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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Hon. R. Scott Sprouse, Circuit Court Judge

Trial Court Case No. 2019CP041942
Appellant Case No. 2023-001681

Natalie Zitek, individually, and on behalf of
all others similarly situated, ... Plaintiff,

v.

D. R. Horton, Inc., Jane Doe#1-10; and,
John Doe #1-50, ... Defendants,

AND

D.R. Horton, Inc., ... Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J Landscaping &
Grading, LLC; AllPro Textures, LLC; Alpha Omega
Construction Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J Framing, Inc.; Alpha
E.M.C.; A-Z, Inc.; Atlanta Floor Designs Center; A Grade
Above Others, LLC; Brand-Vaughan Lumber Co, Inc.; BKF
Builders, Inc.; Builders Designhouse, LLC; BMC East LLC
d/b/a Coleman Floor, LLC; Builders Firstsource Southeast
Group, LLC, a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc., a/k/a Caryl
Mechanics, Inc.; Cannaday Siding & Gutter, Inc.; Cortes
Painting, LLC; CBU Enterprises, Inc.; CPI Security
Systems, Inc.; DOM Group, LLC; Ferguson Enterprises,
Inc.; Five Star Construction Inc.; Five Star Foundations,
LLC; Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II; Get
Floored, LLC; GBS Building Supply; US LBM, LLC, f/k/a
GBS Building Supply, Inc.; General Shale Brick Inc.;
Greener Pastures, Inc., a/k/a Green Pastures of Aiken, LLC;

IBS Asset, LLC d/b/a Blue Ridge Building Products; Installed Building Products, LLC, a/k/a Installed Building Products II LLC; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danlar, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC, a/k/a M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, Inc., a/k/a P & T Construction, Inc.; P & L Enterprises, LLC; Probuild Company, LLC a/k/a Probuild Holdings, Inc.; Rite Rug Company, Inc., a/k/a, Rite Rug Co.; Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractors Service; Tucker Materials, Inc, a/k/a Gypsum; Silver Line Building Products Corp.; Dupree Plumbing Co., Inc.; UTM Enterprises, Inc; and Willow Tree Landscaping, Inc., and Silver Line Building Products Corporation, ...

Third-Party Defendants,

of which Galloway-Bell, Inc. a/k/a Galloway-Bell, Inc. II is the

Respondent,

AND

D.R. Horton, Inc. is the

Appellant.

**RECORD ON APPEAL
VOLUME I**

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RECORD ON APPEAL
Horton Appellant – Respondent Galloway
Appeal 2023-001681

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE NO.: 2019-CP-04-1942
	)	
Natalie Zitek, individually, and on behalf of all	)	
others similarly situated,	)	
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF'S
	)	MOTION FOR CLASS
v.	)	CERTIFICATION AND DENYING
	)	DEFENDANT'S MOTION TO
D.R. Horton, Inc.; Jane Doe #1-10; and John	)	COMPEL ARBITRATION
Doe #1-50,	)	
	)	
Defendants.	)	

This matter came before the Court on December 9, 2020 on Plaintiff's Motion for Class Certification and Defendant's Motion to Compel Arbitration.¹ Having reviewed the parties' submissions, heard oral arguments, and conducted a rigorous Rule 23 analysis under the South Carolina Rules of Civil Procedure, this Court finds that:

1. All five Rule 23 class certification requirements are met here;
2. This case is well-suited for class certification because multiple claims that center on Horton's conduct can be resolved in a single action that poses no unusual manageability problems;
3. Horton's arbitration provision is unenforceable because it was extinguished pursuant to the Doctrine of Merger; and,
4. Horton's arbitration provision is unenforceable because it is unconscionable.

Accordingly, the Court **GRANTS** Zitek's Class Certification Motion and certifies the class as proposed; and, the Court **DENIES** Horton's Arbitration Motion.

BACKGROUND

¹ At the December 9th hearing, Justin Lucey and Dabny Lynn with the Lucey Law Firm appeared on behalf of Plaintiff. Tom Dudley and Brian Aughttry with the Kenison, Dudley, & Crawford Law Firm appeared on behalf of Defendant.

This is a proposed class action that involves 234 single-family homes built and sold by Defendant, D.R. Horton, Inc. (“Horton”), in the Rose Hill subdivision located in Easley, South Carolina. These homes were completed between 2012 and 2017. Plaintiff, Natalie Zitek (“Zitek”), owns one of these homes. Zitek maintains that her home and all other Horton-built homes in Rose Hill contain common defects and damages such as leaky windows and patio doors; insufficiently supported brick that is cracking along walls; loosely embedded stone that is separating away from walls; and, insufficiently supported slab foundations that are cracking in many places. Zitek’s expert, Dr. Rhett Whitlock (“Dr. Whitlock”), catalogued all 234 homes and performed detailed inspections at 1/3rd of these homes.² According to Dr. Whitlock, all 234 homes share common construction, a common construction problem (*i.e.*, failing exterior envelopes), and common repairs for this problem that can be commonly priced from home to home. As such, Zitek argues class certification is appropriate and seeks certification of the following class:

Any persons or entities that own a home developed/built by D.R. Horton within the Rose Hill neighborhood in Easley, South Carolina.³

Horton argues that class certification is inappropriate, and separately, argues that the 174 or so proposed class members who contracted directly with Horton should be compelled to arbitrate their claims based on the arbitration provision in Horton’s purchase agreement. Zitek argues that this arbitration provision is unenforceable for two independent reasons: (1) it no longer exists under the Doctrine of Merger; and, (2) it is unconscionable under *Smith v. D.R. Horton*, 403 S.C. 10, 16, 742 S.E.2d 37, 41 (Ct. App. 2013), *aff’d*, 417 S.C. 42, 790 S.E.2d 1 (2016).

PROCEDURAL HISTORY

² Dr. Whitlock tested the windows and masonry at several of these inspected homes. Whitlock Aff., para. 22.

³The class excludes any home owned by D.R. Horton and/or their affiliates; any home owned by the Judge, any Rose Hill home developed by persons other than D.R. Horton; any former Rose Hill homeowner; any current Rose Hill homeowner who previously released D.R. Horton; and, all persons who properly and timely opt out of the Class.

On September 25, 2019, Zitek filed this proposed class action to recover damages owed to her and other Rose Hill homeowners due to defects existing in their homes. Zitek's Complaint asserts the following claims against Horton: negligence/gross negligence, breach of implied warranties, and unfair trade practices.⁴ On February 28, 2020, Horton filed a Motion to Stay for Compliance with the Right to Cure Act (the "Act"). On March 30, 2020, Zitek responded with a Class Certification Motion. In support of her Motion, Zitek filed several supporting exhibits, supporting Affidavits of Dr. Whitlock, Zitek, and Class Counsel, and pictures of the same or similar window defects and damages in a multitude of the homes.

Both parties' Motions were scheduled to be heard on May 29, 2020.⁵ On May 27, 2020, Horton filed its Opposing Memo to Class Certification and an Affidavit from a Horton Manager, Shawn Kruglewicz ("Kruglewicz"). Horton also filed a separate Motion to Compel Arbitration. On May 28, 2020, Zitek filed Dr. Whitlock's Reply Affidavit to Kruglewicz's Affidavit.

At the May 29th hearing, the Court took the Motions under advisement and encouraged the parties to reach an agreement on representative (class action) compliance with the Act. The parties agreed on a compliance plan that this Court enrolled on July 20, 2020. Under this plan, the Parties temporarily withdrew their Motions and Horton inspected and offered to cure 48 homes.⁶ This process ended on October 18, 2020. The next day, Horton re-filed its Arbitration Motion; and, on October 20, 2020, Zitek re-filed her Class Certification Motion.⁷

⁴ Plaintiff represented that if the class were certified that John and Jane Does would not be added and that SCUPTA claims would not apply to the class.

⁵ On May 19, 2020, Horton moved to Continue Zitek's Class Certification Motion, but Horton's Motion was denied.

⁶ These homes included 25 Lucey Law Firm clients which were randomly selected and 22 or so other homeowners which were selected by Horton.

⁷ On November 13, 2020, and after Horton received Zitek's discovery requests, Horton filed a Rule 26 Motion seeking to halt discovery given its pending Arbitration Motion.

Prior to the hearing of these Motions on December 9, 2020,⁸ Zitek filed two memoranda and additional materials supporting her Motion including: (1) Dr. Whitlock's Supplemental Affidavit regarding additional engineering inspections and over 100 photos showing a half dozen common defects and damages; (2) Horton's offers to cure also showing common conditions; and, (3) a chart challenging Horton's points opposing certification. Zitek also filed two memoranda and materials opposing Horton's Arbitration Motion including (1) Horton's One Year Warranty and (2) Zitek's Affidavit discussing her lack of bargaining power. Horton supplemented its Memo Opposing Class Certification with one expert Affidavit; and, in support of its Arbitration Motion, Horton filed a memorandum and an Affidavit of Horton Manager, Philip Deleskamp.

ANALYSIS

I. This Action Meets Rule 23's Class Certification Requirements

This Court finds that Zitek has met all Rule 23 requirements and class certification is an appropriate vehicle for the fair and effective adjudication of this matter. *See* Rule 23, SCRCF.⁹

A. Numerosity – Rule 23(a)(1)

The Court finds that the proposed class, which Horton admits consists of 234 or more members who own 234 houses, is so numerous that the joinder of all members is impractical. Rule 23(a)(1), SCRCF;¹⁰ *Kruglewicz Aff.*, para. 8 (Horton agreeing that there are 234 Horton-built homes in Rose Hill); *Mixson Aff.*, paras. 3-6 (“[T]he putative class is in excess of 234 members”).

The Court also finds that a class action is the appropriate procedure to efficiently litigate the claims of these homeowners. Many of these homeowners may not have the ability to bring their

⁸ This hearing was originally scheduled for November 30, 2020, then for December 2, 2020, but it was moved to December 9, 2020 to ensure that the parties had enough time to make their respective arguments.

⁹ *See also Salmonsens v. CGD*, 377 S.C. 442, 455, 661 S.E.2d 81, 88 (2008) (South Carolina favors class actions).

¹⁰ *See also Newberg on Class Actions* § 3:12 (“[A] class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone.”).

own claim because of a lack of time, expertise, or financial resources required. Even if each of these homeowners had the resources to proceed individually, this Court would be overrun with claims.

B. Commonality – Rule 23(a)(2)

The Court finds that there are common legal and factual questions that bind the proposed class together such as whether Horton’s construction practices damaged class members. Rule 23(a)(2), SCRCP;¹¹ Compl, para. 37 (alleging common questions of law and fact). Zitek also submitted evidence supporting the commonality of the claims at issue. *See, e.g.*, Whitlock Aff., para. 20 (opining that all 234 homes contain many of the same components and have experienced the same weather conditions); Whitlock Aff., paras. 27-32 (opining that defects and damages observed are typical and consistent and affect all 234 Rose Hill Homes); Whitlock Aff., para. 34 (opining that all-inclusive unit costs for the repair of these common defects are typical and consistent); Whitlock Reply Aff., para. 4-8 (opining that these defects can be classified singularly as defective exterior building envelopes); Whitlock Supp. Aff., Exs. B-G (over 100 photos showing six common defects Whitlock documented throughout these homes’ envelopes); *see also* Kruglewicz Aff., para. 18 (Horton admitting it hired subcontractors to perform nearly identical scopes of work); Offers to Cure (showing Horton observed sealant failure at windows in 96% of the homes it inspected and damaged patio doors in 52% of these homes).

C. Typicality – Rule 23(a)(3)

This Court finds that Zitek’s claims are typical of the claims of the proposed class. Rule 23(a)(3), SCRCP; Compl., para. 38. Zitek’s claims arise out of a common pattern of alleged wrongdoing by Horton, and the same legal and factual theories, *e.g.*, building code violations, are

¹¹ *See Napier, et al v. Adiz, et al*, Case No. 2016-CP-02-263 (S.C. Com. Pl.) (Judge Bucker Jan. 12, 2018 Order Granting Class Cert., p. 12) (“Napier Order”) (Aiken County); *Marcum, et al v. Adiz, et al*, Case No. 2012-CP-02-3191 (S.C. Com. Pl.) (Judge Early Apr. 21, 2014 Order Granting Class Cert., pp. 10-11) (“Marcum Order”) (Aiken County). (Compl, paras. 29-31); *see also McGann v. Mungo*, 287 S.C. 561, 568, 340 S.E.2d 154, 157-58 (Ct. App. 1986) (not every issue must be common to all class members; and even a single common issue will satisfy Rule 23).

asserted on behalf of all class members. Zitek has also presented evidence that further support these points.

D. Adequacy – Rule 23(a)(4)

The Court finds that Zitek and Zitek’s Counsel will fairly and adequately represent the class. Rule 23(a)(4), SCRCF.¹² Zitek voluntarily accepted her role as class representative and there is nothing to suggest that she has competing interests. Zitek Aff., paras. 10-13. No material conflict exists between Zitek (an owner of a Horton-built home) and the class members she seeks to represent (also owners of Horton-built homes). Horton’s argument that her upscale residence should disqualify her is inadequately supported and misplaced. Zitek also retained the Lucey Law Firm to prosecute her and the proposed class’ claims. Zitek Aff., paras. 10-13. The Lucey Law Firm is highly experienced in construction and class action litigation. Lucey Aff., paras. 1-16. The firm is reputed to have three of the four largest negotiated, residential construction recoveries in South Carolina, and the largest construction verdicts; and, Mr. Lucey has been qualified and appointed as class counsel in many cases. *Id.*

E. Amount in Controversy – Rule 23(a)(5)

This Court finds that the proposed class meets the \$100 amount in controversy requirement. Rule 23(a)(5), SCRCF. Dr. Whitlock opined that the cost to repair each of these homes is more than \$100 and Horton’s offers to cure implicitly confirm this. Whitlock Aff., p. 5, n. 1; *see also* Offers to Cure.

II. Horton’s Opposition to Class Certification is Overruled

Horton’s opposition primarily focuses on two grounds – commonality and typicality. Horton offers rhetorical arguments that “potential” differences in size, price, model type, etc. “may” require

¹² *See also Newberg on Class Actions* § 3:50 (The class representative (1) should not have any significant antagonistic or conflicting interests to class members; and (2) should vigorously prosecute the interests of the class through qualified counsel).

individualized inquiries. However, Horton offers no evidence showing how any of these purported differences impact the common and typical defect at issue – failing exterior envelopes (consisting of failing siding systems and failing fenestrations).

Moreover, Horton’s offers to cure show that there are at least two common and typical conditions relating to these homes’ envelopes – which Horton agreed to commonly repair. (Offers to Cure). Horton concedes these common conditions in its Opposing Memo.¹³ These concessions negate Horton’s expert’s opinion that individualized repairs “may” be required and that “there was not one issue that was common and present at all of the homes”. Moore Aff., paras. 23, 25.

This Court will not deny class certification based on speculation rather than facts. Zitek and Dr. Whitlock provided extensive evidence supporting all five Rule 23 requirements. Horton has had months to challenge this evidence or otherwise refute Dr. Whitlock’s opinions but failed to do so. Notably, Plaintiffs have shown that person(s) knowledgeable about the construction of these homes are still employed by Horton and could have submitted less speculative affidavits – but did not.

III. Arbitration is Unenforceable Under the Doctrine of Merger

This Court finds that the arbitration provision in Horton’s purchase agreement is unenforceable under the Doctrine of Merger because this provision merged with homeowner deeds.

[Under] [t]he doctrine of merger. . . The execution, delivery, and acceptance of a deed varying from the terms of the antecedent contract indicates an amendment of the original contract, and generally the rights of the parties are fixed by their expressions as contained in the deed.

¹³ Horton Opposing Memo, p. 17 (“Additionally, the expert affidavit (“Moore Affidavit”) prepared by Larry Steven Moore (“Moore”) with Applied Building Sciences, Inc., attached hereto as Exhibit A, indicates that there are no defects or issues common to every single home inspected. To the contrary, the only potential defect that might be common to most or all of the homes is a failure of an adhesive sealant around some of the windows of the homes. Although several of the homes have similar issues, like those arising from doors, whether it be framing or weatherproofing issues, these issues are not common to all the homes. Most, if not all, of the alleged defects would best be characterized as common to some, or maybe even half, of the homes. However, these alleged defects are certainly not common to all the homes in Rose Hill.”) (emphasis added).

Wilson v. Landstrom, 281 S.C. 260, 264, 315 S.E.2d 130, 132-33 (Ct. App. 1984) quoting *Charleston & Western Carolina Railway Co. v. Joyce*, 231 S.C. 493, 504, 99 S.E.2d 187, 193 (1957) (emphasis added). In other words, once parties execute a deed:

. . . [T]he written . . . agreement to convey is merged in the deed, the agreement to convey is discharged or is modified as indicated by the deed, the deed regulates the rights and liabilities of the parties, and [prior] agreement[s] [are] inadmissible. . .

Charleston & Western, 231 S.C. at 505, 99 S.E.2d at 193; *Wilson*, 281 S.C. at 364, 315 S.E.2d at 133 (“A deed executed [after a] contract for the sale of land supersedes that contract. . .”).

In 2005 and 2011, two South Carolina Circuit Courts refused to enforce the arbitration provision in Horton purchase agreements because they found that the provision was extinguished by the deed.¹⁴ Like these cases, Zitek’s deed was executed after Zitek’s purchase agreement. Zitek Purchase Agreement, p. 8 (Zitek purchase agreement executed on February 17, 2013); Zitek Deed, p. 2 (Zitek deed executed on July 25, 2013). Paragraph 15 of Zitek’s purchase agreement¹⁵ – even if it had any validity – is therefore extinguished and unenforceable under the Merger Doctrine.

IV. **The Two Merger Doctrine Exceptions Do Not Apply**

Horton argues two exceptions to the Merger Doctrine that this Court finds do not apply here.

A. **Contrary Intent Exception**

First, the Court finds the “contrary intent” exception to the Merger Doctrine does not apply because Horton has not clearly shown that Paragraph 15 was intended to survive closing. Under this exception, “the 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,

¹⁴ *Smith v. D.R. Horton*, Case No. 2010-CP-18-641 (S.C. Com. Pl.) (Judge Dickson Apr. 12, 2011 Order Denying Horton’s Arbitration Motion) (Dorchester County); *Upchurch v. D.R. Horton*, 2005 WL 5621497, at *3 (S.C. Com. Plea) (Judge Barber Sept. 28, 2005 Order Denying Horton’s Arbitration Motion) (Richland County).

¹⁵ Horton’s express arbitration provision is in Paragraph 15 of its purchase agreement. As discussed herein, this Court finds that Paragraph 15 does not stand alone; rather, it is intertwined with Paragraph 14. However, even assuming Paragraph 15 did stand alone, it is nevertheless unenforceable under the Doctrine of Merger.

322 S.E.2d 827, 828 (Ct. App. 1984). Horton has not met this burden. This is supported by the following facts:

- Zitek’s purchase agreement does not contain a general survival clause;
- Paragraph 15, itself, does not state that it “survives closing” or applies “after closing”;¹⁶
- Horton included survival sentences in other provisions like Paragraphs 9(b), 10, and 21;
- Paragraph 14(c) indicates that “after closing” Horton has no liability or obligation to Zitek “except as provided in. . .[her] deed”;
- Horton provided Zitek two, separate post-closing Warranties that have their own arbitration provisions that conflict with Paragraph 15;¹⁷ and
- Horton did not include Paragraph 15 in Zitek’s deed or anything else given to her at closing.

B. Part Performance Exception

Second, the Court finds that the “part performance” exception to the Merger Doctrine does not apply because Horton has no unperformed obligations. This exception provides that unperformed contractual obligations do not merge with deeds until they are performed. *New Prospect Area Fire Dist. v. New Prospect Ruritan Club*, 311 S.C. 402, 405, 429 S.E.2d 791, 792 (1993). “As to those provisions, the contract is not merged in the deed, and the contract remains in force until the contract has been fully performed.” 26A C.J.S. Deeds § 223 (1956) (emphasis added).

Horton defines its unperformed obligations in Paragraph 14(c) of the purchase agreement. According to this Paragraph, Horton has no post-closing obligations “except as provided in”: (1) Section 14 (*i.e.*, the Written Warranties); (2) Section 21 (*i.e.*, Punch List Repairs); and (3) the homeowners’ deeds.¹⁸ There are no Horton post-closing obligations expressly incorporated into

¹⁶ These facts distinguish this case from *Carlson v. S.C. State Plastering*, 404 S.C. 250, 743 S.E.2d 868 (Ct. App. 2013). There, the purchase agreement had a survival clause and the arbitration provision stated that it applied “after closing”.

¹⁷ To be clear, there was a total of three different arbitration provisions, and Horton does not seek to compel either of the other two arbitration provisions which were contained in the two written warranties.

¹⁸ Zitek’s purchase agreement indicates that Horton’s other rights and obligations end at “Closing”. *See, e.g.*, Zitek Purchase Agreement Paras. 5, 6, 8, 9, 12, 14(a), 16, 18.

Zitek's deed,¹⁹ and, Horton's post-closing Warranty obligations are set forth in separate documents. As such, Zitek's purchase "contract has been fully performed". 26A C.J.S. Deeds § 223, *supra*. Moreover, again, the Written Warranties have their own arbitration provisions, and the Punch List provision has its own survival clause.

V. Arbitration is Also Unenforceable Because the Arbitration Provision is Unconscionable

This Court also finds that arbitration is unenforceable because Zitek's purchase agreement is an adhesion contract and its arbitration provision contains oppressive terms that are not severable. *Smith*, 417 S.C. at 49, 790 S.E.2d at 4 ("[U]nconscionability is. . .the absence of meaningful choice. . .due to one-sided contract provisions, together with [oppressive] terms. . .").

A. Absence of Meaningful Choice/Adhesion Contract

First, this Court finds that Zitek's purchase agreement is an adhesion contract and she lacked a meaningful choice in her ability to negotiate arbitration. This is supported by the following facts:

- The agreement is a boilerplate contract that Horton offered to Zitek on a take-it-or-leave-it basis. Zitek Aff., paras. 5, 7;
- Zitek has no experience in real estate, construction or the law and was not represented by her own attorney at the time she signed the agreement. Zitek Aff., paras. 2, 8;
- Zitek is an unsophisticated purchaser whereas Horton is a sophisticated developer that has constructed nearly 800,000 homes in the United States. *Id.*; *see also* Horton Website; and,
- Similar Horton contracts have previously been found to be adhesion contracts by South Carolina courts.

B. Oppressive Terms

¹⁹ Implied warranties may survive deeds, but this does negate the Merger Doctrine's applicability to pre-deed warranty disclaimers (or arbitration clauses) as explained by the 4th Circuit in *Tower South POA v. Summey Building Systems, Inc.*, 47 F.3d 1165 (1995) (unpublished).

Second, this Court finds the agreement's arbitration provision contains oppressive terms that disclaim all implied warranties and waive Horton's liability "for monetary damages of any kind".

The arbitration provision consists of Paragraphs 14 and 15 because, like *Smith*, cross-references "intertwine" these provisions. *Smith*, 417 S.C. at 49, 790 S.E.2d at 4.²⁰ The only pertinent differences between *Smith* and here is that Horton relocated (1) its express arbitration clause from Paragraph 14(g) to Paragraph 15; and (2) its disclaimers from Paragraph 14(i) to Paragraph 14(c). However, the relocation of these provisions does not negate *Smith*'s applicability. A comparison of *Smith*'s paragraphs to Zitek's paragraphs shows that they contain the same cross-references.²¹

More importantly, Paragraph 15, unlike *Smith*'s Paragraph 14(g), contains a broad reference to Section 14 – it states that disputes regarding Horton's warranty "pursuant to Section 14 above" shall be arbitrated. Thus, Paragraph 15 – does not stand alone – it references "Section 14 above" which includes oppressive terms.

C. Severability

The Court further finds that Paragraph 15 is not severable from Paragraph 14. This is supported by the fact that neither Paragraph 14 nor 15 (nor the body of Zitek's purchase agreement) contain a severability clause. Zitek Purchase Agreement. This is also supported by the law:

We conclude the arbitration clause. . .should not be severed from the numerous unconscionable provisions and particularly Horton's attempt to waive any seller liability for "monetary damages of any kind. . ."

Smith, 403 S.C. at 16, 742 S.E.2d at 41 (emphasis added).

²⁰ See also *Mirmow v. Great Southern Homes, Inc.*, 2019 WL 7611604, *2 (S.C. Com. Pl.) (Judge Kessley Dec. 9, 2019 Order Denying Arb. Motion) (Lexington County) (finding the arbitration agreement in limited warranty unconscionable under *Smith* based on "related" warranty and liability disclaimers).

²¹ See Pl. Memo. Opposing Arb., p. 13 (charts showing similarities between *Smith*'s and Zitek's paragraphs).

Horton's argument that Paragraph 15 is a separable provision is the same argument considered and rejected by the *Smith* Court. *Smith* is good law; this case involves essentially the same contracts, paragraphs, cross-references and oppressive terms; and therefore, *Smith* controls.

VI. Even if the Arbitration Provision Survived, It Would Only Apply to A Subclass of Original Purchasers, Not the Subclass of Downstream Purchasers

Even if the arbitration provision survived, it would only apply to the subclass of homeowners that purchased their homes directly from Horton ("Original Homeowners"). Horton does not have contracts with downstream homeowners, those that purchased their homes from other homeowners. The absence of a contractual agreement to arbitrate downstream claims is fatal to the Motion to Compel Arbitration against this subclass.²² Therefore, had there been an arbitration agreement that survived closing, it is only the subclass of Original Homeowners (estimated by Plaintiff to be the owners of approximately one hundred and sixty-five homes) which would have been sent by this Court to arbitration.

CONCLUSION

Having found that all Rule 23 requirements are satisfied here, this Court **GRANTS** Zitek's Class Certification Motion and certifies the following class:

Any persons or entities that own a home developed/built by D.R. Horton within the Rose Hill neighborhood in Easley, South Carolina.

The class excludes any home owned by D.R. Horton and/or their affiliates; any home owned by the Judge, any Rose Hill home developed by persons other than D.R. Horton; any former Rose Hill homeowner; any current Rose Hill homeowner who previously released D.R. Horton; and, all persons who properly execute and file a timely request for exclusion from the Class.

²² It appears that Horton does not contest the inapplicability of its arbitration provision to downstream purchasers.

This class shall consist of two subclasses, the first being original owners, and the second being downstream owners, so that should Horton appeal the denial of the Motion to Compel, the downstream subclass may continue to prosecute their claims during the pendency of the appeal.

Natalie Zitek is hereby appointed as Class Representative. Justin Lucey, Dabny Lynn, and Sohayla Townes of the Lucey Law Firm are hereby appointed as Class Counsel. The filed Notice Plan, Notice, and Opt-Out Form are approved for use by Class Counsel as detailed in the documents.

Having found that the arbitration provision in Horton's purchase agreement is unenforceable, this Court **DENIES** Horton's Motion to Compel Arbitration.²³

AND IT IS SO ORDERED!

Anderson, South Carolina
_____, 2021

The Honorable Cordell Maddox
Presiding Judge for the 10th Circuit

²³Since this Court finds arbitration is unenforceable, it need not address whether the South Carolina Uniform Arbitration Act ("SCUAA") or Federal Arbitration Act ("FAA"), or both, would apply. However, the purchase contracts set forth that the SCUAA applies and the Court sees no reason to disturb that provision.



Anderson Common Pleas

Case Caption: Natalie Zitek VS D.R. Horton, Inc. , defendant, et al
Case Number: 2019CP0401942
Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2021-01-27 11:29:22 page 14 of 14

FORM 4**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE****JUDGMENT IN A CIVIL CASE****IN THE COURT OF COMMON PLEAS****CASE NO.** 2019CP0401942Natalie Zitek, individually, and on behalf
of all others similarly situated

D.R. Horton, Inc.,

Third-Party Plaintiff

AJ LANDSCAPING & GRADING LLC, et
al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant**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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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:**ORDER INFORMATION**

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2752

Judge Code

Date

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of all
others similarly situated,

Plaintiff

vs

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50

Defendant

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No. 2019-CP-04-01942

ORDER

D.R HORTON, INC.

Third-Party Plaintiff

vs

AJ LANDSCAPING & GRADING LLC,
A/K/A AJ LANDSCAPNG & GRADING,
INC; ALLPRO TEXTURES, LCC; ALPHA
OMEGA CONSTRUCTION GROUP, INC.;
AMERICAN CONCRETE AND PRECAST, INC.,
A/K/A ACP CONCRETE, INC.; A&J FRAMING,
INC; ALPHA E.M.C; A-Z, INC.; ATLANTA
FLOOR DESIGNS CENTER; A GRADE ABOVE
OTHERS, LLC; BRAND-VAUGHAN LUMBER
CO., INC.; BKF BUILDERS, INC; BUILDERS
DESIGNHOUSE, LLC; BMC EAST, LLC D/B/A
COLEMAN FLOOR, LLC; BUILDERS
FIRSTSOURCE SOUTHEAST GROUP, LLC,
A/K/A BUILDERS FIRSTSOURCE, INC;
BRAVO CARPENTERS, INC.; CARYL
MECHANICS II, INC.; CARYL MECHANICALS,
INC.; CANNADAY SIDING AND GUTTER, INC;)
CORTES PAINTING, LLC; CBU ENTERPRISES,)
INC.; CPI SECURITY SYSTEMS, INC.; DOM)
GROUP, LLC; FERGUSON ENTERPRISES, INC.)
;FIVE STAR CONSTRUCTION INC.; FIVE)
STAR FOUNDATIONS, LLC; GALLOWAY-)
BELL, INC.; A/K/A GALLOWAY-BELL, INC. II)
BGET FLOORED, LLC; GBS BUILDING)
SUPPLY-US LBM, LLC, A/K/A GBS)

I. The Plaintiff's Motion to Sever

The Plaintiff moves that the Plaintiffs' claims be severed from the Defendant's claims against the Third Party Defendants under Rule 42, South Carolina Rules of Civil Procedure. The basis for this motion is that the Defendant's claims against the Third Party Defendants are rooted in indemnification. The Plaintiff argues that severing the claims would further expedition and economy to the case, since the liability issue would be determined prior to the adjudication of the claims against the Third Party Defendants. The Defendant argues that it would be cumbersome and not economical for the Court's time, since the Third Party Defendants may be called as witnesses during the trial anyway.

After careful review of this close question, the Court DENIES the Plaintiff's motion to sever the case. The Court finds that, on balance, judicial economy will be served by keeping the case together.

II. The Plaintiff's Motion to Transfer the Case to the Jury Docket

The Court is requesting several weeks of Common Pleas Court for the July-December 2023 from SC Court Administration. This case will be set as a date certain for a jury trial when the schedule is released during the Spring.

III. Motions for Summary Judgment

The Court heard several motions for summary judgment filed by various Third Party Defendants and one motion filed by a Fourth Defendant. All of the Third Party Defendants make essentially the same argument. They argue that the Defendant's claims are merely disguised claims for indemnification. The Defendant argues that its claims are distinguishable from the cases cited by the Third Party Defendants in their memoranda. The Court must view the evidence in a light most favorable to the non-moving party. Like the motion to sever above, this is a close question. After review of the applicable law and the materials presented, I find that there are genuine issues of material fact in the claims between the Defendant and Third Party Defendants. Accordingly, the motions for summary judgment filed by Five Star Foundations, LLC, Long Heating and Air Conditioning, Inc., Caryl Mechanics II, Inc. A/K/A Caryl Mechanicals Inc., Alpha Omega Construction Group, Inc., General Shale Brick, Inc., P&T Construction Inc., King's Landscaping, LLC, AJ Landscaping & Grading, LLC, Rite Rug Company, Inc. A/K/A Rite Rug Co., Atlanta Floor Designs Center, Allpro Textures, LLC, and Manale Landscaping LLC are DENIED. The Fourth Party Defendant's motion for Summary Judgment is also denied under the same rationale.

IV. Discovery Issues

The Plaintiff moves to bifurcate discovery, with a request that Third Party Defendants may only audit depositions involving unrelated trades. Plaintiff's counsel argues that scheduling depositions is very problematic with over forty attorneys having the right to participate. The Court finds that this is a valid argument and that the Plaintiff's motion to bifurcate discovery is GRANTED. Henceforth, Third Party Defendants shall be able to participate in depositions in

which issues pertaining to the work done by their client is in question. Third Party Defendants may only audit depositions of unrelated work.

The Defendant raises the issue of inspections of the properties in the class. The parties dispute whether or not the Plaintiff is thwarting the ability of the Defendant to have the subject properties inspected. The Court finds that the Defendant should have the right to inspect the subject properties without interference. However, due to the nature of the case, the inspections must be done in an orderly manner, with advance notice. Either party may petition the Court for relief if they are not able to formulate a reasonable or allege abuse of this process. In light of the Court's ruling above regarding the depositions, discovery should be able to be completed in a more efficient manner.

V. Pertinent Dates

As stated above, the Court is requesting a block of time from Court Administration in its July-December 2023 schedule. This case shall be set as a date certain case for that block of Common Pleas terms. The parties shall be bound by the following schedule:

February 1, 2023	All inspections shall be completed.
April 1, 2023	All discovery shall be completed.
May 1, 2023	Any other motions shall be filed. All will be heard prior to July 1.
July 1, 2023	Mediation shall be completed.

Once the case is set for trial, the parties shall submit pre-trial briefs, including witness lists, proposed voir dire questions, the issues remaining in controversy and any pre-trial matters/evidentiary issues. The pre-trial briefs shall be filed no later than ten (10) days prior to the start of the trial.

AND IT IS SO ORDERED!

October 31, 2022

R. Scott Sprouse
Circuit Judge, Tenth Judicial Circuit



Anderson Common Pleas

Case Caption: Natalie Zitek , plaintiff, et al VS Jane Doe 1 , defendant, et al
Case Number: 2019CP0401942
Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2022-11-03 11:14:32 page 8 of 8

FORM4

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

JUDGMENT IN A CIVIL CASE

CIVIL ACTION NO.: 2019-CP-04-01942

Natalie Zitek, et al

PLAINTIFF(S)

DR Horton, et al

DEFENDANT(S)

Submitted By:
Address:

Attorney for : Plaintiff Defendant or
Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40U), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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:

ORDER INFORMATION

This order ends ☒ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
If applicable, describe the property, including tax map information and address, referenced in the order:		

The Judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court for judgment details.

R. SCOTT SPROUSE

2752

8/17/2023

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____, to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

CourtReporter:-----

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT
CASE NO: 2019-CP-04-1942

Natalie Zitek, individually, and on
behalf of all others similarly situated,

PLAINTIFF

vs

D.R. Horton, Inc., Jane Doe #1-10; and,
John Doe #1-50

DEFENDANTS

TRIAL PLAN ORDER

DR Horton, Inc.,

THIRD-PARTY PLAINTIFF

VS

AJ Landscaping & Grading, LLC a/k/a
AJ Landscaping & Grading, Inc;
AllPro Textures, LCC; Alpha Omega
Construction Group, Inc; American
Concrete And Precast, Inc., a/k/a ACP
Concrete, Inc.; A&J Framing, Inc;
Alpha EMC; A-Z, Inc; Atlanta Floor
Designs Center; A Grade Above Others,
LLC; Brand-Vaughan Lumber Co.,
Inc. BKF Builders, Inc.; Builders
Designhouse, LLC; BMC East,
LLC D/B/A Coleman Floor, LLC;
Builders Firstsource
Southeast Group, LLC, a/k/a Builders
Firstsource, Inc;
Bravo Carpenters, Inc.; Caryl
Mechanics II, Inc.; Caryl
Mechanicals, Inc.; Cannaday
Siding and Gutter, Inc.; Cores Painting,
LLC; CBU Enterprises Inc.; CPI
Security Systems, Inc.; DOM Group,
LLC; Ferguson Enterprises, Inc.; Five
Star Construction, Inc.; Five Star

Foundations, LLC; Galloway Bell Inc.;
a/k/a Galloway-Bell, Inc. II; BGET
Floored, LLC; GBS
Building Supply-US LBM, LLC, a/k/a
GBS Building Supply, Inc. General Shale
Brick, Inc.;
Greener Pastures, Inc., a/k/a Greener
Pastures of Aiken, Inc; IBP Asset, LLC
D/B/A Blue Ridge Building Products; JLS
Masonry, Inc.; Kings Landscaping, LLC;
Landscapers, LLC; Lade-Danler, Inc.;
Lansing Building Products Inc.; Long
Heating & Air
Conditioning, Inc.; L&M
Electric, Inc.; Manale Landscaping,
LLC; MJ Cowboys, LLC; M&L General
Construction, LLC. a/k/a M&L General
Construction, Inc.; M&L Reyna
Construction, LLC; M&M Foundations,
LLC; Nazareth Builders, LLC, NB
Contractors, LLC; Poinsett Development,
LLC; Poinsett Homes, LLC; P&T
Construction, LLC; P&L Enterprises,
LLC; Probuild Company, a/k/a Probuild
Holdings, Inc.; Rite Rug Co.; Rodney
Howard Grading Co.; Sandlapper
Concrete, LLC; Sodfather, Inc.,
Landscape Contractors; Stock Building
Supply, LLC; Topbuild Home Services,
Inc., a/k/a Gale Contractors Service;
Tucker Materials, Inc., a/k/a Gypsum
UTM Enterprises, Inc.; Dupree Plumbing
Company, Inc.; Willow Tree
Landscaping, Inc.

THIRD-PARTY DEFENDANTS

This case involves complex issues and presents a significant challenge to the Court to ensure that the issues are presented to the jury in an organized and understandable manner. The Court heard from the parties at the July 21, 2023 hearing regarding a trial plan. Opportunity for the submission of additional trial plans was given to the parties. The following parties moved for bifurcation and/or submitted/joined in the submission of trial plans:

The Plaintiff Natalie Zitek, et al

The Defendant D.R. Horton

Third Party Defendants P&L Enterprises
 M&L Reyna Construction LLC
 Aaron D. Peris
 Installed Building Products LLC
 JLS Masonry Inc.
 Topbuild Home Services, Inc.

The Court received correspondence from the parties requesting that the Court not issue a final trial plan order until August 17, 2023, given that the parties were actively involved in settlement negotiations. The Court granted that request.

I. Trial Bifurcation

The Court finds that the most judicially economical method of presenting this case will be by bifurcating the trial. The Court previously denied the Plaintiffs motion to bifurcate the entire case, in that a complete bifurcation would require a new jury and new trial. The Court finds that the same jury should hear all of the issues in this case. However, the claims of the Defendant against the Third-Party Defendants (and the claims against the Fourth-Party/Fifth-Party Defendants that flow from those) are affected by any liability attributed to the Defendant by the jury. Accordingly, Phase I of the trial shall be that of liability of the Defendant to the Plaintiff. The issue of punitive damages shall be heard by the jury immediately after Phase I should the jury have found the Defendant liable to the Plaintiff and if the Defendant has elected bifurcation of that issue. The jury shall render a verdict on the issues of liability and punitive damages. Should the jury find for the Plaintiff on any issue of liability and/or punitive damages, Phase II of the trial shall consist of the Defendant proceeding with its claims against the Third-Party Defendants (and any Fourth/Fifth Party claims).

II. Pretrial Submissions

The parties shall make the following pre-trial submissions by the end of business on **Friday, August 25, 2023:**

- A. Witness lists.
- B. Proposed deposition designations under S.C.R.C.P Rule 32.

The parties shall make the following pre-trial submissions by the end of business on **Monday, August 28, 2023:**

- A. Notice by the Defendant of election of punitive damages bifurcation. Should the Defendant file no notice in this regard, punitive damages will not be bifurcated.
- B. Proposed voir dire questions.
- C. Exhibit lists.
- D. Motions in limine.
- E. Proposed verdict forms.

- F. Counter designations and objections to any deposition designations. Counter designations must clearly specify which designations are supplemental to the portions designated to be published to the jury (and need to be incorporated by original designating party) and which portions are simply counter-publications (to be published by the counter party at the conclusion of the original publication in the nature of rebuttal information). The parties are encouraged to make an earnest effort to reach an agreement on publication of deposition summaries in lieu of verbatim reading given the limited amount of time for the trial.

The parties shall file any objections to witness or exhibit lists by the end of business on **Tuesday, August 29, 2023.**

Service of any of these materials shall be by electronic transmission.

The parties shall confer before submissions of the above-listed items and determine where disagreements exist. The Court will hear arguments surrounding any of these items at the Pre-Trial Hearing.

III. Pre-Trial Hearing

The attorneys in the case shall appear at an in-person Pre-Trial Hearing on Friday, September 1, 2023 at 9:30 AM. The Court will rule on any disputes regarding the Pre-Trial submissions and announce the voir dire questions that will be used. The attorneys shall bring hard copies of any documents in dispute to the hearing, unless excused from this requirement by the Court. The parties are expected to have their exhibits ready to be marked by the Court reporter. All exhibits shall be marked. The parties shall be prepared to enter any stipulated exhibits and inform the Court which exhibits will require foundation testimony and a ruling on admissibility. No attorney shall exit the courthouse until all of his or her exhibits have been marked. The parties also should be prepared to notify the Court of whether or not they would be willing to accept a verdict of fewer than twelve jurors should issues arise where it is impossible for a full jury to finish the case. This will not be an option if any party objects.

The parties also shall bring any multimedia presentations and/or demonstrative exhibits requiring use of the courtroom's electrical system/outlets with them to this hearing. The courtroom shall be available to the parties after the hearing. Should a party plan on using a technician to operate their presentation, that person shall attend the Pre-Trial Hearing so that all of that party's technological equipment can be tested in the courtroom.

IV. Jury Selection

Due to the nature of the case, the Court has directed the Clerk of Court to summon a very large jury pool, making the facilities at the Anderson County Courthouse insufficient to house all of the persons in attendance. Therefore, the Court has directed jury qualification and selection to take place at the Anderson Civic Center, which is located at 3027 Martin Luther King, Jr. Blvd. Anderson, SC 29625, on Tuesday, September 5, 2023 at 9:30 AM.

The Plaintiff and Defendant shall have the customary four (4) strikes. The Third-Party Defendants shall be grouped according to trade, not to exceed five (5). The Third-Party Defendants shall submit proposed groups to the Court by the end of business on Monday, August 28, 2023 along with the other items in Paragraph II above. The Court will make a final decision on which group each party is assigned to at the Pre-Trial Hearing. Each group shall have four (4) strikes. The group shall elect one attorney to announce that group's strikes.

Due to the anticipated length of the trial, it is the Court's intention for four (4) alternates to be selected, departing from normal procedure. In the event a party has an objection to this unusual number of alternates, it must file that objection with the other materials set forth in Paragraph II above.

The Court's intention is that the jury be selected and sworn before lunch, with the trial to begin at 2 PM on the same day.

V. Trial Commencement and Opening Statements.

The Plaintiff and Defendant shall make opening statements at the commencement of Phase I of the trial. Then, one attorney from each trade group (to be elected by the group) shall be allowed to make an opening statement. Should the group be unable to agree on an attorney to make an opening statement, the Court will select one from the group randomly. The Plaintiff should be prepared to call the first witness at the conclusion of the opening statements on September 5, as time permits.

VI. Trial Procedure.

Court shall commence each day at 9 AM, unless the Court instructs otherwise. The attorneys should anticipate, and communicate to their witnesses, that the trial will extend past 5 PM on some days in order for a witness' testimony to be concluded. The time allotted to this case is limited given the large number of parties. Requests have been made for the Court to either set specific days for each party or to limit examination/cross-examination of witnesses by hours. The Court hesitates to set arbitrary time limits for each witness given the highly technical nature of this case and the need for counsel to make tactical decisions regarding witnesses in the prosecution and defense of this case. However, the Court recognizes the potential of the case bogging down in minutiae and the need for guidelines. The guidelines will be followed and counsel should prepare to complete their portion of the case inside the days allotted. Accordingly, the following schedule shall govern the trial:

September

5	Tuesday	Jury Selection, Opening Statements, First Witness (if time permits).
6	Wednesday	Plaintiffs Case.
7	Thursday	Plaintiffs Case.
8	Friday	Plaintiffs Case.

11	Monday		Plaintiff's Case.
12	Tuesday	AM	Plaintiff's Case.
		PM	Defendant's Case.
13	Wednesday		Defendant's Case.
14	Thursday		Defendant's Case.
15	Friday		Defendant's Case.
18	Monday		Defendant's Case.
19	Tuesday	AM	Plaintiffs Reply.
		PM	(Time available for site visit should the Court order such).
20	Wednesday		Closing Arguments/Jury Verdict on Phase I.
21	Thursday		Punitive Damages Phase (should the Defendant elect bifurcation).
22	Friday		Phase II Opening Statements/ Defendant/Third-Party Plaintiffs Case.
25	Monday		Defendant/Third-Party Plaintiffs Case.
26	Tuesday	AM	Defendant/Third-Party Plaintiffs Case.
		PM	Third-Party Defendants' Case.
27	Wednesday	AM	Third-Party Defendants' Case.
		PM	Fourth/Fifth-Party Defendants' Case.
28	Thursday		Defendant/Third-Party Plaintiff Reply.
			Third-Party Defendants/Fourth-Party Plaintiff Reply.
29	Friday		Phase II Closing Arguments/Submission to Jury

While the Court does not put specific hourly limits on any examination, the Court reserves the right to terminate the questioning of a particular witness by any attorney if the questions being asked are repetitive, unduly argumentative or merely for the purpose of slowing the pace of the trial. In Phase I, the Plaintiff and Defendant shall be allowed to fully examine each witness. One attorney representing each group shall be allowed to cross examine any witness regarding matters not covered in the direct or cross examination by the Plaintiff or Defendant. The attorney representing a party may participate in full if their client or expert is called as a witness by the Plaintiff or Defendant. In that case, that particular attorney will represent his client's group.

Should a part of the trial finish early, the next part of the trial will proceed at that time. For instance, should the Plaintiff rest a day early, the Defendant should be prepared to immediately move forward with its case.

VII. Post-Trial Motions

The parties shall have ten (10) days from the conclusion of the trial in which to file any post-trial motions.

The Court reserves the right to modify this plan. The parties should notify the Court immediately should any settlements be reached which removes parties and simplifies the case.

AND IT IS SO ORDERED!

This 17th day of August, 2023

Walhalla, South Carolina

R. Scott Sprouse, Judge

Tenth Judicial Circuit



Anderson Common Pleas

Case Caption: Natalie Zitek , plaintiff, et al VS Jane Doe 1 , defendant, et al
Case Number: 2019CP0401942
Type: Order/Jury Trial

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2023-08-17 14:27:11 page 10 of 10

**STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 -CP-26-03124

Natalie Zitek, individually, and on behalf of
all others similarly situated

PLAINTIFF(S)

D.R. Horton, Inc., et al.

DEFENDANT(S)

Submitted by: Jeffrey Ross, Counsel for Galloway-Bell, Inc.

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : Judge Sprouse granted Galloway-Bell's Motion for Summary Judgment at the pre-trial hearings held on September 1, 2023

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Date _____

Page 2 of 4



Anderson Common Pleas

Case Caption: Natalie Zitek , plaintiff, et al VS Jane Doe 1 , defendant, et al
Case Number: 2019CP0401942
Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2023-09-27 15:28:47 page 4 of 4

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; AllPro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J Framing,
Inc.; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor
Designs Center; A Grade Above Others,
LLC; Brand-Vaughan Lumber Co, Inc.; BKF
Builders, Inc.; Builders Designhouse, LLC;
BMC East LLC d/b/a Coleman Floor, LLC;
Builders Firstsource Southeast Group, LLC,
a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Cortes Painting, LLC;
CBU Enterprises, Inc.; CPI Security Systems,
Inc.; DOM Group, LLC; Ferguson
Enterprises, Inc.; Five Star Construction Inc.;
Five Star Foundations, LLC; Galloway-Bell,
Inc., a/k/a Galloway-Bell, Inc. II; Get
Floored, LLC; GBS Building Supply – US
LBM, LLC, f/k/a GBS Building Supply, Inc.;
General Shale Brick Inc.; Greener Pastures,
Inc., a/k/a Green Pastures of Aiken, LLC;
IBS Asset, LLC d/b/a Blue Ridge Building
Products; Installed Building Products, LLC,

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**ORDER GRANTING GALLOWAY-
BELL, INC. A/K/A GALLOWAY-BELL,
INC II'S MOTION FOR SUMMARY
JUDGMENT AS TO ALL CLAIMS
ASSERTED BY THIRD-PARTY
PLAINTIFF D.R. HOTON, INC.**

a/k/a Installed Building Products II LLC; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danlar, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC, a/k/a M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, Inc., a/k/a P & T Construction, Inc.; P & L Enterprises, LLC; Probuild Company, LLC a/k/a Probuild Holdings, Inc.; Rite Rug Company, Inc., a/k/a, Rite Rug Co.; Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractors Service; Tucker Materials, Inc, a/k/a Gypsum; Silver Line Building Products Corp.; Dupree Plumbing Co., Inc.; UTM Enterprises, Inc; and Willow Tree Landscaping, Inc., and Silver Line Building Products Corporation

Third-Party Defendants.

This matter is before the Court on July 21, 2023, on Galloway-Bell, Inc. a/k/a Galloway-Bell, Inc. II's ("Galloway-Bell") Motion seeking an Order granting Summary Judgment in its favor on the claims by D.R. Horton, Inc. ("Horton") set forth in its Second Amended Answer and Third-Party Complaint. For the reasons set forth herein, the Motion is GRANTED.

PROCEDURAL BACKGROUND

This class action litigation against DR Horton stems from alleged construction defects and deficiencies in the Rose Hill subdivision in Anderson, South Carolina. There are approximately 220 single-family homes out of 271 single-family homes that are a part of this class action suit. Horton served as the general contractor for the project, which began in 2007 and was completed

in 2017. The suit was certified as a class action against Horton on January 27, 2021. D.R. Horton filed a third-party suit against Galloway-Bell and other subcontractors on March 11, 2021. The Third-Party Complaint includes allegations against Galloway-Bell for negligence, breach of warranty, breach of contract, equitable indemnity, and contractual indemnity. On July 20, 2023, Plaintiff filed her Stipulations as to Limitation on Claims. Notably, Plaintiff stipulated that “Plaintiff Natalie Zitek . . . and the Class are not making defective construction claims for the . . . 1. batt and blown insulation[.]”

LEGAL STANDARD

Summary judgment is appropriate when the movant demonstrates that the material facts of the case are undisputed, and the moving party is entitled to judgment as a matter of law. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); Rule 56(c), SCRCP. If the moving party meets its initial burden of showing an absence of evidentiary support for the nonmoving party’s case, the nonmoving party cannot simply rest on mere allegations or denials contained in the pleadings. *Singleton v. Sherer*, 377 S.C. 185, 197–98, 659 S.E.2d 196, 203 (Ct. App. 2008). Instead, the nonmoving party must come forward with specific evidentiary support showing there is a genuine dispute for trial. *Rife v. Hitachi Const. Mach. Co.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005). “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *BPS, Inc. v. Worthy*, 362 S.C. 319, 326, 608 S.E.2d 155, 159 (Ct. App. 2005).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Galloway-Bell sought Summary Judgment on all causes of action brought by Horton in the Second Amended Answer and Third-Party Complaint (“Third-Party Complaint”). Horton’s Third-Party Complaint alleged causes of action against Galloway-Bell for contractual indemnification,

equitable indemnification, breach of contract, breach of express warranties, breach of implied warranties, and negligence/gross negligence/recklessness. For the reasons set forth below, Summary Judgment is granted as to all causes of action alleged by Horton against Galloway-Bell.

I. D.R. Horton's Third-Party Complaint against Galloway-Bell must be dismissed because the defects common to the class do not implicate the work of Galloway-Bell.

Plaintiff Zitek has stipulated that neither she nor other members of the Class allege any common defect implicating the work of Galloway-Bell. There are no allegations of common defects in Plaintiff's pleadings, deposition testimony, or expert reports related to the installation of insulation installed by Galloway-Bell. Furthermore, Horton has presented no evidence that it has incurred any damages resulting from Galloway-Bell's work. Therefore, Galloway-Bell cannot be found negligent/grossly negligent/reckless or have breached any contract or warranties. Furthermore, Galloway-Bell cannot be compelled to defend and indemnify Horton. This Court finds that the entire Third-Party Complaint by Horton against Galloway-Bell should be dismissed.

II. Horton's claims for negligence, gross negligence, recklessness, breach of express and implied warranties, and breach of contract are merely disguised indemnity claims.

Horton's negligence/gross negligence/recklessness, breach of express and implied warranties, and breach of contract causes of actions are all merely disguised indemnity claims. *See Stoneledge at Lake Keowee Owners' Ass'n. Inc. v. Clear View Construction, Inc.*, 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015); *Stoneledge at Lake Keowee Owners' Ass'n. Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 776 S.E.2d 434 (Ct. App. 2015). Horton has not presented any evidence showing any damages that could show its claims are more than disguised indemnity claims. *See id.* The record supports only the conclusion that Horton's claims are disguised

indemnity claims, and, therefore, Horton's claims for breach of contract, breach of express or implied warranties, and negligence/gross negligence/recklessness should be dismissed.

III. Horton's claim for contractual indemnity fails as a matter of law.

The language contained in a contract must "clearly and unequivocally" provide for the indemnification of Horton's concurrent or sole negligence. *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018), *reh'g denied* (Oct. 19, 2018). The contractual indemnity language contained within the contract fails to meet the "clear and unequivocal" standard required under *Concord & Cumberland*. Specifically, the indemnity provision fails to clearly and unequivocally state whether Galloway-Bell is required to indemnify Horton for its concurrent or sole negligence. *See id.* Therefore, Horton's claim for contractual indemnity should be dismissed.

This Court finds there is no genuine issue as to any material fact as to DR Horton's Third-Party Complaint against Galloway-Bell, and that the moving party is entitled to judgment as a matter of law, pursuant to Rule 56(c). SCRCPP. Therefore, it is hereby **ORDERED** that Galloway-Bell's Motion for Summary Judgment as to all of D.R. Horton's third-party claims is **GRANTED** and D.R. Horton's Third-Party Complaint against Galloway-Bell is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED, this _____ day of _____, 2023.

The Honorable Judge Sprouse



Anderson Common Pleas

Case Caption: Natalie Zitek , plaintiff, et al VS Jane Doe 1 , defendant, et al
Case Number: 2019CP0401942
Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2023-09-27 15:28:27 page 6 of 6

FORM 4

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

JUDGMENT IN A CIVIL CASE

CIVIL ACTION NO.: 2019CP0401942

Natalie Zitek, plaintiff, et al
PLAINTIFF(S)Jane Doe 1, defendant, et al
DEFENDANT(S)

Submitted By: Address:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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:

This matter is before the Court pursuant to the Third Party Defendant JLS Masonry, Inc.'s Motions for Judgment Notwithstanding the Verdict (JNOV) and New Trial Absolute and/or New Trial Nisi Remittitur. Also included in the motions was a renewal of the Motion to Decertify the Class. The motion contained thirteen (13) grounds, including, but not limited to, the Statute of Limitations, the Statute of Repose, contractual indemnity, and the insufficiency of the evidence.

The Court presided over the trial and considered the motion, briefs, applicable case law, and the arguments of counsel. The Court viewed the evidence in a light most favorable to the Plaintiff as required by law. The Court finds that there was evidence in the record that reasonably supports the jury's verdict. Accordingly, the Third Party Defendant's Motion for Judgment Notwithstanding the Verdict (JNOV) on all the stated grounds is DENIED.

The Court finds no evidence that the jury reached its verdict as the result of caprice, passion, prejudice, partiality, or any other improper motive. The verdict is not unduly liberal or excessive given the evidence presented in the trial. The Court notes that the jury found that the total amount of the damages in the areas of work pertaining to JLS Masonry was twenty-five (25%) percent less than that claimed by the Plaintiff (\$15,000,000.00 rather than the claimed \$20,000,000.00) indicating that the jury gave consideration to the Third Party

Defendant's arguments that the Plaintiff's expert had overstated the value of the damages. Further, the Third Party Defendant performed the work in question on a stipulated forty-six (46%) percent of the houses in the subdivision. The Plaintiff asserted, in assumption of Defendant D.R. Horton's claims as part of the settlement, that JLS Masonry should be responsible for the same percentage of the damages. JLS Masonry challenged that assertion. The jury, with its \$4,000,000.00 verdict, held JLS Masonry responsible for fifty-eight (58%) percent of the damages, again indicating that the jury gave consideration to the Third Party Defendant's arguments. The Court finds that the verdict is well within the range of verdicts possible from a reasonable consideration of the evidence and that the Third Party Defendant JLS Masonry's Motion for New Trial Absolute and/or New Trial Nisi Remittitur should be DENIED.

The Court has heard the Motion to Decertify the Class multiple times during the case and continues to DENY that motion.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court for judgment details.**

Circuit Court Judge

2752

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: _____

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



Anderson Common Pleas

Case Caption: Natalie Zitek , plaintiff, et al VS Jane Doe 1 , defendant, et al
Case Number: 2019CP0401942
Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2023-11-08 15:53:36 page 4 of 4

FORM 4

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

JUDGMENT IN A CIVIL CASE

CIVIL ACTION NO.: 2019CP0401942

Zitek, et al.
PLAINTIFF(S)

DR Horton
DEFENDANT(S)

Submitted By: Address:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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:

See attached order below

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court for judgment details.**

Circuit Court Judge

2752

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: _____

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; AllPro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J Framing,
Inc.; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor
Designs Center; A Grade Above Others,
LLC; Brand-Vaughan Lumber Co, Inc.; BKF
Builders, Inc.; Builders Designhouse, LLC;
BMC East LLC d/b/a Coleman Floor, LLC;
Builders Firstsource Southeast Group, LLC,
a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Cortes Painting, LLC;
CBU Enterprises, Inc.; CPI Security Systems,
Inc.; DOM Group, LLC; Ferguson
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Five Star Foundations, LLC; Galloway-Bell,
Inc., a/k/a Galloway-Bell, Inc. II; Get
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LBM, LLC, f/k/a GBS Building Supply, Inc.;
General Shale Brick Inc.; Greener Pastures,
Inc., a/k/a Green Pastures of Aiken, LLC;
IBS Asset, LLC d/b/a Blue Ridge Building
Products; Installed Building Products, LLC,
a/k/a Installed Building Products II LLC; JLS
Masonry, Inc.; Kings Landscaping, LLC;
Landshapers, LLC; Lade-Danlar, Inc.;
Lansing Building Products, Inc.; Long

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**ORDER DENYING THIRD-PARTY
DEFENDANT JLS MASONRY, INC.
MOTION FOR RECONSIDERATION**

Heating & Air Conditioning, Inc.; L&M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC, a/k/a M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, Inc., a/k/a P & T Construction, Inc.; P & L Enterprises, LLC; Probuild Company, LLC a/k/a Probuild Holdings, Inc.; Rite Rug Company, Inc., a/k/a, Rite Rug Co.; Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractors Service; Tucker Materials, Inc, a/k/a Gypsum; Silver Line Building Products Corp.; Dupree Plumbing Co., Inc.; UTM Enterprises, Inc; and Willow Tree Landscaping, Inc., and Silver Line Building Products Corporation

Third-Party Defendants.

After careful consideration of the able argument and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Third-Party Defendant JLS Masonry's Motion, pursuant to Rule 59, SCRCP,¹ is DENIED.

AND IT IS SO ORDERED.

Honorable R. Scott Sprouse

December ____, 2023
Anderson, SC

¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.



Anderson Common Pleas

Case Caption: Natalie Zitek , plaintiff, et al VS Jane Doe 1 , defendant, et al
Case Number: 2019CP0401942
Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2023-12-12 09:24:18 page 6 of 6

23 SEP 19 AM 9:20:59
Anderson, SC COC, CP/65

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

) IN THE COURT OF COMMON PLEAS
) FOR THE TENTH JUDICIAL CIRCUIT
) CASE NO. 2019-CP-04-01942

Natalie Zitek, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

D.R. Horton, Inc.,

Defendant.

VERDICT FORM

1. On the Plaintiff's claims against D.R. Horton, we find for the Plaintiff on the following causes of action (check the one you find in favor of):

☒ Negligence

☐ Implied Warranty

(Only answer the next question if you found in favor of the Plaintiff on one of the foregoing questions)

2. We award Plaintiff damages against Defendant D.R. Horton in the amount of:

fifteen million dollars (\$15,000,000.00)

(Only answer the next question if you found in favor of the Plaintiff on one of the foregoing questions)

3. On Defendant D.R. Horton's claims against Third-Party JLS Masonry, Inc. which have been assigned to Plaintiff, we find for the Plaintiff on the following causes of action (check any that apply):

☒ Breach of Implied Warranty

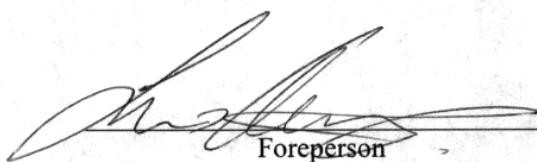
☐ Contractual Indemnity

☐ Equitable Indemnity

(Only answer the next question if you found in favor of the Plaintiff against JLS on one of the foregoing questions)

4. We find JLS Masonry, Inc. liable to Plaintiff on the claims that D.R. Horton assigned to Plaintiff in the amount of:

Four million dollars (\$ 4,000,000.00)


Foreperson

September 15, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE NO.: 2019-CP-04-_____
Natalie Zitek, individually, and on behalf of all	)	
others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
D.R. Horton, Inc.; Jane Doe #1-10; and, John	)	
Doe #1-50,	)	
	)	
Defendants.	)	

SUMMONS
(Defective Construction)
(Class Action)
(Jury Trial Demanded)

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers, at their offices at 415 Mill Street, Mount Pleasant, South Carolina 29464, within thirty (30) days after the service thereof, 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, plus interest and costs.

JUSTIN O'TOOLE LUCEY, P.A.

s/ Dabny Lynn

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Attorneys for Plaintiff

September 25, 2019
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE NO.: 2019-CP-04-_____
Natalie Zitek, individually, and on behalf of all	)	
others similarly situated,	)	
	)	
Plaintiff,	)	COMPLAINT
	)	(Defective Construction)
v.	)	(Class Action)
	)	(Jury Trial Demanded)
D.R. Horton, Inc.; Jane Doe #1-10; and, John	)	
Doe #1-50,	)	
	)	
Defendants.	)	

Plaintiff, Natalie Zitek, individually, and on behalf of all others similarly situated, complaining of the above-named Defendants, would respectfully allege and show the Court as follows:

PARTIES AND JURISDICTIONAL STATEMENT

1. The Rose Hill subdivision ("Rose Hill") is a neighborhood of approximately 270 single-family homes located off State Highway 74 in Anderson County, South Carolina.
2. Plaintiff Natalie Zitek ("Plaintiff Zitek") is a citizen and resident of Anderson County, South Carolina.
3. Plaintiff Zitek owns a home within Rose Hill that is located at 104 Sturbridge Court, Easley, South Carolina, 29462.
4. Plaintiff Zitek purchased her home on or about February 17, 2013.
5. Plaintiff Zitek brings this action on behalf of herself and a proposed Class of other similarly situated Rose Hill homeowners (collectively "Plaintiff" or "Plaintiff Zitek and the Class").

Developer Defendant

6. Defendant D.R. Horton, Inc. (“D.R. Horton”) is a corporation organized under the laws of the State of Delaware. At all times relevant to this action, D.R. Horton conducted business in Anderson County, South Carolina.

7. D.R. Horton is the developer, builder, and seller of the Plaintiff’s and Class’ homes and properties in Rose Hill (“the Residences”). At all times relevant to this action, D.R. Horton coordinated, performed, directed, managed, controlled, supervised and/or otherwise participated in the design, development, marketing, construction, sale, and/or repair of the Residences.

Jane Doe Defendants

8. Defendants Jane Doe #1-10, whose true names are unknown (“Jane Doe Defendants”), are other entities or individuals which are actual or *de facto* joint venturers and/or partners, control persons, and/or agents of D.R. Horton and/or each other in connection with the design, construction, and repair of the Residences.

9. The address and identity of each Jane Doe Defendant is unknown at this time.

10. All at times relevant hereto, Jane Doe Defendants were conducting business in Anderson County, South Carolina.

11. Upon information and belief, D.R. Horton, Jane Doe Defendants, and their officers, members, managers, directors, and/or shareholders (collectively “Developers”), operated a joint enterprise for the common, for-profit purpose of selling the Residences to Plaintiff Zitek and the Class.

12. Upon information and belief, Developers collectively developed the Residences, marketed the Residences to the public, placed the Residences into the stream of commerce, sold the Residences, and/or repaired the Residences.

13. Upon information and belief, Developers failed to observe corporate formalities; acted as agents of each other; and/or, comingled and combined their resources in developing, constructing, marketing, selling, and/or repairing the Residences.

14. Upon information and belief, the legal distinctions between Developers are blurred and they are, in effect, one and the same and their interests are amalgamated such that the actions of one should apply to the others.

15. Developers' collective conduct, blurring of corporate lines, and other abuses of the corporate form have resulted in fundamental unfairnesses to Plaintiff Zitek and the Class.

John Doe Defendants

16. Defendants John Doe #1-50 ("John Doe Defendants") are persons or entities who participated in the design, development, marketing, construction, repair, and/or sale of the Residences as contractors, subcontractors, manufacturers, material suppliers, consultants, architects, engineers, real estate agents, managers, marketers, laborers, or otherwise.

17. The address and identity of the John Doe Defendants are unknown at this time.

18. All at times relevant hereto, John Doe Defendants were conducting business in Anderson County, South Carolina.

19. This Honorable Court has jurisdiction over all parties hereto and over all subject matter alleged herein.

20. Venue is proper in Anderson County as the most substantial part of Plaintiff's and the Class' alleged injuries and Defendants' alleged acts or omissions took place in Anderson County.

21. Plaintiff Zitek is informed and believes that well over two-thirds of the Class are citizens of Anderson County, South Carolina.

22. Plaintiff Zitek is informed and believes that all or nearly all of the Class are citizens of South Carolina.

FACTUAL ALLEGATIONS

23. This matter arises out of the design, development, construction, sale and/or repair of the Residences.

24. At the time their Certificates of Occupancy were issued, the Residences contained latent and undisclosed defects. The latent and undisclosed defects, in combination with fortuitous weather, repeated water intrusion and/or other events, have resulted in consequential damage to non-defective portions of the Residences and other property.

25. Defendants should have known of the existence of the latent defects for many reasons, including their post-construction repair efforts.

26. Plaintiff Zitek and members of the Class have previously put D.R. Horton on notice of one or more of the deficiencies. In turn, D.R. Horton has put one or more of the other Defendants on notice. However, the Defendants have not rectified the problems and their various and sundry repair attempts have been inadequate, are failing, or have failed.

27. A preliminary inspection of the Residences evidences failure in load-bearing components; failure in exterior cladding systems; water intrusion into and through windows, doors, and the exterior building envelope; and, resulting consequential damage to non-defective building components and other property. Inspection also reveals failure of other various and sundry building components, with consequential damages resulting therefrom.

28. Defendants had a duty to design, develop, and construct the Residences in a workmanlike manner with suitable materials, free from all defects, and in accordance with the

applicable building code, permitted building plans, good workmanship, and construction industry and engineering standards.

29. Plaintiff Zitek is informed and believes that various building components of the Residences, including those listed above, are not in compliance with applicable building codes, proper workmanship, and industry standards and must be corrected or replaced.

30. Defendants' acts and omissions have resulted in building deficiencies, consequential damages, and partial loss of use and enjoyment.

31. The aforementioned deficiencies and resulting damages show that Defendants breached their duties to Plaintiff Zitek and the Class.

32. Remedying the above wrongs will result in additional consequential damages and loss of use.

33. As a direct and proximate result of Defendants' violation of their legal duties, Plaintiff Zitek and the Class have been proximately damaged in an amount to be determined by the trier of fact, and have had to incur reasonable attorneys' fees and costs for the retention of experts to determine the damage and scope of work for repair.

34. Upon information and belief, the water intrusion and resulting consequential damages commenced shortly after completion of the Residences and have occurred and have been occurring in each and every year since commencement and constitute "occurrences" and "property damage" under the standard and/or typical commercial general liability policies.

CLASS ACTION ALLEGATIONS

35. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Zitek brings this action, both individually, and on behalf of a Class of similarly situated claimants. The Class is more particularly defined as follows:

All persons and entities that own a single-family house developed by Defendants within the Rose Hill subdivision in the City of Easley, Anderson County, South Carolina.

Plaintiff proposes that the class be divided into subclasses if, and as necessary, to align class interest.

Excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and their legal representatives, assigns and successors of Defendants and Defendants' current or former employees, investors, members, or officers; (c) any Rose Hill residence owned by any of the Defendants or an entity related to any of the Defendants; (d) any Rose Hill residence developed by persons other than Defendants; (e) any former Rose Hill homeowner; (f) any current Rose Hill homeowner that has previously released all the claims set forth herein; and, (g) all persons who properly execute and file a timely request for exclusion from the Class.

36. *Numerosity*: The Class concerns approximately two hundred and fifty (250) properties, owned by people geographically dispersed throughout the State of South Carolina, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of four hundred members (400) members.

37. *Commonality*: 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. These common legal and factual issues include the following:

- a. Whether Defendants negligently designed, constructed and/or repaired the Residences;
- b. Whether Defendants breached their implied warranties in connection with the Residences;
- c. Whether Defendants knew or should have known of the latent defects;
- d. Whether Defendants failed to disclose defects and/or unsuccessful repairs;

- e. Whether Defendants have acted or refused to act on grounds generally applicable to the Class;
- f. Whether Plaintiff Zitek and the Class are entitled to recover the estimated cost to repair and (i) compensation for all out-of-pocket monies expended for repair of their homes, as well as repair/replacement of other property damage; (ii) temporary repairs; and, (iii) compensation for loss of use; and,
- g. Whether Defendants' conduct was reckless, willful, wanton, or the like, entitling Plaintiff Zitek and the Class to punitive damages.

38. *Typicality*: Plaintiff Zitek's claims are typical of the claims of the Class, as all such claims arise out of Defendants' wrongful conduct in developing, building, repairing, and/or selling the Residences and Plaintiff Zitek's and Class' ownership of these Residences that contain latent defects.

39. *Adequate Representation*: Plaintiff Zitek will fairly and adequately protect the interests of the Class and has no interests antagonistic to those of the Class. Plaintiff Zitek has retained counsel experienced in the prosecution of construction defect claims and complex litigation, including consumer class actions involving product liability and product design defects.

40. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the Class predominate over questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication 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 confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale, and comprehensive supervision by a single Court.

41. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice. All Class members have the same legal right to and interest in redress for damages associated with the defective conditions existing within their Residences.

42. Plaintiff Zitek and the Class envision no unusual difficulty in the management of this action as a class action.

43. Each Class member has an interest of more than \$100.00.

44. The amount of money at stake for each Class member is not sufficient for each member to hire their own counsel and engineers and bring their own action.

**ESTOPPEL FROM PLEADING AND TOLLING OF
APPLICABLE STATUTES OF LIMITATIONS**

45. Defendants are estopped from relying on any statutes of limitations or repose by virtue of their acts. Upon information and belief, Defendants should have known the Residences were defectively constructed and failed to alert Plaintiff Zitek and the Class of the Residences' defective condition.

46. Defendants had a duty to inform Plaintiff Zitek and the Class of the defects described herein, which they should have known. Notwithstanding their duty, Defendants never disclosed the defects to Plaintiff Zitek or the Class.

47. Despite exercising reasonable diligence, Plaintiff Zitek and the Class could not have discovered the defective condition of Residences.

48. Given Defendants' failure to disclose this non-public information about the defective nature of the Residences – information over which they had exclusive control – and because Plaintiff Zitek and the Class could not reasonably have known of the Residences' defective nature, Defendants are estopped from relying on any statutes of limitations or repose that

might otherwise be applicable to the claims asserted herein.

49. Defendants are further estopped from relying upon any statute of limitations as they have repeatedly represented to Plaintiff Zitek and the Class that they had or were correcting the work.

50. The equitable tolling doctrine further precludes Defendants from relying on a statute of limitations defense.

ESTOPPEL FROM ASSERTING THE ARBITRATION PROVISION AND WARRANTY DISCLAIMERS CONTAINED IN D.R. HORTON'S PURCHASE CONTRACTS

51. Defendants are estopped/barred from asserting the Arbitration Provision and Warranty Disclaimer Provisions contained in D.R. Horton's purchase contracts because these Provisions are unconscionable and unenforceable.

52. Plaintiff Zitek's purchase contract contains the same or similar "Warranties and Disclaimers" and "Arbitration" Provisions that the South Carolina Supreme Court has already deemed are "clearly one sided and oppressive". *Smith v. D.R. Horton*, 417 S.C. 42, 50, 790 S.E.2d 1, 5 (2016).

53. Plaintiff Zitek's purchase contract attempts to disclaim implied warranty claims and prohibits any monetary damage by providing that "D.R. Horton shall not be liable for any reason under any circumstance to Purchaser or anyone claiming through Purchaser for monetary damages of any kind. . .".

54. Any such provisions purporting to waive all implied warranties and all relief are void pursuant to public policy and South Carolina law.

55. As a result, Defendants cannot rely on their warranty disclaimers, and cannot compel Plaintiff Zitek or the Class into arbitration, based on D.R. Horton's purchase contracts. *Id.* ("We. . .hold the arbitration provision is unconscionable, and thus, unenforceable").

**ESTOPPEL FROM ASSERTING THE ARBITRATION PROVISIONS AND
WARRANTY LIMITATIONS IN EXPRESS WARRANTIES**

56. Defendants are estopped/barred from asserting the Arbitration Provisions and Warranty Limitations contained in their express warranties because Plaintiff Zitek and the Class do not currently allege a breach of express warranty claim.

57. Defendants are also estopped/barred from asserting the Arbitration Provisions and Warranty Limitations contained in their express warranties or the like because these provisions and limitations are conflicting, procedurally burdensome, unconscionable, and/or not geared towards an unbiased decision by a neutral decision-maker.

58. Defendants are further estopped/barred from relying on Warranty Limitations contained in their express warranties or the like by virtue of their conduct and such warranties' failure to serve its essential purpose.

59. By virtue of Defendants' acts, the work performed at the Residences have not lived up to Defendants' warranties. Given the Residences' defective condition, their building components have not proven to be of reasonable or acceptable quality.

60. Defendants, in the exercise of required diligence, which failed to occur, should have known the Residences were defective, uninhabitable, unfit, and unmerchantable.

61. Defendants' warranties are woefully inadequate to repair and replace failed building components in the Residences, let alone to reimburse for any damage suffered to the underlying components and other property. The remedies available in Defendants' warranties are limited to such an extent that they do not provide a minimum adequate remedy and fail their essential purpose.

62. As such, Defendants are precluded from relying on the Arbitration Provisions and Warranty Limitations contained in their express warranties or the like as a defense to the claims asserted herein.

FOR A FIRST CAUSE OF ACTION
(Negligence and Gross Negligence as to Defendants)

63. Plaintiff repeats and re-alleges the above paragraphs as if fully set forth verbatim.

64. Defendants, either on their own or through their agents, servants, and employees undertook and owed duties to Plaintiff in connection with the work they performed at the Residences.

65. Defendants had a duty to perform their work at the Residences in accordance with applicable codes, approved plans and specifications, industry standards, and in a careful, diligent, and workmanlike manner, free from defects.

66. Defendants also had a duty to provide accurate information about the Residences' condition and to disclose defective conditions.

67. Defendants breached their duties to Plaintiff in a manner that was negligent, grossly negligent, careless, reckless, willful, and wanton in the following particulars:

- a. In failing to use due care in developing the Residences;
- b. In failing to provide adequate load-bearing systems, exterior claddings, windows, doors, structural components and/or other building components for the Residences;
- c. In failing to develop the Residences in accordance with applicable building codes, standard building practices, and accepted construction and design industry standards and practices;
- d. In failing to properly supervise the work performed at the Residences;
- e. In failing to properly coordinate the subcontractors and trades;

- f. In failing to act as a reasonable person would in the circumstances then and there prevailing;
- g. In failing to provide accurate information about the Residences;
- h. In failing to make proper repairs; and,
- i. Other deficiencies or failures as will be proven at trial.

68. Plaintiff has been damaged as a direct and proximate result of the negligence, carelessness, recklessness, gross negligence, willfulness, and wantonness of the Defendants.

69. The violation of applicable building codes constitutes negligence *per se* and may constitute evidence of gross negligence.

70. If it is shown that said failures were committed with gross negligence and/or reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages against the Defendants.

71. As a result of Defendants' negligence and/or gross negligence, Plaintiff is entitled to a judgment against Defendants for all actual, direct, indirect, resulting, consequential, and punitive damages in an amount to be determined at the trial of this case.

FOR A SECOND CAUSE OF ACTION
(Breach of Implied Warranties as to Defendants)

72. Plaintiff repeats and re-alleges the above paragraphs as if fully set forth verbatim.

73. Defendants implicitly warranted that the Residences would be developed in a careful, diligent, and workmanlike manner, with suitable materials and components that complied with applicable building codes, industry standards, and industry practice.

74. Defendants implicitly warranted that the Residences would be merchantable, free from latent defects, and fit for the particular purpose.

75. D.R. Horton impliedly warranted that the Residences would be habitable.

76. Defendants breached their implied warranties by developing the Residences in a defective manner as set forth above.

77. As a direct and proximate result of Defendants' breach of their implied warranties, Plaintiff has been damaged and is entitled to a judgment against Defendants for all actual, direct, indirect, resulting, and consequential damages in an amount to be proven at trial.

FOR A THIRD CAUSE OF ACTION
(Unfair Trade Practices as to D.R. Horton)

78. Plaintiff repeats and re-alleges the above paragraphs as if fully set forth verbatim.

79. D.R. Horton is a person within the meaning of the South Carolina Unfair Trade Practices Act (the "Act").

80. D.R. Horton developed and sold the Residences and, therefore, engaged in commerce as defined by the Act.

81. D.R. Horton's above-described actions, including placing defective Residences into the stream of commerce; failing to oversee and control the workmanship and material quality of the Residences; failing to properly repair defective conditions; failing to comply with the building codes, industry standards, and industry practice; attempting to disclaim and eviscerate any and all relief to the owners of the Residences; and, other acts to be shown through the course of discovery and at trial, constitute unfair and deceptive practices within the meaning of the Act.

82. D.R. Horton knew or should have known that its conduct was in violation of the Act.

83. D.R. Horton's conduct is capable of repetition and, upon information and belief and in accord with the allegations herein, has been repeated.

84. D.R. Horton's conduct adversely affects the public interest as well as many South Carolina citizens.

85. As a direct, foreseeable, and proximate result of D.R. Horton's unfair and deceptive practices, the individual owners of the Residences, including Plaintiff Zitek, have been damaged and are entitled to a judgment against D.R. Horton in amount to be proven at trial.

WHEREFORE, Plaintiff demands a trial by jury and prays for actual and consequential damages expected to exceed five million dollars, statutory and punitive damages, reasonable attorneys' fees, costs of suit, prejudgment interest, and granting of such further relief as the Court deems just and proper.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

s/ Dabny Lynn

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Attorneys for Plaintiff

September 25, 2019
 Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	C.A. No. 2019-CP-04-1942
Natalie Zitek, individually, and on behalf of	)	
all others similarly situated,	)	
	)	AMENDED SUMMONS
	)	
	)	
Plaintiff	)	
vs	)	
	)	
D.R. Horton, Inc., Jane Doe #1-10; and, John	)	
Doe #1-50,	)	
	)	
Defendant	)	
	)	
D.R. HORTON, INC.	)	
	)	
Third-Party Plaintiff	)	
vs	)	
	)	
AJ LANDSCAPING & GRADING, LLC,	)	
A/K/A A J LANDSCAPING & GRADING,	)	
LLC; ALLPRO TEXTURES, LLC; ALPHA	)	
OMEGA CONSTRUCTION GROUP, INC.;	)	
AMERICAN CONCRETE AND PRECAST,	)	
INC.; A/K/A ACP CONCRETE, INC.; A &	)	
J FRAMING, INC; ALPHA E.M.C.; A-Z,	)	
INC.; ATLANTA FLOOR DESIGNS	)	
CENTER; A GRADE ABOVE OTHERS,	)	
LLC; BRAND-VAUGHAN LUMBER CO,	)	
INC.; BKF BUILDERS, INC.; BLUE	)	
RIDGE BUILDING PRODUCTS, LLC;	)	
BUILDERS DESIGNHOUSE, LLC; BMC	)	
EAST LLC; BUILDERS FIRSTSOURCE	)	
SOUTHEAST GROUP, LLC, A/K/A	)	
BUILDERS FIRSTSOURCE, INC.;	)	
BRAVO CARPENTERS, INC.; CARYL	)	
MECHANICS II, INC., A/K/A CARYL	)	
MECHANICALS, INC.; CANNADAY	)	
SIDING & GUTTER, INC.; COLEMAN	)	
FLOOR, LLC; CORTES PAINTING, LLC;	)	
CBU ENTERPRISES, INC.; CPI	)	
SECURITY SYSTEMS, INC.; DOM	)	
GROUP, LLC; FERGUSON	)	

ENTERPRISES, INC.; FIVE STAR)
 CONSTRUCTION INC.; FIVE STAR)
 FOUNDATIONS, LLC; GALLOWAY-)
 BELL, INC., A/K/A GALLOWAY-BELL,)
 INC. II; GET FLOORED, LLC; GBS)
 BUILDING SUPPLY – US LBM, LLC,)
 F/K/A GBS BUILDING SUPPLY, INC.;)
 GENERAL SHALE BRICK INC.;)
 GREENER PASTURES, INC., A/K/A)
 GREENER PASTURES OF AIKEN, LLC;)
 INSTALLED BUILDING PRODUCTS,)
 LLC, A/K/A INSTALLED BUILDING)
 PRODUCTS II, LLC; JLS MASONRY,)
 INC.; KINGS LANDSCAPING, LLC;)
 LANDSHAPERS, LLC; LADE-DANLAR,)
 INC.; LANSING BUILDING PRODUCTS,)
 INC.; LONG HEATING & AIR)
 CONDITIONING, INC.; L & M)
 ELECTRIC, INC; MANALE)
 LANDSCAPING, LLC; MJ COWBOYS,)
 LLC; M & L GENERAL)
 CONSTRUCTION, LLC, A/K/A M & L)
 GENERAL CONSTRUCTION, INC.; M&L)
 REYNA CONSTRUCTION, LLC; M&M)
 FOUNDATIONS, LLC; NAZARETH)
 BUILDERS, LLC; NB CONTRACTORS,)
 LLC; POINSETT DEVELOPMENT, LLC;)
 POINSETT HOMES, LLC; P&T)
 CONSTRUCTION, INC., A/K/A P & T)
 CONSTRUCTION, INC.; P & L)
 ENTERPRISES, LLC; PROBUILD)
 COMPANY, LLC A/K/A PROBUILD)
 HOLDINGS, INC.; RITE RUG COMPANY,)
 INC., A/K/A RITE RUG CO.; RODNEY)
 HOWARD GRADING INC., A/K/A)
 RODNEY HOWARD GRADING CO.;)
 SANDLAPPER CONCRETE, LLC;)
 SODFATHER INC., LANDSCAPE)
 CONTRACTORS; STOCK BUILDING)
 SUPPLY, LLC; TOPBUILD HOME)
 SERVICES, INC., A/K/A GALE)
 CONTRACTORS SERVICE; TUCKER)
 MATERIALS, INC., A/K/A GYPSUM;)
 UTM ENTERPRISES, INC; AND)
 WILLOW TREE LANDSCAPING, INC;)
)

Third-Party Defendants

TO: NAMED THIRD-PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Third-Party Complaint contained in the Answer of D.R. Horton, Inc., to Plaintiff's Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Third-Party Complaint on the subscriber hereto at this office at 704 East McBee Avenue, Greenville, South Carolina, 29601, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

John T. Crawford Jr. (SC Bar # 69682)

Jason Imhoff (S.C. Bar # 69355)

Kyle McGann (SC Bar # 103113)

F. James Warmoth (SC Bar # 101072)

704 E. McBee Ave.

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E: Warmoth@conlaw.com

Attorneys for D.R. Horton

March 11, 2021
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	C.A. No. 2019-CP-04-1942
Natalie Zitek, individually, and on behalf of	)	
all others similarly situated,	)	
	)	AMENDED ANSWER AND THIRD-
	)	PARTY COMPLAINT OF
	)	DEFENDANT D.R. HORTON, INC.
	)	
Plaintiff	)	
vs	)	
	)	
D.R. Horton, Inc., Jane Doe #1-10; and, John	)	
Doe #1-50,	)	
	)	
Defendant	)	
	)	
D.R. HORTON, INC.	)	
	)	
Third-Party Plaintiff	)	
Vs	)	
	)	
AJ LANDSCAPING & GRADING, LLC,	)	
A/K/A A J LANDSCAPING & GRADING,	)	
LLC; ALLPRO TEXTURES, LLC; ALPHA	)	
OMEGA CONSTRUCTION GROUP, INC.;	)	
AMERICAN CONCRETE AND PRECAST,	)	
INC.; A/K/A ACP CONCRETE, INC.; A &	)	
J FRAMING, INC; ALPHA E.M.C.; A-Z,	)	
INC.; ATLANTA FLOOR DESIGNS	)	
CENTER; A GRADE ABOVE OTHERS,	)	
LLC; BRAND-VAUGHAN LUMBER CO,	)	
INC.; BKF BUILDERS, INC.; BLUE	)	
RIDGE BUILDING PRODUCTS, LLC;	)	
BUILDERS DESIGNHOUSE, LLC; BMC	)	
EAST LLC; BUILDERS FIRSTSOURCE	)	
SOUTHEAST GROUP, LLC, A/K/A	)	
BUILDERS FIRSTSOURCE, INC.;	)	
BRAVO CARPENTERS, INC.; CARYL	)	
MECHANICS II, INC., A/K/A CARYL	)	
MECHANICALS, INC.; CANNADAY	)	
SIDING & GUTTER, INC.; COLEMAN	)	
FLOOR, LLC; CORTES PAINTING, LLC;	)	
CBU ENTERPRISES, INC.; CPI	)	
SECURITY SYSTEMS, INC.; DOM	)	
GROUP, LLC; FERGUSON	)	

ENTERPRISES, INC.; FIVE STAR)
 CONSTRUCTION INC.; FIVE STAR)
 FOUNDATIONS, LLC; GALLOWAY-)
 BELL, INC., A/K/A GALLOWAY-BELL,)
 INC. II; GET FLOORED, LLC; GBS)
 BUILDING SUPPLY – US LBM, LLC,)
 F/K/A GBS BUILDING SUPPLY, INC.;)
 GENERAL SHALE BRICK INC.;)
 GREENER PASTURES, INC., A/K/A)
 GREENER PASTURES OF AIKEN, LLC;)
 INSTALLED BUILDING PRODUCTS,)
 LLC, A/K/A INSTALLED BUILDING)
 PRODUCTS II, LLC; JLS MASONRY,)
 INC.; KINGS LANDSCAPING, LLC;)
 LANDSHAPERS, LLC; LADE-DANLAR,)
 INC.; LANSING BUILDING PRODUCTS,)
 INC.; LONG HEATING & AIR)
 CONDITIONING, INC.; L & M)
 ELECTRIC, INC; MANALE)
 LANDSCAPING, LLC; MJ COWBOYS,)
 LLC; M & L GENERAL)
 CONSTRUCTION, LLC, A/K/A M & L)
 GENERAL CONSTRUCTION, INC.; M&L)
 REYNA CONSTRUCTION, LLC; M&M)
 FOUNDATIONS, LLC; NAZARETH)
 BUILDERS, LLC; NB CONTRACTORS,)
 LLC; POINSETT DEVELOPMENT, LLC;)
 POINSETT HOMES, LLC; P&T)
 CONSTRUCTION, INC., A/K/A P & T)
 CONSTRUCTION, INC.; P & L)
 ENTERPRISES, LLC; PROBUILD)
 COMPANY, LLC A/K/A PROBUILD)
 HOLDINGS, INC.; RITE RUG COMPANY,)
 INC., A/K/A RITE RUG CO.; RODNEY)
 HOWARD GRADING INC., A/K/A)
 RODNEY HOWARD GRADING CO.;)
 SANDLAPPER CONCRETE, LLC;)
 SODFATHER INC., LANDSCAPE)
 CONTRACTORS; STOCK BUILDING)
 SUPPLY, LLC; TOPBUILD HOME)
 SERVICES, INC., A/K/A GALE)
 CONTRACTORS SERVICE; TUCKER)
 MATERIALS, INC., A/K/A GYPSUM;)
 UTM ENTERPRISES, INC; AND)
 WILLOW TREE LANDSCAPING, INC;)
)

Third-Party Defendants

**TO: JUSTIN O'TOOLE LUCEY, ESQUIRE, AND DABNY LYNN, ESQUIRE,
ATTORNEYS FOR PLAINTIFF:**

Pursuant to Rule 15, SCRCP, Defendant D.R. Horton, Inc. ("D.R. Horton" or "Defendant"), hereby amends its answer and asserts a third-party complaint and answers the Complaint of Natalie Zitek, individually, and on behalf of all others similarly situated ("Plaintiff"), as set forth below, by denying each and every allegation not hereinafter specifically admitted, demanding strict proof thereof, and further responds as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained within Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained is denied.
2. Upon information and belief, D.R. Horton admits the allegations contained within Paragraphs 1, 2, 3, and 4 of the Complaint.
3. D.R. Horton denies that this matter is a proper matter for a class action lawsuit as alleged in Paragraph 5 of the Complaint and therefore denies the same.
4. D.R. Horton admits the allegations of Paragraph 6 of the Complaint.
5. D.R. Horton admits so much of the allegations contained in Paragraph 7 of the Complaint in that D.R. Horton constructed various residences and developed certain portions of Rose Hill. All remaining allegations contained in Paragraph 7 are denied.
6. D.R. Horton denies the allegations of Paragraphs 8, 9, 10, 11, 12, 13, 14, 15 of the Complaint.
7. D.R. Horton lacks sufficient information to admit or deny the allegations contained in Paragraphs 16, 17 and 18 of the Complaint and therefore denies the same.

8. Paragraphs 19 and 20 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to this paragraph it is denied and strict proof is demanded.

9. D.R. Horton lacks sufficient information to admit or deny Paragraphs 21 and 22 of the Complaint and therefore denies the same.

10. D.R. Horton admits so much of the allegations contained in Paragraph 23 of the Complaint that Plaintiff claims arises out of construction of the Zitek residence. All remaining allegations contained in Paragraph 23 are denied.

11. D.R. Horton denies the allegations of Paragraph 24 of the Complaint.

12. D.R. Horton denies the allegations of Paragraph 25 of the Complaint.

13. D.R. Horton denies the allegations of Paragraph 26 and 27 of the Complaint.

14. Paragraph 28 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to this paragraph it is denied and strict proof is demanded.

15. D.R. Horton denies the allegations of Paragraph 29 of the Complaint.

16. D.R. Horton denies the allegations of Paragraphs 30 and 31 of the Complaint.

17. D.R. Horton denies the allegations of Paragraph 32 of the Complaint.

18. D.R. Horton denies the allegations of Paragraphs 33 and 34 of the Complaint.

19. D.R. Horton denies any and all allegations in Paragraphs 35, 36, 37, 38, 39 and 40 and denies that this matter is proper as a class action lawsuit as alleged in Paragraphs 35, 36, 37, 38, 39 and 40 of the Complaint and therefore denies the same.

20. Paragraph 41 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to this paragraph it is denied and strict proof is demanded.

21. D.R. Horton denies that this matter is proper as a class action lawsuit as alleged in Paragraph 42 of the Complaint and therefore denies the same.

22. D.R. Horton denies the allegations of Paragraph 43 of the Complaint.

23. D.R. Horton lacks sufficient information to admit or deny Paragraph 44 of the Complaint and therefore denies the same.

24. D.R. Horton denies the allegations of Paragraph 45 of the Complaint.

25. D.R. Horton denies knowledge of the existence of any defects, as alleged in Paragraphs 46 and 47 of the Complaint. Further, Paragraphs 46 and 47 of the Complaint call for a legal conclusion which can neither be admitted or denied. To the extent a response is required, it is denied and strict proof of demanded.

26. Paragraphs 48, 49, 50 and 51 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to these paragraphs they are denied and strict proof is demanded.

27. D.R. Horton denies the allegations of Paragraph 52 of the Complaint.

28. Dr. Horton craves reference to the documents referenced in Paragraphs 53 and 54 of the Complaint and denies any allegations inconsistent thereof. Further, Paragraphs 53 and 54 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to this paragraph it is denied and strict proof is demanded.

29. D.R. Horton denies the allegations of Paragraphs 55, 56, 57, 58 and 59 of the Complaint.

30. D.R. Horton denies the knowledge of the existence of any defects and denies that D.R. Horton's warranties are inadequate, as alleged in Paragraphs 60 and 61 of the Complaint, and therefore denies the same.

31. D.R. Horton denies the allegations of Paragraph 62 of the Complaint.

32. Paragraph 63 of Plaintiff's Complaint is an administrative paragraph to which no response is required. To the extent a response is required, D.R. Horton realleges and reasserts its answers and defenses to the prior allegations of the Complaint.

33. Paragraphs 64, 65, and 66 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to this paragraph, it is denied and strict proof is demanded.

34. D.R. Horton denies the allegations of Paragraph 67 and 68 of the Complaint.

35. Paragraph 69 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to this paragraph it is denied and strict proof is demanded.

36. D.R. Horton denies the allegations of Paragraph 70 of the Complaint.

37. D.R. Horton denies that Plaintiff is entitled to any relief as sought in Paragraph 71 of the Complaint.

38. Paragraph 72 of Plaintiff's Complaint is an administrative paragraph to which no response is required. To the extent a response is required, D.R. Horton realleges and reasserts its answers and defenses to the prior allegations of the Complaint.

39. Paragraphs 73, 74, and 75 of the Complaint calls for a legal conclusion to which can neither be admitted nor denied. To the extent a response is required to this paragraph, it is denied and strict proof is demanded.

40. D.R. Horton denies the allegations of Paragraph 76 of the Complaint.

41. D.R. Horton denies that Plaintiff is entitled to any relief as sought in Paragraph 77 of the Complaint.

42. Paragraph 78 of Plaintiff's Complaint is an administrative paragraph to which no response is required. To the extent a response is required, D.R. Horton realleges and reasserts its answers and defenses to the prior allegations of the Complaint.

43. Paragraphs 79 and 80 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to this paragraph it is denied and strict proof is demanded.

44. D.R. Horton denies the allegations of Paragraphs 81, 82, 83, and 84 of the Complaint, including the existence of any alleged defects.

45. Denies that Plaintiff is entitled to any relief as sought in Paragraph 85 of the Complaint.

46. Denies all remaining allegations of the Complaint, including Plaintiff's Prayer for Relief as set forth in the Paragraph beginning "WHEREFORE" which claims entitlement to actual damages, attorneys' fees, costs, and any other relief and prays that this action against D.R. Horton be dismissed.

FOR A SECOND DEFENSE
(Motion to Dismiss, Alternatively to Stay and Compel Arbitration)

47. D.R. Horton moves to dismiss this action pursuant to Rule 12(b)(6), SCRPC, or, alternatively, stay this action as Plaintiff entered into a contract with D.R. Horton regarding the construction of a home, which is the subject of this suit ("Contract"). The contract contains a binding and enforceable arbitration agreement. Therefore, this Court does not have jurisdiction to hear this matter and/or should stay the case and transfer it for arbitration.

48. D.R. Horton asserts that Defendants John Doe #1-50 and Jane Doe #1-10 have not been served pursuant to the South Carolina Rules of Civil Procedure. Therefore, D.R. Horton moves to dismiss Co-Defendants John Doe #1-50 and Jane Doe #1-10 pursuant to Rule 12(b)(4)

and (5) of the South Carolina Rules of Civil Procedure for insufficiency of process and insufficiency of service of process. D.R. Horton further alleges lack of service as a defense in this matter as to Defendant John Doe #1-50 and Jane Doe #1-10.

FOR A THIRD DEFENSE
(Lack of standing)

49. Plaintiff lacks standing to make the claims asserted against D.R. Horton in this action.

50. D.R. Horton asserts that Defendants John Doe #1-50 and Jane Doe #1-10 have not been served pursuant to the South Carolina Rules of Civil Procedure. Therefore, D.R. Horton moves to dismiss Co-Defendants John Doe #1-50 and Jane Doe #1-10 pursuant to Rule 12(b)(4) and (5) of the South Carolina Rules of Civil Procedure for insufficiency of process and insufficiency of service of process. D.R. Horton further alleges lack of service as a defense in this matter as to Defendant John Doe #1-50 and Jane Doe #1-10.

FOR A FOURTH DEFENSE
(Failure to State a claim or cause of action)

51. Plaintiff fails to state a claim upon which relief may be granted.

52. Plaintiff fails to state a cause of action against D.R. Horton.

53. D.R. Horton asserts that Defendants John Doe #1-50 and Jane Doe #1-10 have not been served pursuant to the South Carolina Rules of Civil Procedure. Therefore, D.R. Horton moves to dismiss Co-Defendants John Doe #1-50 and Jane Doe #1-10 pursuant to Rule 12(b)(4) and (5) of the South Carolina Rules of Civil Procedure for insufficiency of process and insufficiency of service of process. D.R. Horton further alleges lack of service as a defense in this matter as to Defendant John Doe #1-50 and Jane Doe #1-10.

FOR A FIFTH DEFENSE
(Laches, Estoppel, Waiver)

54. That all claims asserted against D.R. Horton are barred by the equitable doctrines of laches, waiver, and/or estoppel.

FOR A SIXTH DEFENSE
(Spoliation)

55. Plaintiff's claims are barred by the doctrine of spoliation of evidence.

FOR A SEVENTH DEFENSE
(Unclean Hands)

56. Plaintiff's claims against D.R. Horton are barred by the Doctrine of Unclean Hands.

FOR AN EIGHTH DEFENSE
(Negligence of Others)

57. D.R. Horton alleges that the direct and proximate cause of Plaintiff's damages, if any, was the negligence, gross negligence, wanton and reckless conduct of some other person or corporation and, accordingly, D.R. Horton is not liable to Plaintiff.

FOR A NINTH DEFENSE
(Comparative Negligence)

58. Plaintiff's claims and damages, if any, are barred, or should be reduced, by Plaintiff's own contributory and comparative negligence and recklessness which combined, contributed and concurred with any alleged negligence on the part of the D.R. Horton, if any, and which is expressly denied.

FOR A TENTH DEFENSE
(Offset)

59. D.R. Horton is entitled to offset in the amount of any and all damages recovered by the Plaintiff from other for the same injuries and/or damages claimed in this suit.

FOR AN ELEVENTH DEFENSE
(Mitigate Damages)

60. D.R. Horton allege that Plaintiff had an obligation to mitigate damages but failed to do so.

FOR A TWELVETH DEFENSE
(Compliance with Industry Standards)

61. Any and all materials, work or services provided by D.R. Horton met all relevant industry customs, practices and standards.

FOR A THIRTEENTH DEFENSE
(Acceptance of Work)

62. That the final completion and acceptance of the work undertaken by D.R. Horton constitutes a complete defense to all claims asserted by Plaintiff.

FOR A FOURTEENTH DEFENSE
(Proximate Cause)

63. Even if D.R. Horton were negligent or in breach, D.R. Horton alleges that Plaintiff's claims are barred due to the lack of proximate cause between Plaintiff's alleged damages and the alleged actions/inactions of D.R. Horton.

FOR A FIFTEENTH DEFENSE
(Scope of Work)

64. D.R. Horton's obligations to Plaintiff are limited to the services provided pursuant to D.R. Horton's scope of work; therefore, to the extent that any of Plaintiff's claims include

allegations against D.R. Horton that are outside the scope of services and work performed by D.R. Horton, those claims are barred.

FOR A SIXTEENTH DEFENSE
(Limitation of Warranty)

65. Plaintiff's claims are, upon information and belief, barred as they failed to make a claim against D.R. Horton within the applicable, implied and express warranty period and would be reduced to the extent that D.R. Horton provided a warranty which was in lieu of all other warranties.

FOR A SEVENTEENTH DEFENSE
(Intervening/Superseding Cause)

66. D.R. Horton asserts that even if it was negligent or reckless any respect, which is expressly denied, it is not liable to Plaintiff for any resulting damages, if any, because of the intervening negligent, grossly negligent, reckless, willful, and wanton acts of third parties, including those parties whose identities are unknown at the present time, which negligent and reckless acts on their part were not reasonably foreseeable, and intervened and acted as the direct and proximate cause of the damages, if any, sustained by Plaintiff.

67. D.R. Horton asserts that the intervening acts of a third party or parties were the sole and proximate cause of injuries to Plaintiff and the action should be dismissed.

FOR AN EIGHTEENTH DEFENSE
(Legal Duty)

68. D.R. Horton owed no legal duty as a matter of law to the Plaintiff.

FOR A NINETEENTH DEFENSE
(Statute of Limitations/Repose)

69. D.R. Horton allege that the Plaintiff's claims are barred by the applicable Statute of Limitations and Statute of Repose.

FOR A TWENTYTH DEFENSE
(Punitive Damages)

70. D.R. Horton would show that if the Plaintiff is making any claim for punitive damages, which are inappropriate, such violates the due process and equal protection laws of the United States Constitution and the Constitution of the State of South Carolina.

71. Punitive damages are inappropriate in this case, as a matter of law and also because the D.R. Horton did not engage in any malicious, reckless, wrongful, or intentional conduct upon which an award of punitive damages would be based.

72. D.R. Horton would show that any award of punitive damages, which D.R. Horton deny is appropriate, is subject to the limitations set forth in South Carolina Code §15-32-530.

FOR A TWENTY- FIRST DEFENSE
(Workmanlike Manner)

73. D.R. Horton asserts that all work performed was done in a workmanlike manner and therefore no breach of warranty may exist.

FOR A TWENTY- SECOND DEFENSE
(Disclaimer of Warranty)

74. The Contract disclaims any implied warranties made by D.R. Horton. Therefore, Plaintiff may not maintain any claims relating and/or referring to an implied warranty.

FOR A TWENTY-THIRD DEFENSE
(Failure to comply with conditions precedent)

75. D.R. Horton asserts that Plaintiff failed and refused to comply with the contractual conditions precedent to this action.

FOR A TWENTY-FOURTH DEFENSE
(Economic loss rule)

76. D.R. Horton asserts the Economic Loss Rule as a complete and total bar to all of Plaintiff's causes of action outside Breach of Contract.

FOR A TWENTY-FIFTH DEFENSE
(Additional Affirmative Defenses)

77. D.R. Horton hereby gives notice that it intends to rely on such other affirmative defenses pled by other defendants in this matter and as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert such defenses.

FURTHER ANSWERING THE COMPLAINT AND BY WAY OF THIRD-PARTY COMPLAINT AGAINST AJ LANDSCAPING & GRADING, LLC, A/K/A A J LANDSCAPING & GRADING, LLC; ALLPRO TEXTURES, LLC; ALPHA OMEGA CONSTRUCTION GROUP, INC.; AMERICAN CONCRETE AND PRECAST, INC.; A/K/A ACP CONCRETE, INC.; A & J FRAMING, INC; ALPHA E.M.C.; A-Z, INC.; ATLANTA FLOOR DESIGNS CENTER; A GRADE ABOVE OTHERS, LLC; BRAND-VAUGHAN LUMBER CO, INC.; BKF BUILDERS, INC.; BLUE RIDGE BUILDING PRODUCTS, LLC; BUILDERS DESIGNHOUSE, LLC; BMC EAST LLC; BUILDERS FIRSTSOURCE SOUTHEAST GROUP, LLC, A/K/A BUILDERS FIRSTSOURCE, INC.; BRAVO CARPENTERS, INC.; CARYL MECHANICS II, INC., A/K/A CARYL MECHANICALS, INC.; CANNADAY SIDING & GUTTER, INC.; COLEMAN FLOOR, LLC; CORTES PAINTING, LLC; CBU ENTERPRISES, INC.; CPI SECURITY SYSTEMS, INC.; DOM GROUP, LLC FERGUSON ENTERPRISES, INC.; FIVE STAR CONSTRUCTION INC.; FIVE STAR FOUNDATIONS, LLC; GALLOWAY-BELL, INC., A/K/A GALLOWAY-BELL, INC. II; GET FLOORED, LLC; GBS BUILDING SUPPLY – US LBM, LLC, F/K/A GBS BUILDING SUPPLY, INC.; GENERAL SHALE BRICK INC.; GREENER PASTURES, INC., A/K/A GREENER PASTURES OF AIKEN, LLC; INSTALLED BUILDING PRODUCTS, LLC, A/K/A INSTALLED BUILDING PRODUCTS II, LLC; JLS MASONRY, INC.; KINGS LANDSCAPING, LLC; LANDSHAPERS, LLC; LADE-DANLAR, INC.; LANSING BUILDING PRODUCTS, INC.; LONG HEATING & AIR CONDITIONING, INC.; L & M ELECTRIC, INC.; MANALE LANDSCAPING, LLC; MJ COWBOYS, LLC; M & L GENERAL CONSTRUCTION, LLC, A/K/A M & L GENERAL CONSTRUCTION, INC.; M&L REYNA CONSTRUCTION, LLC; M&M FOUNDATIONS, LLC; NAZARETH BUILDERS, LLC; NB CONTRACTORS, LLC; POINSETT DEVELOPMENT, LLC; POINSETT HOMES, LLC; P&T CONSTRUCTION, INC., A/K/A P & T CONSTRUCTION, INC.; P & L ENTERPRISES, LLC; PROBUILD COMPANY, LLC A/K/A PROBUILD HOLDINGS, INC.; RITE RUG COMPANY, INC., A/K/A RITE RUG CO.; RODNEY HOWARD GRADING INC., A/K/A RODNEY HOWARD GRADING CO.; SANDLAPPER CONCRETE, LLC; SODFATHER INC., LANDSCAPE CONTRACTORS; STOCK BUILDING SUPPLY, LLC; TOPBUILD HOME SERVICES,

INC., A/K/A GALE CONTRACTORS SERVICE; TUCKER MATERIALS, INC., A/K/A GYPSUM; UTM ENTERPRISES, INC; AND WILLOW TREE LANDSCAPING, INC.

78. D.R Horton herein realleges its answers and defenses to the above complaint in the preceding paragraphs as if fully set forth herein.

79. D.R. Horton individually contracted with AJ Landscaping & Grading, LLC, A/K/A A J Landscaping & Grading, LLC; AllPro Textures, LLC; Alpha Omega Construction Group, Inc.; American Concrete And Precast, Inc.; A/K/A ACP Concrete, Inc.; A & J Framing, Inc; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor Designs Center; A Grade Above Others, LLC; Brand-Vaughan Lumber Co, Inc.; Bkf Builders, Inc.; Blue Ridge Building Products, LLC; Builders Designhouse, LLC; BMC East LLC; Builders FirstSource Southeast Group, LLC, A/K/A Builders FirstSource, Inc.; Bravo Carpenters, Inc.; Caryl Mechanics II, Inc., A/K/A Caryl Mechanicals, Inc.; Cannaday Siding & Gutter, Inc.; Coleman Floor, LLC; Cortes Painting, LLC; CBU Enterprises, Inc.; Cpi Security Systems, Inc.; Ferguson Enterprises, Inc.; Five Star Construction Inc.; Five Star Foundations, LLC; Galloway-Bell, Inc., A/K/A Galloway-Bell, Inc. II; Get Floored, LLC; GBS Building Supply – Us LBM, LLC, F/K/A GBS Building Supply, Inc.; General Shale Brick Inc.; Greener Pastures, Inc., A/K/A Greener Pastures Of Aiken, LLC; Installed Building Products, LLC, A/K/A Installed Building Products II, LLC; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danlar, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L & M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M & L General Construction, LLC, A/K/A M & L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; P&T Construction, Inc., A/K/A P & T Construction, Inc.; P & L Enterprises, LLC; Probuild Company, LLC A/K/A Probuild Holdings, Inc.; Rite Rug Company, Inc., A/K/A Rite Rug Co.; Rodney Howard Grading Inc., A/K/A Rodney Howard

Grading Co.; Sandlapper Concrete, LLC; Sodfather Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., A/K/A Gale Contractors Service; Tucker Materials, Inc., A/K/A Gypsum; UTM Enterprises, Inc; And Willow Tree Landscaping, Inc. (collectively referred to as “Subcontractors”) for Subcontractors to provide certain labor and/or supply certain materials (collectively and individually the “Work”) concerning homes (the “Homes”) located in the Rose Hill subdivision (“Rose Hill”) located off State Highway 74 in Anderson County, South Carolina.

80. Subcontractors each entered into individual and respective contracts with D.R. Horton, as referred to directly above, to perform the Work. These respective contracts shall be collectively referred to as the “Agreements.”

81. Certain Homes located within Rose Hill were developed and constructed, at least in part, by Poinsett Development, LLC and Poinsett Homes, LLC (collectively “Poinsett”).

82. Poinsett and Subcontractors shall be collectively referred to as “Third-Party Defendants.”

83. The Homes located in Rose Hill are the subject of Plaintiff’s lawsuit.

84. This Court has jurisdiction over the claims asserted in this Third-Party Complaint because the claims asserted herein are so related to the claims in the action within the Court’s original jurisdiction that they form part of the same case or controversy.

85. Subcontractors agreed to perform their work on the Homes in a good and workmanlike manner.

86. Subcontractors were aware of the need and the importance of constructing the Homes in Rose Hill in accordance with construction plans, contract requirements, industry standards, and/or building code requirements so as to avoid construction defects.

87. D.R. Horton contracted with subcontractors to perform their Work on the project. Subcontractors' Work on the project for D.R. Horton gave rise to contractual and common law duties in tort and/or warranty. D.R. Horton was recently made aware that subcontractors' Work on the project may be defective. If subcontractors' work was defective, subcontractors breached their contractual and common law duties to D.R. Horton and caused it damages at the time it preformed its work. Subcontractors' allegedly deficient work gave rise to causes of action in favor of D.R. Horton against subcontractors at the time the work was performed and caused D.R. Horton damages, which would not become apparent for years. Those damages include extra workload, repair or repair costs of the defective work, previously unknown breaches of D.R. Horton's common law duties, express and implied warranties, and contractual relationships with other parties, costs of investigation, damage and harm to reputation, and potentially attorneys' fees and litigation costs incurred due to subcontractors' defective, latent, and previously unknown errors.

88. Plaintiff, and others similarly situated, sent D.R. Horton a Notice and Opportunity to Cure letter, and, in the underlying action, have filed a Complaint against D.R. Horton seeking damages related to the construction and workmanship (a/k/a the "Work") of the Homes in Rose Hill, alleging that the Homes have been constructed defectively.

89. Upon information and belief, Plaintiff's Notice and Opportunity to Cure letter and Complaint implicates each respective Subcontractors' Work.

90. Plaintiff's allegations contend that Subcontractors were grossly negligent, have failed to meet the requirements of the Agreements, including failing to construct the Homes in Rose Hill in accordance with construction documents, contract requirements, industry standards, and/or building code requirements so as to avoid construction defects.

91. Upon information and belief, each individual Agreement contains an indemnification clause, wherein Subcontractors agreed to indemnify D.R. Horton for the Work.

92. D.R. Horton has fully satisfied and performed all requirements associated with each respective Agreement.

93. D.R. Horton purchased partially developed lots and undeveloped lots within Rose Hill from Poinsett's successor in interest.

94. D.R. Horton purchased the partially completed lots with the understanding that these properties were built in accordance with construction plans, contract requirements, industry standards, and/or building code requirements so as to avoid construction defects. This understanding was a material fact in the purchase of the units.

95. Plaintiff has sued D.R. Horton claiming damages related to the and lots that were partially completed by Poinsett and such claims include allegations based upon the work performed by Poinsett.

96. Although D.R. Horton is without fault, by virtue of the alleged acts and omissions of the Subcontractors, D.R. Horton has been subjected to damages including, but not limited to, extra workload, repair or repair costs of the defective work, previously unknown breaches of D.R. Horton's common law duties, express and implied warranties, and contractual relationships with other parties, costs of investigation, damage and harm to reputation, and potentially attorneys' fees and litigation costs incurred due to subcontractors' defective, latent, and previously unknown errors.

FOR A FIRST CAUSE OF ACTION
(Contractual Indemnification as to Subcontractors)

97. D.R. Horton re-alleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

98. Plaintiff, individually, and on behalf of all others similarly situated, sent D.R. Horton a Notice and Opportunity to Cure letter and has sued D.R. Horton claiming damages related to construction work alleged to have been performed by Subcontractors in Rose Hill.

99. Subcontractors contracted with D.R. Horton to perform certain construction services on the Homes in Rose Hill.

100. Plaintiff has alleged that certain deficiencies in the work of Subcontractors have caused the damage to the Plaintiff.

101. D.R. Horton is informed and believes that if, in fact, Plaintiff, individually, and on behalf of all others similarly situated, is correct regarding the allegations of the Complaint, that the defects, if any, are the result of the wrongful acts, breach of warranties, omissions, negligence, gross negligence, and/or representations of Subcontractors, all of which are contrary to the statutory and common laws of the State of South Carolina.

102. As D.R. Horton has suffered damages, including but not limited to, any future adjudication of liability to Plaintiff, individually, and on behalf of all others similarly situated, in this action, such liability would be the direct and proximate result of the wrongful acts, errors, and/or omissions, negligence and/or gross negligence of Subcontractors, which have damaged D.R. Horton as set forth more fully above.

103. Pursuant to each Agreement with D.R. Horton, Subcontractors agreed to indemnify D.R. Horton from damages arising out of Subcontractors' Work on the Homes in Rose Hill.

104. D.R. Horton is entitled to a judgment for full contractual indemnification from subcontractors, and D.R. Horton would be entitled to damages for the acts, errors, and/or omissions, breach of warranties, breach of contract, negligence and/or gross negligence of

Subcontractors, as described hereinabove, entitling D.R. Horton to recover from Subcontractor its damages as set forth above.

105. The alleged acts or omissions of Subcontractors are the independent, active, primary, superseding, and/or intervening cause of damages allegedly suffered by Plaintiff, and the cause of D.R. Horton's separate and distinct damages set forth above and any wrongful acts or omissions by D.R. Horton, which are expressly denied, were passive and secondary only.

FOR A SECOND CAUSE OF ACTION
(Equitable Indemnification as to all Third-Party Defendants)

106. D.R. Horton repeats and re-alleges the allegations contained in the preceding paragraph as if fully set forth herein.

107. Plaintiff, individually, and on behalf of all others similarly situated, sent D.R. Horton a Notice and Opportunity to Cure letter and has sued D.R. Horton claiming damages related to the Homes in Rose Hill and such claims include allegations based upon each respective Subcontractors' Work and Poinsett's Work.

108. D.R. Horton has denied all substantive allegations against it that were made by Plaintiff.

109. A sufficient special relationship exists between D.R. Horton and Subcontractors and Poinsett, such that D.R. Horton could be held liable for subcontractors' and Poinsett's work and/or errors without any error by it.

110. D.R. Horton is informed and believes that if, in fact, Plaintiff is correct about her allegations, that the allegations are the result of the wrongful acts, omissions, breach of contract, breach of warranty, negligence, gross negligence, and/or representations of Subcontractors, all of which are contrary to the statutory and common laws of the State of South Carolina.

111. As D.R. Horton has suffered damages, including but not limited to, any future adjudication of liability to Plaintiff, individually, and on behalf of all others similarly situated, in this action, such liability would be the direct and proximate result of the wrongful acts, errors, and/or omissions, negligence and/or gross negligence of Subcontractors, which have damaged D.R. Horton as set forth more fully above. To the extent, if any, that D.R. Horton is held liable to Plaintiff in this action, the alleged acts or omissions of Subcontractors and Poinsett are the independent, active, primary, superseding, and/or intervening cause of damages allegedly suffered by Plaintiff, and any wrongful acts or omissions by D.R. Horton, which are expressly denied, were passive and secondary only.

112. D.R. Horton is entitled to a judgment for full common law indemnification from Subcontractors and Poinsett for all damages, as set forth above, including any liability D.R. Horton could be found to have to Plaintiff in this action, and D.R. Horton would be entitled to damages for the acts, errors, and/or omissions, negligence and/or gross negligence of Subcontractors as described above, entitling D.R. Horton to recover from Subcontractors and Poinsett damages including, but not limited to, extra workload, repair or repair costs of the defective work, previously unknown breaches of D.R. Horton's common law duties, express and implied warranties, and contractual relationships with other parties, costs of investigation, damage and harm to reputation, and potentially attorneys' fees and litigation costs incurred due to subcontractors' defective, latent, and previously unknown errors.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract as to Subcontractors)

113. D.R. Horton repeats and re-alleges the allegations contained in the preceding paragraph as if fully set forth herein.

114. Subcontractors were contractually responsible for executing the requirements in the Agreements correctly.

115. To the extent that Plaintiff proves that the work was not performed correctly, Subcontractors materially breached the Agreements in failing to construct the Homes in Rose Hill in accordance with contract requirements, industry standards, and/or building code requirements so as to avoid construction defects.

116. D.R. Horton is entitled to judgment against Subcontractors for breach of contract plus costs, expenses, attorneys' fees, and other damages associated therewith.

FOR A FOURTH CAUSE OF ACTION
(Breach of Express Warranties as to all Subcontractors)

117. D.R. Horton repeats and re-alleges the allegations contained in the preceding paragraph as if fully set forth herein.

118. Subcontractors made express warranties that any materials, installation, and workmanship they performed at the Homes in Rose Hill were proper as required by the Agreements, applicable building codes, and industry standards.

119. If the materials, installation, and/or workmanship were not in accordance with contract requirements, industry standards, and/or building code requirements, then Subcontractors have materially breached their express warranties.

120. D.R. Horton is entitled to judgment against Subcontractors for breach of express warranties, along with costs, expenses, attorneys' fees, and other damages associated therewith.

FOR A FIFTH CAUSE OF ACTION
(Breach of Implied Warranties as to all Third-Party Defendants)

121. D.R. Horton repeats and re-alleges the allegations contained in the preceding paragraph as if fully set forth herein.

122. Subcontractors and Poinsett implicitly warranted that any materials, installation, and workmanship they performed at the Homes in Rose Hill were proper as required by the Agreements, applicable building codes, common law, warranty of workmanlike service, and industry standards.

123. If the materials, installation, and/or workmanship were not in accordance with contract requirements, construction plans, industry standards, and/or building code requirements, then Subcontractors and Poinsett have materially breached their express warranties.

124. D.R. Horton is entitled to judgment against Subcontractors and Poinsett for breach of express warranties, along with costs, expenses, attorneys' fees, and other damages set forth above.

FOR A SIXTH CAUSE OF ACTION
(Negligence/Gross Negligence/Recklessness as to all Third-Party Defendants)

125. D.R. Horton repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

126. Upon information and belief, Subcontractors owed a duty to use due care in ensuring that proper levels of workmanship were achieved under the terms of the Agreements.

127. If due care was not used in ensuring proper levels of workmanship were achieved, then Subcontractors breached that duty of care by failing to ensure that proper levels of workmanship were achieved pursuant to the requirements under the Agreements.

128. D.R. Horton has been damaged as a direct and foreseeable and proximate result of Subcontractors and Poinsett's negligence/gross negligence/recklessness, and D.R. Horton is entitled to judgment against Subcontractors for their damages, including costs, expense, attorneys' fees, and other damages set forth above.

WHEREFORE, D.R. Horton has been damaged as a direct and foreseeable and proximate result of Third-Party Defendants' acts, in that, among other damages, D.R. Horton was deprived of the benefit of the bargain, has and will suffer substantial damages including, but not limited to, extra workload, repair or repair costs of the defective work, previously unknown breaches of D.R. Horton's common law duties, express and implied warranties, and contractual relationships with other parties, costs of investigation, damage and harm to reputation, and potentially attorneys' fees and litigation costs incurred due to subcontractors' defective, latent, and previously unknown errors and D.R. Horton is entitled to judgment against Third-Party Defendants for its damages, including costs, expense, attorneys' fees, and other damages associated therewith. WHEREFORE, D.R. Horton prays for:

- (a) Having fully answered the allegations of the Third Amended Complaint, dismissal of the Third Amended Complaint and all causes of action contained therein, with prejudice, and an award to D.R. Horton, Inc of its attorney fees, costs, and other expenses incurred in defending this action;
- (b) On D.R. Horton's First Cause of Action, judgment in favor of D.R. Horton and against the Subcontractors in the amount of any liability D.R. Horton is found to have to the Plaintiff in this action and requiring the D.R. Horton Subcontractors to defend and indemnify D.R. Horton against any liability which D.R. Horton may be liable for and for any costs, losses, or damages D.R. Horton may incur as it relates to the Plaintiff in this action, to include D.R. Horton's attorneys' fees, costs, and any and all other expenses incurred in defending this action;
- (c) On D.R. Horton's Second Cause of Action, judgment in favor of D.R. Horton and against Third-Party Defendants in the amount of any liability D.R. Horton is found to have to the Plaintiff in this action and requiring the Third-Party Defendants to defend and indemnify D.R. Horton against any liability which D.R. Horton may be liable for and for any costs, losses, or damages D.R. Horton may incur as it relates to the Plaintiff in this action, to include D.R. Horton's attorneys' fees, costs, and any and all other expenses incurred in defending this action;
- (d) On D.R. Horton's Third and Fourth Causes of Action, judgment for D.R. Horton and against the Subcontractors in an amount to be determined at trial;

- (e) On D.R. Horton's Fifth Cause of Action, judgment for D.R. Horton and against the Third-Party Defendants in an amount to be determined at trial;
- (f) On D.R. Horton's Sixth Cause of Action, judgment for D.R. Horton and against Third-Party Defendants awarding actual, special, consequential and punitive damages in an amount to be determined at trial;
- (g) Attorneys' fees;
- (h) Costs of this action; and
- (i) Such other and further relief that this Court deems just and proper.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

John T. Crawford Jr. (SC Bar # 69682)

Jason Imhoff (S.C. Bar # 69355)

Kyle McGann (SC Bar # 103113)

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Greenville, SC 29601

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E: Warmoth@conlaw.com

Attorneys for D.R. Horton

March 11, 2021
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff

VS

D.R. Horton, Inc., Jane Doe #1-10; and, John Doe #1-50,

Defendant

D.R. HORTON, INC.

Third-Party Plaintiff

VS

AJ LANDSCAPING & GRADING, LLC;
A/K/A AJ LANDSCAPING & GRADING,
LLC; ALLPRO TEXTURES, LLC; ALPHA
OMEGA CONSTRUCTION GROUP, INC.;
AMERICAN CONCRETE AND PRECAST,
INC.; A/K/A ACP CONCRETE, INC.; A&J
FRAMING, INC; ALPHA E.M.C.; A-Z,
INC.; ATLANTA FLOOR DESIGNS
CENTER; A GRADE ABOVE OTHERS,
LLC; BRAND-VAUGHAN LUMBER CO,
INC.; BKF BUILDERS, INC.; BUILDERS
DESIGNHOUSE, LLC; BMC EAST LLC
D/B/A COLEMAN FLOOR, LLC;
BUILDERS FIRSTSOURCE SOUTHEAST
GROUP, LLC, A/K/A BUILDERS
FIRSTSOURCE, INC; BRAVO
CARPENTERS, INC.; CARYL
MECHANICS II, INC., A/K/A CARYL
MECHANICALS, INC.; CANNADAY
SIDING & GUTTER, INC.; CORTES
PAINTING, LLC; CBU ENTERPRISES,
INC.; CPI SECURITY SYSTEMS, INC.;
DOM GROUP, LLC; FERGUSON
ENTERPRISES, INC.; FIVE STAR

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No. 2019-CP-04-1942

SECOND AMENDED SUMMONS

CONSTRUCTION INC.; FIVE STAR)
 FOUNDATIONS, LLC; GALLOWAY-)
 BELL, INC. A/K/A GALLOWAY-BELL,)
 INC. II; GET FLOORED, LLC; GBS)
 BUILDING SUPPLY – US LBM, LLC,)
 F/K/A GBS BUILDING SUPPLY, INC.;)
 GENERAL SHALE BRICK INC.;)
 GREENER PASTURES, INC. A/K/A)
 GREENER PASTURES OF AIKEN, LLC;)
 IBP ASSET, LLC D/B/A BLUE RIDGE)
 BUILDING PRODUCTS; JLS MASONRY,)
 INC.; KINGS LANDSCAPING, LLC;)
 LANDSHAPERS, LLC; LADE-DANLAR,)
 INC.; LANSING BUILDING PRODUCTS,)
 INC.; LONG HEATING & AIR)
 CONDITIONING, INC.; L&M ELECTRIC,)
 INC; MANALE LANDSCAPING, LLC; MJ)
 COWBOYS, LLC; M&L GENERAL)
 CONSTRUCTION, LLC, A/K/A M&L)
 GENERAL CONSTRUCTION, INC.; M&L)
 REYNA CONSTRUCTION, LLC; M&M)
 FOUNDATIONS, LLC; NAZARETH)
 BUILDERS, LLC; NB CONTRACTORS,)
 LLC; POINSETT DEVELOPMENT, LLC;)
 POINSETT HOMES, LLC; P&T)
 CONSTRUCTION, INC., A/K/A P&T)
 CONSTRUCTION, INC.; P&L)
 ENTERPRISES, LLC; PROBUILD)
 COMPANY, LLC A/K/A PROBUILD)
 HOLDINGS, INC.; RITE RUG CO.;)
 RODNEY HOWARD GRADING, INC.)
 A/K/A RODNEY HOWARD GRADING)
 CO.; SANDLAPPER CONCRETE, LLC;)
 SODFATHER INC., LANDSCAPE)
 CONTRACTORS; STOCK BUILDING)
 SUPPLY, LLC; TOPBUILD HOME)
 SERVICES, INC., A/K/A GALE)
 CONTRACTORS SERVICE; TUCKER)
 MATERIALS, INC., A/K/A GYPSUM;)
 UTM ENTERPRISES, INC; DUPREE)
 PLUMBING COMPANY, INC., WILLOW)
 TREE LANDSCAPING, INC; AND)
 SILVER LINE BUILDING PRODUCTS)
 CORPORATION)
)

Third-Party Defendants

TO: NAMED THIRD-PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Third-Party Complaint contained in the Second Amended Answer of D.R. Horton, Inc., to Plaintiff's Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Third-Party Complaint on the subscriber hereto at this office at 704 East McBee Avenue, Greenville, South Carolina, 29601, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

John T. Crawford Jr. (SC Bar # 69682)

Jason Imhoff (S.C. Bar # 69355)

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Attorneys for D.R. Horton

February 23, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	C.A. No. 2019-CP-04-1942
Natalie Zitek, individually, and on behalf of	)	
all others similarly situated,	)	
	)	SECOND AMENDED ANSWER AND
	)	THIRD-PARTY COMPLAINT OF
	)	DEFENDANT D.R. HORTON, INC.
	)	
Plaintiff	)	
vs	)	
	)	
D.R. Horton, Inc., Jane Doe #1-10; and, John	)	
Doe #1-50,	)	
	)	
Defendant	)	
	)	
D.R. HORTON, INC.	)	
	)	
Third-Party Plaintiff	)	
vs	)	
	)	
AJ LANDSCAPING & GRADING, LLC,	)	
A/K/A AJ LANDSCAPING & GRADING,	)	
LLC; ALLPRO TEXTURES, LLC; ALPHA	)	
OMEGA CONSTRUCTION GROUP, INC.;	)	
AMERICAN CONCRETE AND PRECAST,	)	
INC.; A/K/A ACP CONCRETE, INC.; A&J	)	
FRAMING, INC; ALPHA E.M.C.; A-Z,	)	
INC.; ATLANTA FLOOR DESIGNS	)	
CENTER; A GRADE ABOVE OTHERS,	)	
LLC; BRAND-VAUGHAN LUMBER CO,	)	
INC.; BKF BUILDERS, INC.;BUILDERS	)	
DESIGNHOUSE, LLC; BMC EAST LLC	)	
D/B/A COLEMAN FLOOR, LLC;	)	
BUILDERS FIRSTSOURCE SOUTHEAST	)	
GROUP, LLC, A/K/A BUILDERS	)	
FIRSTSOURCE, INC; BRAVO	)	
CARPENTERS, INC.; CARYL	)	
MECHANICS II, INC., A/K/A CARYL	)	
MECHANICALS, INC.; CANNADAY	)	
SIDING & GUTTER, INC.; CORTES	)	
PAINTING, LLC; CBU ENTERPRISES,	)	
INC.; CPI SECURITY SYSTEMS, INC.;	)	
DOM GROUP, LLC; FERGUSON	)	
ENTERPRISES, INC.; FIVE STAR	)	

CONSTRUCTION INC.; FIVE STAR)
 FOUNDATIONS, LLC; GALLOWAY-)
 BELL, INC. A/K/A GALLOWAY-BELL,)
 INC. II; GET FLOORED, LLC; GBS)
 BUILDING SUPPLY – US LBM, LLC,)
 F/K/A GBS BUILDING SUPPLY, INC.;)
 GENERAL SHALE BRICK INC.;)
 GREENER PASTURES, INC. A/K/A)
 GREENER PASTURES OF AIKEN, LLC;)
 IBP ASSET, LLC D/B/A BLUE RIDGE)
 BUILDING PRODUCTS; JLS MASONRY,)
 INC.; KINGS LANDSCAPING, LLC;)
 LANDSHAPERS, LLC; LADE-DANLAR,)
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 CONDITIONING, INC.; L&M ELECTRIC,)
 INC; MANALE LANDSCAPING, LLC; MJ)
 COWBOYS, LLC; M&L GENERAL)
 CONSTRUCTION, LLC, A/K/A M&L)
 GENERAL CONSTRUCTION, INC.; M&L)
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 FOUNDATIONS, LLC; NAZARETH)
 BUILDERS, LLC; NB CONTRACTORS,)
 LLC; POINSETT DEVELOPMENT, LLC;)
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 COMPANY, LLC A/K/A PROBUILD)
 HOLDINGS, INC.; RITE RUG CO.;)
 RODNEY HOWARD GRADING, INC.)
 A/K/A RODNEY HOWARD GRADING)
 CO.; SANDLAPPER CONCRETE, LLC;)
 SODFATHER INC., LANDSCAPE)
 CONTRACTORS; STOCK BUILDING)
 SUPPLY, LLC; TOPBUILD HOME)
 SERVICES, INC., A/K/A GALE)
 CONTRACTORS SERVICE; TUCKER)
 MATERIALS, INC., A/K/A GYPSUM;)
 UTM ENTERPRISES, INC; DUPREE)
 PLUMBING COMPANY, INC. AND)
 WILLOW TREE LANDSCAPING, INC;)
 AND SILVER LINE BUILDING)
 PRODUCTS CORPORATION)
)

Third-Party Defendants

**TO: JUSTIN O'TOOLE LUCEY, ESQUIRE, AND DABNY LYNN, ESQUIRE,
ATTORNEYS FOR PLAINTIFF:**

Pursuant to Rule 15, SCRCP, Defendant D.R. Horton, Inc. ("D.R. Horton" or "Defendant"), hereby amends its answer and asserts a third-party complaint and answers the Complaint of Natalie Zitek, individually, and on behalf of all others similarly situated ("Plaintiff"), as set forth below, by denying each and every allegation not hereinafter specifically admitted, demanding strict proof thereof, and further responds as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained within Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained is denied.
2. Upon information and belief, D.R. Horton admits the allegations contained within Paragraphs 1, 2, 3, and 4 of the Complaint.
3. D.R. Horton denies that this matter is a proper matter for a class action lawsuit as alleged in Paragraph 5 of the Complaint and therefore denies the same.
4. D.R. Horton admits the allegations of Paragraph 6 of the Complaint.
5. D.R. Horton admits so much of the allegations contained in Paragraph 7 of the Complaint in that D.R. Horton constructed various residences and developed certain portions of Rose Hill. All remaining allegations contained in Paragraph 7 are denied.
6. D.R. Horton denies the allegations of Paragraphs 8, 9, 10, 11, 12, 13, 14, 15 of the Complaint.
7. D.R. Horton lacks sufficient information to admit or deny the allegations contained in Paragraphs 16, 17 and 18 of the Complaint and therefore denies the same.

8. Paragraphs 19 and 20 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to this paragraph it is denied and strict proof is demanded.

9. D.R. Horton lacks sufficient information to admit or deny Paragraphs 21 and 22 of the Complaint and therefore denies the same.

10. D.R. Horton admits so much of the allegations contained in Paragraph 23 of the Complaint that Plaintiff claims arises out of construction of the Zitek residence. All remaining allegations contained in Paragraph 23 are denied.

11. D.R. Horton denies the allegations of Paragraph 24 of the Complaint.

12. D.R. Horton denies the allegations of Paragraph 25 of the Complaint.

13. D.R. Horton denies the allegations of Paragraph 26 and 27 of the Complaint.

14. Paragraph 28 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to this paragraph it is denied and strict proof is demanded.

15. D.R. Horton denies the allegations of Paragraph 29 of the Complaint.

16. D.R. Horton denies the allegations of Paragraphs 30 and 31 of the Complaint.

17. D.R. Horton denies the allegations of Paragraph 32 of the Complaint.

18. D.R. Horton denies the allegations of Paragraphs 33 and 34 of the Complaint.

19. D.R. Horton denies any and all allegations in Paragraphs 35, 36, 37, 38, 39 and 40 and denies that this matter is proper as a class action lawsuit as alleged in Paragraphs 35, 36, 37, 38, 39 and 40 of the Complaint and therefore denies the same.

20. Paragraph 41 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to this paragraph it is denied and strict proof is demanded.

21. D.R. Horton denies that this matter is proper as a class action lawsuit as alleged in Paragraph 42 of the Complaint and therefore denies the same.

22. D.R. Horton denies the allegations of Paragraph 43 of the Complaint.

23. D.R. Horton lacks sufficient information to admit or deny Paragraph 44 of the Complaint and therefore denies the same.

24. D.R. Horton denies the allegations of Paragraph 45 of the Complaint.

25. D.R. Horton denies knowledge of the existence of any defects, as alleged in Paragraphs 46 and 47 of the Complaint. Further, Paragraphs 46 and 47 of the Complaint call for a legal conclusion which can neither be admitted or denied. To the extent a response is required, it is denied and strict proof of demanded.

26. Paragraphs 48, 49, 50 and 51 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to these paragraphs they are denied, and strict proof is demanded.

27. D.R. Horton denies the allegations of Paragraph 52 of the Complaint.

28. Dr. Horton craves reference to the documents referenced in Paragraphs 53 and 54 of the Complaint and denies any allegations inconsistent thereof. Further, Paragraphs 53 and 54 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to this paragraph it is denied and strict proof is demanded.

29. D.R. Horton denies the allegations of Paragraphs 55, 56, 57, 58 and 59 of the Complaint.

30. D.R. Horton denies the knowledge of the existence of any defects and denies that D.R. Horton's warranties are inadequate, as alleged in Paragraphs 60 and 61 of the Complaint, and therefore denies the same.

31. D.R. Horton denies the allegations of Paragraph 62 of the Complaint.

32. Paragraph 63 of Plaintiff's Complaint is an administrative paragraph to which no response is required. To the extent a response is required, D.R. Horton realleges and reasserts its answers and defenses to the prior allegations of the Complaint.

33. Paragraphs 64, 65, and 66 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to this paragraph, it is denied, and strict proof is demanded.

34. D.R. Horton denies the allegations of Paragraph 67 and 68 of the Complaint.

35. Paragraph 69 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to this paragraph it is denied and strict proof is demanded.

36. D.R. Horton denies the allegations of Paragraph 70 of the Complaint.

37. D.R. Horton denies that Plaintiff is entitled to any relief as sought in Paragraph 71 of the Complaint.

38. Paragraph 72 of Plaintiff's Complaint is an administrative paragraph to which no response is required. To the extent a response is required, D.R. Horton realleges and reasserts its answers and defenses to the prior allegations of the Complaint.

39. Paragraphs 73, 74, and 75 of the Complaint calls for a legal conclusion to which can neither be admitted nor denied. To the extent a response is required to this paragraph, it is denied, and strict proof is demanded.

40. D.R. Horton denies the allegations of Paragraph 76 of the Complaint.

41. D.R. Horton denies that Plaintiff is entitled to any relief as sought in Paragraph 77 of the Complaint.

42. Paragraph 78 of Plaintiff's Complaint is an administrative paragraph to which no response is required. To the extent a response is required, D.R. Horton realleges and reasserts its answers and defenses to the prior allegations of the Complaint.

43. Paragraphs 79 and 80 of the Complaint call for a legal conclusion which can neither be admitted nor denied. To the extent a response is required to this paragraph it is denied and strict proof is demanded.

44. D.R. Horton denies the allegations of Paragraphs 81, 82, 83, and 84 of the Complaint, including the existence of any alleged defects.

45. Denies that Plaintiff is entitled to any relief as sought in Paragraph 85 of the Complaint.

46. Denies all remaining allegations of the Complaint, including Plaintiff's Prayer for Relief as set forth in the Paragraph beginning "WHEREFORE" which claims entitlement to actual damages, attorneys' fees, costs, and any other relief and prays that this action against D.R. Horton be dismissed.

FOR A SECOND DEFENSE
(Motion to Dismiss, Alternatively to Stay and Compel Arbitration)

47. D.R. Horton moves to dismiss this action pursuant to Rule 12(b)(6), SCRPC, or, alternatively, stay this action as Plaintiff entered into a contract with D.R. Horton regarding the construction of a home, which is the subject of this suit ("Contract"). The contract contains a binding and enforceable arbitration agreement. Therefore, this Court does not have jurisdiction to hear this matter and/or should stay the case and transfer it for arbitration.

48. D.R. Horton asserts that Defendants John Doe #1-50 and Jane Doe #1-10 have not been served pursuant to the South Carolina Rules of Civil Procedure. Therefore, D.R. Horton moves to dismiss Co-Defendants John Doe #1-50 and Jane Doe #1-10 pursuant to Rule 12(b)(4)

and (5) of the South Carolina Rules of Civil Procedure for insufficiency of process and insufficiency of service of process. D.R. Horton further alleges lack of service as a defense in this matter as to Defendant John Doe #1-50 and Jane Doe #1-10.

FOR A THIRD DEFENSE
(Lack of standing)

49. Plaintiff lacks standing to make the claims asserted against D.R. Horton in this action.

50. D.R. Horton asserts that Defendants John Doe #1-50 and Jane Doe #1-10 have not been served pursuant to the South Carolina Rules of Civil Procedure. Therefore, D.R. Horton moves to dismiss Co-Defendants John Doe #1-50 and Jane Doe #1-10 pursuant to Rule 12(b)(4) and (5) of the South Carolina Rules of Civil Procedure for insufficiency of process and insufficiency of service of process. D.R. Horton further alleges lack of service as a defense in this matter as to Defendant John Doe #1-50 and Jane Doe #1-10.

FOR A FOURTH DEFENSE
(Failure to State a claim or cause of action)

51. Plaintiff fails to state a claim upon which relief may be granted.

52. Plaintiff fails to state a cause of action against D.R. Horton.

53. D.R. Horton asserts that Defendants John Doe #1-50 and Jane Doe #1-10 have not been served pursuant to the South Carolina Rules of Civil Procedure. Therefore, D.R. Horton moves to dismiss Co-Defendants John Doe #1-50 and Jane Doe #1-10 pursuant to Rule 12(b)(4) and (5) of the South Carolina Rules of Civil Procedure for insufficiency of process and insufficiency of service of process. D.R. Horton further alleges lack of service as a defense in this matter as to Defendant John Doe #1-50 and Jane Doe #1-10.

FOR A FIFTH DEFENSE
(Laches, Estoppel, Waiver)

54. That all claims asserted against D.R. Horton are barred by the equitable doctrines of laches, waiver, and/or estoppel.

FOR A SIXTH DEFENSE
(Spoliation)

55. Plaintiff's claims are barred by the doctrine of spoliation of evidence.

FOR A SEVENTH DEFENSE
(Unclean Hands)

56. Plaintiff's claims against D.R. Horton are barred by the Doctrine of Unclean Hands.

FOR AN EIGHTH DEFENSE
(Negligence of Others)

57. D.R. Horton alleges that the direct and proximate cause of Plaintiff's damages, if any, was the negligence, gross negligence, wanton and reckless conduct of some other person or corporation and, accordingly, D.R. Horton is not liable to Plaintiff.

FOR A NINTH DEFENSE
(Comparative Negligence)

58. Plaintiff's claims and damages, if any, are barred, or should be reduced, by Plaintiff's own contributory and comparative negligence and recklessness which combined, contributed and concurred with any alleged negligence on the part of the D.R. Horton, if any, and which is expressly denied.

FOR A TENTH DEFENSE
(Offset)

59. D.R. Horton is entitled to offset in the amount of any and all damages recovered by the Plaintiff from other for the same injuries and/or damages claimed in this suit.

FOR AN ELEVENTH DEFENSE
(Mitigate Damages)

60. D.R. Horton allege that Plaintiff had an obligation to mitigate damages but failed to do so.

FOR A TWELVETH DEFENSE
(Compliance with Industry Standards)

61. Any and all materials, work or services provided by D.R. Horton met all relevant industry customs, practices and standards.

FOR A THIRTEENTH DEFENSE
(Acceptance of Work)

62. That the final completion and acceptance of the work undertaken by D.R. Horton constitutes a complete defense to all claims asserted by Plaintiff.

FOR A FOURTEENTH DEFENSE
(Proximate Cause)

63. Even if D.R. Horton were negligent or in breach, D.R. Horton alleges that Plaintiff's claims are barred due to the lack of proximate cause between Plaintiff's alleged damages and the alleged actions/inactions of D.R. Horton.

FOR A FIFTEENTH DEFENSE
(Scope of Work)

64. D.R. Horton's obligations to Plaintiff are limited to the services provided pursuant to D.R. Horton's scope of work; therefore, to the extent that any of Plaintiff's claims include

allegations against D.R. Horton that are outside the scope of services and work performed by D.R. Horton, those claims are barred.

FOR A SIXTEENTH DEFENSE
(Limitation of Warranty)

65. Plaintiff's claims are, upon information and belief, barred as they failed to make a claim against D.R. Horton within the applicable, implied and express warranty period and would be reduced to the extent that D.R. Horton provided a warranty which was in lieu of all other warranties.

FOR A SEVENTEENTH DEFENSE
(Intervening/Superseding Cause)

66. D.R. Horton asserts that even if it was negligent or reckless any respect, which is expressly denied, it is not liable to Plaintiff for any resulting damages, if any, because of the intervening negligent, grossly negligent, reckless, willful, and wanton acts of third parties, including those parties whose identities are unknown at the present time, which negligent and reckless acts on their part were not reasonably foreseeable, and intervened and acted as the direct and proximate cause of the damages, if any, sustained by Plaintiff.

67. D.R. Horton asserts that the intervening acts of a third party or parties were the sole and proximate cause of injuries to Plaintiff and the action should be dismissed.

FOR AN EIGHTEENTH DEFENSE
(Legal Duty)

68. D.R. Horton owed no legal duty as a matter of law to the Plaintiff.

FOR A NINETEENTH DEFENSE
(Statute of Limitations/Repose)

69. D.R. Horton allege that the Plaintiff's claims are barred by the applicable Statute of Limitations and Statute of Repose.

FOR A TWENTIETH DEFENSE
(Punitive Damages)

70. D.R. Horton would show that if the Plaintiff is making any claim for punitive damages, which are inappropriate, such violates the due process and equal protection laws of the United States Constitution and the Constitution of the State of South Carolina.

71. Punitive damages are inappropriate in this case, as a matter of law and also because the D.R. Horton did not engage in any malicious, reckless, wrongful, or intentional conduct upon which an award of punitive damages would be based.

72. D.R. Horton would show that any award of punitive damages, which D.R. Horton deny is appropriate, is subject to the limitations set forth in South Carolina Code §15-32-530.

FOR A TWENTY- FIRST DEFENSE
(Workmanlike Manner)

73. D.R. Horton asserts that all work performed was done in a workmanlike manner and therefore no breach of warranty may exist.

FOR A TWENTY- SECOND DEFENSE
(Disclaimer of Warranty)

74. The Contract disclaims any implied warranties made by D.R. Horton. Therefore, Plaintiff may not maintain any claims relating and/or referring to an implied warranty.

FOR A TWENTY-THIRD DEFENSE
(Failure to comply with conditions precedent)

75. D.R. Horton asserts that Plaintiff failed and refused to comply with the contractual conditions precedent to this action.

FOR A TWENTY-FOURTH DEFENSE
(Economic loss rule)

76. D.R. Horton asserts the Economic Loss Rule as a complete and total bar to all of Plaintiff's causes of action outside Breach of Contract.

FOR A TWENTY-FIFTH DEFENSE
(Additional Affirmative Defenses)

77. D.R. Horton hereby gives notice that it intends to rely on such other affirmative defenses pled by other defendants in this matter and as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert such defenses.

FURTHER ANSWERING THE COMPLAINT AND BY WAY OF THIRD-PARTY COMPLAINT AGAINST AJ LANDSCAPING & GRADING, LLC, A/K/A A J LANDSCAPING & GRADING, LLC; ALLPRO TEXTURES, LLC; ALPHA OMEGA CONSTRUCTION GROUP, INC.; AMERICAN CONCRETE AND PRECAST, INC.; A/K/A ACP CONCRETE, INC.; A & J FRAMING, INC; ALPHA E.M.C.; A-Z, INC.; ATLANTA FLOOR DESIGNS CENTER; A GRADE ABOVE OTHERS, LLC; BRAND-VAUGHAN LUMBER CO, INC.; BKF BUILDERS, INC.; IBP ASSET, LLC D/B/A BLUE RIDGE BUILDING PRODUCTS; BUILDERS DESIGNHOUSE, LLC; BMC EAST LLC; BUILDERS FIRSTSOURCE SOUTHEAST GROUP, LLC, A/K/A BUILDERS FIRSTSOURCE, INC.; BRAVO CARPENTERS, INC.; CARYL MECHANICS II, INC., A/K/A CARYL MECHANICALS, INC.; CANNADAY SIDING & GUTTER, INC.; COLEMAN FLOOR, LLC; CORTES PAINTING, LLC; CBU ENTERPRISES, INC.; CPI SECURITY SYSTEMS, INC.; DOM GROUP, LLC FERGUSON ENTERPRISES, INC.; FIVE STAR CONSTRUCTION INC.; FIVE STAR FOUNDATIONS, LLC; GALLOWAY-BELL, INC., A/K/A GALLOWAY-BELL, INC. II; GET FLOORED, LLC; GBS BUILDING SUPPLY – US LBM, LLC, F/K/A GBS BUILDING SUPPLY, INC.; GENERAL SHALE BRICK INC.; GREENER PASTURES, INC., A/K/A GREENER PASTURES OF AIKEN, LLC; INSTALLED BUILDING PRODUCTS, LLC, A/K/A INSTALLED BUILDING PRODUCTS II, LLC; JLS MASONRY, INC.; KINGS LANDSCAPING, LLC; LANDSHAPERS, LLC; LADE-DANLAR, INC.; LANSING BUILDING PRODUCTS, INC.; LONG HEATING & AIR CONDITIONING, INC.; L & M ELECTRIC, INC; MANALE LANDSCAPING, LLC; MJ COWBOYS, LLC; M & L GENERAL CONSTRUCTION, LLC, A/K/A M & L GENERAL CONSTRUCTION, INC.; M&L REYNA CONSTRUCTION, LLC; M&M FOUNDATIONS, LLC; NAZARETH BUILDERS, LLC; NB CONTRACTORS, LLC; POINSETT DEVELOPMENT, LLC; POINSETT HOMES, LLC; P&T CONSTRUCTION, INC., A/K/A P & T CONSTRUCTION, INC.; P & L ENTERPRISES, LLC; PROBUILD COMPANY, LLC A/K/A PROBUILD HOLDINGS, INC.; RITE RUG CO.; RODNEY HOWARD GRADING INC., A/K/A RODNEY HOWARD GRADING CO.; SANDLAPPER CONCRETE, LLC; SODFATHER INC., LANDSCAPE CONTRACTORS; STOCK BUILDING SUPPLY, LLC; TOPBUILD HOME SERVICES, INC. A/K/A GALE

CONTRACTORS SERVICE; TUCKER MATERIALS, INC., A/K/A GYPSUM; UTM ENTERPRISES, INC.; WILLOW TREE LANDSCAPING, INC.; DUPREE PLUMBING COMPANY, INC. AND SILVER LINE BUILDING PRODUCTS CORPORATION

78. D.R Horton herein realleges its answers and defenses to the above complaint in the preceding paragraphs as if fully set forth herein.

79. D.R. Horton individually contracted with and paid AJ Landscaping & Grading, LLC, A/K/A AJ Landscaping & Grading, LLC; AllPro Textures, LLC; Alpha Omega Construction Group, Inc.; American Concrete And Precast, Inc.; A/K/A ACP Concrete, Inc.; A & J Framing, Inc; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor Designs Center; A Grade Above Others, LLC; Brand-Vaughan Lumber Co, Inc.; BKF Builders, Inc.; Blue Ridge Building Products, LLC; Builders Designhouse, LLC; BMC East LLC; Builders FirstSource Southeast Group, LLC, A/K/A Builders FirstSource, Inc.; Bravo Carpenters, Inc.; Caryl Mechanics II, Inc., A/K/A Caryl Mechanicals, Inc.; Cannaday Siding & Gutter, Inc.; Coleman Floor, LLC; Cortes Painting, LLC; CBU Enterprises, Inc.; CPI Security Systems, Inc.; Ferguson Enterprises, Inc.; Five Star Construction Inc.; Five Star Foundations, LLC; Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II; Get Floored, LLC; GBS Building Supply – US LBM, LLC, f/k/a GBS Building Supply, Inc.; General Shale Brick Inc.; Greener Pastures, Inc., a/k/a Greener Pastures of Aiken, LLC; IBP Asset, LLC d/b/a Blue Ridge Building Products; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danlar, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC, a/k/a M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; P&T Construction, Inc., a/k/a P&T Construction, Inc.; P&L Enterprises, LLC; ProBuild Company, LLC a/k/a ProBuild Holdings, Inc.; Rite Rug Co.; Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather Inc., Landscape

Contractors; Stock Building Supply, LLC; TopBuild Home Services, Inc., a/k/a Gale Contractors Service; Tucker Materials, Inc., a/k/a Gypsum; UTM Enterprises, Inc; Willow Tree Landscaping, Inc.; Dupree Plumbing Company, Inc. and Silver Line Building Products Corporation (collectively referred to as “Subcontractors”) for Subcontractors to provide certain labor and/or supply certain materials (collectively and individually the “Work”) concerning homes (the “Homes”) located in the Rose Hill subdivision (“Rose Hill”) located off State Highway 74 in Anderson County, South Carolina.

80. Subcontractors each entered into individual and respective contracts with D.R. Horton, as referred to directly above, to perform the Work. These respective contracts shall be collectively referred to as the “Agreements.”

81. Certain Homes located within Rose Hill were developed and constructed, at least in part, by Poinsett Development, LLC and Poinsett Homes, LLC (collectively “Poinsett”).

82. Poinsett and Subcontractors shall be collectively referred to as “Third-Party Defendants.”

83. The Homes located in Rose Hill are the subject of Plaintiff’s lawsuit.

84. This Court has jurisdiction over the claims asserted in this Third-Party Complaint because the claims asserted herein are so related to the claims in the action within the Court’s original jurisdiction that they form part of the same case or controversy.

85. Subcontractors agreed to perform their work on the Homes in a good and workmanlike manner and indemnify and defend D.R. Horton for any improper work.

86. Subcontractors were aware of the need and the importance of constructing the Homes and lots in Rose Hill in accordance with construction and engineering plans, contract requirements, industry standards, and/or building code requirements so as to avoid construction defects.

87. D.R. Horton contracted with subcontractors to perform their Work on the project. Subcontractors' Work on the project for D.R. Horton gave rise to a special relationship and contractual and common law duties in tort and/or warranty. D.R. Horton was recently made aware that subcontractors' Work on the project may be defective. If subcontractors' work was defective, subcontractors breached their contractual and common law duties to D.R. Horton and caused it damages at the time it performed its work. Subcontractors' allegedly deficient work gave rise to causes of action in favor of D.R. Horton against subcontractors at the time the work was performed and caused D.R. Horton damages, which would not become apparent for years. Those damages include extra workload, repair or repair costs of the defective work, previously unknown breaches of D.R. Horton's common law duties, express and implied warranties, and contractual relationships with other parties, costs of investigation, damage and harm to reputation, and potentially attorneys' fees and litigation costs incurred due to subcontractors' defective, latent, and previously unknown errors.

88. Plaintiff, and others similarly situated, sent D.R. Horton a Notice and Opportunity to Cure letter, and, in the underlying action, have filed a Complaint against D.R. Horton seeking damages related to the construction and workmanship (a/k/a the "Work") of the Homes in Rose Hill, alleging that the Homes and/or subdivision has been constructed defectively.

89. Upon information and belief, Plaintiff's Notice and Opportunity to Cure letter and Complaint implicates each respective Subcontractors' Work.

90. Plaintiff's allegations contend that Subcontractors were grossly negligent, have failed to meet the requirements of the Agreements, including failing to construct the Homes in Rose Hill in accordance with construction documents, contract requirements, industry standards, and/or building code requirements so as to avoid construction defects.

91. Upon information and belief, each individual Agreement contains an indemnification clause, wherein Subcontractors agreed to defend and indemnify D.R. Horton for any Work.

92. D.R. Horton has fully satisfied and performed all requirements associated with each respective Agreement.

93. D.R. Horton purchased partially developed lots and undeveloped lots within Rose Hill from Poinsett's successor in interest.

94. D.R. Horton purchased the partially completed lots with the understanding that these properties were built in accordance with construction plans, contract requirements, industry standards, and/or building code requirements so as to avoid construction defects. This understanding was a material fact in the purchase of the units.

95. Plaintiff has sued D.R. Horton claiming damages related to the and lots that were partially completed by Poinsett and such claims include allegations based upon the work performed by Poinsett.

96. Although D.R. Horton is without fault, by virtue of the alleged acts and omissions of the Subcontractors, D.R. Horton has been subjected to damages including, but not limited to, extra workload, repair or repair costs of the defective work, previously unknown breaches of D.R. Horton's common law duties, express and implied warranties, and contractual relationships with other parties, costs of investigation, damage and harm to reputation, and potentially attorneys' fees and litigation costs incurred due to subcontractors' defective, latent, and previously unknown errors.

FOR A FIRST CAUSE OF ACTION
(Contractual Indemnification as to Subcontractors)

97. D.R. Horton re-alleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

98. Plaintiff, individually, and on behalf of all others similarly situated, sent D.R. Horton a Notice and Opportunity to Cure letter and has sued D.R. Horton claiming damages related to construction work alleged to have been performed by Subcontractors in Rose Hill.

99. Subcontractors contracted with D.R. Horton to perform certain construction services on the Homes in Rose Hill.

100. Plaintiff has alleged that certain deficiencies in the work of Subcontractors have caused the damage to the Plaintiff.

101. D.R. Horton is informed and believes that if, in fact, Plaintiff, individually, and on behalf of all others similarly situated, is correct regarding the allegations of the Complaint, that the defects, if any, are the result of the wrongful acts, breach of warranties, omissions, negligence, gross negligence, and/or representations of Subcontractors, all of which are contrary to the statutory and common laws of the State of South Carolina.

102. As D.R. Horton has suffered damages, including but not limited to, any future adjudication of liability to Plaintiff, individually, and on behalf of all others similarly situated, in this action, such liability would be the direct and proximate result of the wrongful acts, errors, and/or omissions, negligence and/or gross negligence of Subcontractors, which have damaged D.R. Horton as set forth more fully above.

103. Pursuant to each Agreement with D.R. Horton, Subcontractors agreed to indemnify D.R. Horton from damages arising out of Subcontractors' Work on the Homes in Rose Hill.

104. D.R. Horton is entitled to a judgment for full contractual indemnification from subcontractors, and D.R. Horton would be entitled to damages for the acts, errors, and/or omissions, breach of warranties, breach of contract, negligence and/or gross negligence of Subcontractors, as described hereinabove, entitling D.R. Horton to recover from Subcontractor its damages as set forth above.

105. The alleged acts or omissions of Subcontractors are the independent, active, primary, superseding, and/or intervening cause of damages allegedly suffered by Plaintiff, and the cause of D.R. Horton's separate and distinct damages set forth above and any wrongful acts or omissions by D.R. Horton, which are expressly denied, were passive and secondary only.

FOR A SECOND CAUSE OF ACTION
(Equitable Indemnification as to all Third-Party Defendants)

106. D.R. Horton repeats and re-alleges the allegations contained in the preceding paragraph as if fully set forth herein.

107. Plaintiff, individually, and on behalf of all others similarly situated, sent D.R. Horton a Notice and Opportunity to Cure letter and has sued D.R. Horton claiming damages related to the Homes in Rose Hill and such claims include allegations based upon each respective Subcontractors' Work and Poinsett's Work.

108. D.R. Horton has denied all substantive allegations against it that were made by Plaintiff.

109. A sufficient special relationship exists between D.R. Horton and Subcontractors and Poinsett, such that D.R. Horton could be held liable for subcontractors' and Poinsett's work and/or errors without any error by it.

110. D.R. Horton is informed and believes that if, in fact, Plaintiff is correct about her allegations, that the allegations are the result of the wrongful acts, omissions, breach of contract,

breach of warranty, negligence, gross negligence, and/or representations of Subcontractors, all of which are contrary to the statutory and common laws of the State of South Carolina.

111. As D.R. Horton has suffered damages, including but not limited to, any future adjudication of liability to Plaintiff, individually, and on behalf of all others similarly situated, in this action, such liability would be the direct and proximate result of the wrongful acts, errors, and/or omissions, negligence and/or gross negligence of Subcontractors, which have damaged D.R. Horton as set forth more fully above. To the extent, if any, that D.R. Horton is held liable to Plaintiff in this action, the alleged acts or omissions of Subcontractors and Poinsett are the independent, active, primary, superseding, and/or intervening cause of damages allegedly suffered by Plaintiff, and any wrongful acts or omissions by D.R. Horton, which are expressly denied, were passive and secondary only.

112. D.R. Horton is entitled to a judgment for full common law indemnification from Subcontractors and Poinsett for all damages, as set forth above, including any liability D.R. Horton could be found to have to Plaintiff in this action, and D.R. Horton would be entitled to damages for the acts, errors, and/or omissions, negligence and/or gross negligence of Subcontractors as described above, entitling D.R. Horton to recover from Subcontractors and Poinsett damages including, but not limited to, extra workload, repair or repair costs of the defective work, previously unknown breaches of D.R. Horton's common law duties, express and implied warranties, and contractual relationships with other parties, costs of investigation, damage and harm to reputation, and potentially attorneys' fees and litigation costs incurred due to subcontractors' defective, latent, and previously unknown errors.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract as to Subcontractors)

113. D.R. Horton repeats and re-alleges the allegations contained in the preceding paragraph as if fully set forth herein.

114. Subcontractors were contractually responsible for executing the requirements in the Agreements correctly.

115. To the extent that Plaintiff proves that the work was not performed correctly, Subcontractors materially breached the Agreements in failing to construct the Homes in Rose Hill in accordance with contract requirements, industry standards, and/or building code requirements so as to avoid construction defects.

116. D.R. Horton is entitled to judgment against Subcontractors for breach of contract plus costs, expenses, attorneys' fees, and other damages associated therewith.

FOR A FOURTH CAUSE OF ACTION
(Breach of Express Warranties as to all Subcontractors)

117. D.R. Horton repeats and re-alleges the allegations contained in the preceding paragraph as if fully set forth herein.

118. Subcontractors made express warranties that any materials, installation, and workmanship they performed at the Homes in Rose Hill were proper as required by the Agreements, applicable building codes, and industry standards.

119. If the materials, installation, and/or workmanship were not in accordance with contract requirements, industry standards, and/or building code requirements, then Subcontractors have materially breached their express warranties.

120. D.R. Horton is entitled to judgment against Subcontractors for breach of express warranties, along with costs, expenses, attorneys' fees, and other damages associated therewith.

FOR A FIFTH CAUSE OF ACTION
(Breach of Implied Warranties as to all Third-Party Defendants)

121. D.R. Horton repeats and re-alleges the allegations contained in the preceding paragraph as if fully set forth herein.

122. Subcontractors and Poinsett implicitly warranted that any materials, installation, and workmanship they performed at the Homes in Rose Hill were proper as required by the Agreements, applicable building codes, common law, warranty of workmanlike service, and industry standards.

123. If the materials, installation, and/or workmanship were not in accordance with contract requirements, construction plans, industry standards, and/or building code requirements, then Subcontractors and Poinsett have materially breached their express warranties.

124. D.R. Horton is entitled to judgment against Subcontractors and Poinsett for breach of express warranties, along with costs, expenses, attorneys' fees, and other damages set forth above.

FOR A SIXTH CAUSE OF ACTION
(Negligence/Gross Negligence/Recklessness as to all Third-Party Defendants)

125. D.R. Horton repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

126. Upon information and belief, Subcontractors owed a duty to use due care in ensuring that proper levels of workmanship were achieved under the terms of the Agreements.

127. If due care was not used in ensuring proper levels of workmanship were achieved, then Subcontractors breached that duty of care by failing to ensure that proper levels of workmanship were achieved pursuant to the requirements under the Agreements.

128. D.R. Horton has been damaged as a direct and foreseeable and proximate result of Subcontractors and Poinsett's negligence/gross negligence/recklessness, and D.R. Horton is

entitled to judgment against Subcontractors for their damages, including costs, expense, attorneys' fees, and other damages set forth above.

WHEREFORE, D.R. Horton has been damaged as a direct and foreseeable and proximate result of Third-Party Defendants' acts, in that, among other damages, D.R. Horton was deprived of the benefit of the bargain, has and will suffer substantial damages including, but not limited to, extra workload, repair or repair costs of the defective work, previously unknown breaches of D.R. Horton's common law duties, express and implied warranties, and contractual relationships with other parties, costs of investigation, damage and harm to reputation, and potentially attorneys' fees and litigation costs incurred due to subcontractors' defective, latent, and previously unknown errors and D.R. Horton is entitled to judgment against Third-Party Defendants for its damages, including costs, expense, attorneys' fees, and other damages associated therewith. WHEREFORE, D.R. Horton prays for:

(a) Having fully answered the allegations of the Third Amended Complaint, dismissal of the Third Amended Complaint and all causes of action contained therein, with prejudice, and an award to D.R. Horton, Inc of its attorney fees, costs, and other expenses incurred in defending this action;

(b) On D.R. Horton's First Cause of Action, judgment in favor of D.R. Horton and against the Subcontractors in the amount of any liability D.R. Horton is found to have to the Plaintiff in this action and requiring the D.R. Horton Subcontractors to defend and indemnify D.R. Horton against any liability which D.R. Horton may be liable for and for any costs, losses, or damages D.R. Horton may incur as it relates to the Plaintiff in this action, to include D.R. Horton's attorneys' fees, costs, and any and all other expenses incurred in defending this action;

(c) On D.R. Horton's Second Cause of Action, judgment in favor of D.R. Horton and against Third-Party Defendants in the amount of any liability D.R. Horton is found to have to the Plaintiff in this action and requiring the Third-Party Defendants to defend and indemnify D.R. Horton against any liability which D.R. Horton may be liable for and for any costs, losses, or damages D.R. Horton may incur as it relates to the Plaintiff in this action, to include D.R. Horton's attorneys' fees, costs, and any and all other expenses incurred in defending this action;

(d) On D.R. Horton's Third and Fourth Causes of Action, judgment for D.R. Horton and against the Subcontractors in an amount to be determined at trial;

(e) On D.R. Horton's Fifth Cause of Action, judgment for D.R. Horton and against the Third-Party Defendants in an amount to be determined at trial;

(f) On D.R. Horton's Sixth Cause of Action, judgment for D.R. Horton and against Third-Party Defendants awarding actual, special, consequential and punitive damages in an amount to be determined at trial;

(g) Attorneys' fees;

(h) Costs of this action; and

(i) Such other and further relief that this Court deems just and proper.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

John T. Crawford Jr. (SC Bar # 69682)

Jason Imhoff (S.C. Bar # 69355)

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Attorneys for D.R. Horton

February 23, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; AllPro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J
Framing, Inc.; Alpha E.M.C.; A-Z, Inc.;
Atlanta Floor Designs Center; A Grade
Above Others, LLC; Brand-Vaughan
Lumber Co, Inc.; BKF Builders, Inc.; Blue
Ridge Building Products, LLC; Builders
Designhouse, LLC; BMC East LLC;
Builders Firstsource Southeast Group, LLC,
a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Coleman Floor, LLC;
Cortes Painting, LLC; CBU Enterprises,
Inc.; CPI Security Systems, Inc.; DOM
Group, LLC; Ferguson Enterprises, Inc.;
Five Star Construction Inc.; Five Star
Foundations, LLC; Galloway-Bell, Inc.,
a/k/a Galloway-Bell, Inc. II: Get Floored,
LLC; GBS Building Supply – US LBM,
LLC, f/k/a GBS Building Supply, Inc.;
General Shale Brick Inc.; Greener Pastures,

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**GALLOWAY-BELL, INC., A/K/A
GALLOWAY-BELL, INC. II'S ANSWER
TO THE THIRD-PARTY COMPLAINT
OF D.R. HORTON, INC. AS ASSERTED
IN ITS SECOND AMENDED ANSWER
TO PLAINTIFF'S COMPLAINT**

(JURY TRIAL DEMANDED)

Inc., a/k/a Green Pastures of Aiken, LLC; Installed Building Products, LLC, a/k/a Installed Building Products II LLC; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danlar, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC, a/k/a M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, Inc., a/k/a P & T Construction, Inc.; P & L Enterprises, LLC; Probuild Company, LLC a/k/a Probuild Holdings, Inc.; Rite Rug Company, Inc., a/k/a, Rite Rug Co.; Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractors Service; Tucker Materials, Inc., a/k/a Gypsum; UTM Enterprises, Inc; Willow Tree Landscaping, Inc.; and Silver Line Building Products Corporation,

Third-Party Defendants.

TO: JASON M. IMHOFF, ESQ. AND JOHN T. CRAWFORD, JR. ESQ., COUNSEL FOR D.R. HORTON, INC.:

The Third-Party Defendant, Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II (hereinafter referred to as “Defendant” or “Galloway-Bell”), answering the Third-Party Claims of D.R. Horton, Inc. (hereinafter “D.R. Horton”) as asserted in its Second Amended Answer to Plaintiffs’ Complaint, alleges and says as follows:

1. That Defendant is not required to admit or deny the truth of the allegations of paragraphs 1 through 77 because, upon information and belief, such allegations are not intended

to state a claim against Galloway-Bell. If and to the extent that such allegations are later held or taken to state a claim against Galloway-Bell, then such allegations together with all inferences to be derived therefrom are denied.

2. Responding to paragraph 78, the Defendant reiterates and re-alleges each and every preceding allegation as if the same were set forth herein verbatim.

3. That Defendant denies the allegations contained in paragraphs 79 through 80 and demands strict proof thereof.

4. That Defendant is not required to admit or deny the truth of the allegations of paragraphs 81 through 83 because, upon information and belief, such allegations are not intended to state a claim against Galloway-Bell. If and to the extent that such allegations are later held or taken to state a claim against Galloway-Bell, then such allegations together with all inferences to be derived therefrom are denied.

5. That paragraph 84 contains allegations of law to which no response is required by Defendant. If and to the extent a response is required, the allegations are denied.

6. That Defendant denies the allegations contained in paragraphs 85 through 89 and demands strict proof thereof.

7. In response to paragraph 90, the Defendant would crave reference to the pleadings for the terms and conditions therein and denies each and every allegation inconsistent therewith.

8. That Defendant denies the allegations in paragraphs 91 through 92 and demands strict proof thereof.

9. That Defendant is not required to admit or deny the truth of the allegations of paragraphs 93 through 95 because, upon information and belief, such allegations are not intended to state a claim against Galloway-Bell. If and to the extent that such allegations are later held or

taken to state a claim against Galloway-Bell, then such allegations together with all inferences to be derived therefrom are denied.

10. That Defendant denies the allegations contained in paragraph 96 and demands strict proof thereof.

11. Responding to paragraph 97, the Defendant reiterates and re-alleges each and every preceding allegation as if the same were set forth herein verbatim.

12. That Defendant denies the allegations contained in paragraphs 98 through 105 and demands strict proof thereof.

13. Responding to paragraph 106, the Defendant reiterates and re-alleges each and every preceding allegation as if the same were set forth herein verbatim.

14. That Defendant denies the allegations in paragraphs 107 through 112 and demands strict proof thereof.

15. Responding to paragraph 113, the Defendant reiterates and re-alleges each and every preceding allegation as if the same were set forth herein verbatim.

16. That Defendant denies the allegations in paragraphs 114 through 116 and demands strict proof thereof.

17. Responding to paragraph 117, the Defendant reiterates and re-alleges each and every preceding allegation as if the same were set forth herein verbatim.

18. That paragraph 118 contains allegations of law to which no response is required by Defendant. If and to the extent a response is required, the allegations are denied.

19. That Defendant denies the allegations contained in paragraphs 119 through 120 and demands strict proof thereof.

20. Responding to paragraph 121, the Defendant reiterates and re-alleges each and

every preceding allegation as if the same were set forth herein verbatim.

21. That Defendant denies the allegations contained in paragraphs 122 through 124 and demands strict proof thereof.

22. Responding to paragraph 125, the Defendant reiterates and re-alleges each and every preceding allegation as if the same were set forth herein verbatim.

23. That paragraph 126 contains allegations of law to which no response is required by Defendant. If and to the extent a response is required, the allegations are denied.

24. That Defendant denies the allegations contained in paragraphs 127 through 128.

25. Defendant denies the allegations of the “Wherefore” clause and the relief and remedies sought therein.

26. Each and every allegation contained herein above not specifically admitted, modified or otherwise addressed is denied.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to State Facts Sufficient)

27. That one or more of the claims fail to state facts sufficient to constitute a cause of action and should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6).

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to Maintain)

28. That there was an obligation to maintain the structure against normal wear, tear and deterioration due to age and the elements, and the responsible party failed to do so, and such is the direct and proximate cause of the damages suffered and therefore constitutes a complete defense to all claims.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Act of God)

29. That the injury or damage suffered by D.R. Horton, if any, was due to and caused by, and was the direct, proximate and exclusive result of the violence of nature, and such constitutes an act of god and a complete defense to all claims.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(No Warranty Expressed)

30. That the written agreement between the parties contains an integration clause, and the terms thereof contain no such warranty as is alleged by D.R. Horton, and such constitutes a complete defense to all claims for breach of express warranty.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Warranty of Limited Duration)

31. That the express warranty contained in the agreement between the parties is limited in duration to a period of one year from the date of completion and acceptance of the project by the owner as will more fully appear by reference to the terms of the agreement. That D.R. Horton failed to give notice of any alleged deficiency within the required time frame, and such constitutes a complete defense to all claims for breach of warranty.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Final Completion and Acceptance)

32. That the work undertaken by this Defendant on the project was fully and finally completed and such work was previously accepted by the owner as fully and finally complete and in full compliance with the contract documents putting an end to all further obligations pursuant

to the contract, and such completion and acceptance constitutes a complete defense to all claims for breach of warranty.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Notice and Opportunity to Correct Workmanship)

33. That D.R. Horton failed to give any reasonable and meaningful notice as to the existence of the alleged breach and failed to give a reasonable opportunity to correct such alleged defects (the existence of which is expressly denied), and such failure to give notice constitutes a complete defense to all claims for breach of warranty of workmanship.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(No Sale of Goods)

34. That D.R. Horton and this Defendant did not enter into any agreement for the sale of goods as defined by the Uniform Commercial Code, and such constitutes a complete defense to all claims for implied warranty.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(UCC Not Applicable - Subcontract for Construction Services)

35. That the predominant factor, thrust or purpose of the alleged subcontract agreement was one for the delivery of services accompanied by the acquisition and furnishing of the necessary materials and it is therefore not a contract for the purchase and sale of goods in which the warranties of merchantability and fitness for a particular purpose may be implied, and such constitutes a complete defense to all claims for breach of implied warranty.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(UCC Not applicable - Contract for Construction Services)

36. That the predominant factor, thrust or purpose of the agreement between the parties was the furnishing of construction services as a subcontractor for the construction of the project, pursuant to which the furnishing of any goods is merely incidental, and such constitutes a complete defense to all claims for breach of warranty of merchantability, fitness for use, or any other warranty arising pursuant to the terms of the Uniform Commercial Code.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Warranty of Fitness Not Applicable - No Reliance)

37. That upon information and belief, D.R. Horton placed no reliance upon the skill or judgment of this Defendant's project scope of work which became incorporated in the construction, but rather, relied upon the judgment, skill and approval of others as to the selection and suitability of such work, means, methods and materials, and such constitutes a complete defense to the claims for breach of warranty of fitness for use.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Economic Loss Rule)

38. That the damages suffered by D.R. Horton, if any, are limited solely to the product itself and/or to diminution in value thereof, and therefore there exists no right of action in tort, and such constitutes a complete defense to all claims other than those sounding in contract.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Completion and Acceptance)

39. That the work undertaken by Defendant on the project was fully and finally completed and such work was previously accepted by the owner as fully and finally complete and

in full compliance with the contract documents, putting an end to all further obligations pursuant to the contract, and such completion and acceptance constitutes a complete defense to all claims for negligence.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Sole Negligence)

40. That the injury or damage sustained by D.R. Horton, if any, was due to, caused by and was the direct and proximate result of the sole negligence, recklessness, willfulness and wantonness of D.R. Horton or of others over whom this Defendant had no control in the following particulars, to wit:

- a) In failing to maintain the property against normal wear, tear and deterioration due to age and the elements;
- b) In failing to take prompt and reasonable action under the circumstances to mitigate damages;
- c) In the particulars alleged in the Plaintiffs' Complaint as to other parties;
- d) In otherwise failing to act with due and reasonable care, caution and prudence under the circumstances then and there prevailing in such further particulars as shall be determined through discovery;

and such constitutes a complete defense to any claims for negligence.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Comparative Negligence)

41. That the injury or damage suffered by D.R. Horton, if any, was due to, caused by and was the direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness of Plaintiff, and recovery should be barred or reduced in proportion to such negligence as provided by law. That D.R. Horton was comparatively negligent in one or more of the particulars, to wit: set forth in paragraph 40 above.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(No Duty Under Trade Usage and Standard Industry Practice)

42. That the duties and obligations alleged to exist were not obligations imposed upon this Defendant within the usage of the trade at the time of construction and were not imposed upon it under the usual and customary practices of the industry at the time of construction, and such constitutes a complete defense to all claims for negligence.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Duties Alleged Beyond Scope of Services)

43. That the duties and obligations alleged are not within the scope of services which were provided by this Defendant, and such duties and obligations lie beyond the scope of services provided, and such constitutes a complete defense to all claims for negligence.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(S.C. Code Ann. §15-32-510 et. seq.)

44. Punitive damages are inappropriate in this case since the Defendants did not engage in any malicious, reckless, wrongful or intentional conduct.

45. As the claimant requests punitive damages, the Defendants plead the limitation on damage awards found in S.C. Code Ann §15-32-510 et seq., and requests bifurcation in accordance with these code sections. Defendant would further show that any award of punitive damages is subject to the limitations set forth in South Carolina Code §15-32-530.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Intervening & Superseding Cause)

46. That the injury or damage suffered by D.R. Horton, if any, was due to, caused by and was the direct and proximate result of the intervening and superseding negligence, willfulness,

wantonness and recklessness of D.R. Horton or of others over whom this Defendant had no control, resulting directly and proximately in the damage of which D.R. Horton complains, and such constitutes a complete defense to all claims for negligence.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**

(Laches)

47. That D.R. Horton neglected for an unreasonable and unexplained length of time to provide notice of any alleged deficiencies to Defendant who has been prejudiced by the delay, and such unreasonable delay and resulting prejudice constitutes a complete defense to all claims.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**

(Statute of Limitations/Statute of Repose)

48. That all claims asserted against the Defendant are barred by the applicable statute of limitations and/or the applicable statute of repose.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**

(Setoff)

49. Any recovery by D.R. Horton must be reduced or offset by amounts D.R. Horton has received or will recover from others for the same injuries and/or damages claimed in this suit.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**

(Failure to Join Parties)

50. D.R. Horton's claims are barred by its failure to join as a party to this action a party or parties in whose absence complete relief cannot be accorded among those already parties thereby subjecting this Defendant to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(*Stoneledge*)

51. D.R. Horton's claims for negligence, breach of warranty, and breach of contract should be dismissed because they are merely disguised claims for indemnity, and therefore, such claims must be dismissed pursuant to the case law of *Stoneledge at Lake Keowee Owners' Ass'n v. Clear View Constr., LLC*, 413 S.C. 615, 621-23, 776 S.E. 2d 426, 429-31 (2015); and *Stoneledge at Lake Keowee Owners Ass'n v. Builders FirstSource Southeast Grp.*, 413 S.C. 630, 635-38, 776 S.E.2d 434, 437-438 (2015).

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Contractual Responsibility Limited by Scope of Agreement)

52. That the conditions and deficiencies alleged to exist in D.R. Horton's Third-Party Claims are not within the scope of services which were requested of Defendant, and that Defendant's responsibility is limited only to those conditions and deficiencies, if any, which are within the scope of series described in the agreement, and such constitutes a complete defense to the claims.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Acceptance of Work)

53. That D.R. Horton accepted the work of Defendant after inspecting it and is now barred from asserting claims upon that work.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Unclean Hands)

54. That to the extent that D.R. Horton was negligent, grossly negligent, willful, wanton, and reckless, resulting in the damages allegedly sustained, D.R. Horton comes to Court with

unclean hands, and such inequitable conduct on the part of D.R. Horton constitutes a bar and complete defense to any claim for equitable relief in the form of indemnity.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Broad Form Indemnity in a Construction Contract is Void)

55. That pursuant to the provisions of S.C. Code Ann. §32-2-10 (1976, as amended), the indemnity clause which D.R. Horton seeks to enforce against Defendant is void and is against public policy.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(No Indemnity Provision)

56. That the agreement between the parties contains no such indemnification provision as is alleged by D.R. Horton and such constitutes a complete defense to all claims for contractual indemnity.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to Comply with the Limitations within Agreement)

57. That D.R. Horton failed to commence this action within the time required by the applicable provisions of the agreement between the parties and the failure to timely commence the action constitutes a bar and complete defense to all claims.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Final Payment as Waiver or Release)

58. That final payment to Defendant for all work performed pursuant to the agreement between the parties has been made and such final payment, according to the terms of the agreement and the customs of the industry constitutes a waiver and release of all claims of the nature set forth herein, and therefore such final payment constitutes a defense to all claims for breach of contract.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Payment in Full)

59. That Defendant has been paid in full for all work performed under the subcontract agreement and Defendant therefore pleads full payment as a bar and complete defense to all the claims for breach of contract.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Estoppel by Contract)

60. That the claims of D.R. Horton are contrary to the plain language of the agreement, and D.R. Horton is therefore estopped by the terms and provisions of the agreement from asserting the claims and matters set forth in its pleadings.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Breach of Warranty as to Plans and Specifications)

61. That D.R. Horton furnished plans, specifications, and drawings for use in the construction of the project and thereby warranted the sufficiency of the plans, specifications, and drawings for the purpose in view, and impliedly warranted that they fully and accurately disclosed all information necessary for the proper construction of the project. That the plans, specifications, and drawings furnished were defective, insufficient, conflicting, and incomplete and thereby breached the foregoing warranties which are implied by law, and such constitutes a complete defense to all claims.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Spoliation of Evidence)

62. That the primary evidence and proof of the facts alleged have been destroyed, altered, or otherwise lost to the prejudice and detriment of Galloway-Bell. That D.R. Horton knew

or should have known of the importance of such evidence and had a duty to preserve same and such constitutes a complete defense to all claims.

FURTHER ANSWERING AND AS AND ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Primary Implied Assumption of Risk)

63. That when D.R. Horton and others undertook to design and develop the property, they impliedly assumed the risks that are inherent in such activity and therefore the duty of care owed by Defendant does not encompass the risks involved therein, and such constitutes a complete and absolute defense to all claims for negligence.

FURTHER ANSWERING AND AS AND ADDITIONAL
AND AFFIRMATIVE DEFENSE
(First to Breach Contract)

64. “Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests.” Willms Trucking Co., Inc. v. JW Constr. Co., Inc., 314 S.C. 170, 178, 442 S.E.2d 197, 201 (Ct.App.1994); *see also* Ellis v. Taylor, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994). Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008). D.R. Horton breached the original contract by and through its failure to pay for the services and materials provided by the defendant and/or other failures to perform. As a result, Plaintiff is responsible for all liability from any subsequent nonperformance and the Defendant is discharged of any further obligation to perform.

FURTHER ANSWERING AND AS AND ADDITIONAL
AND AFFIRMATIVE DEFENSE
(First to Breach Contract)

65. D.R. Horton failed to comply with its contractual obligations by failure to pay Defendant for services rendered and/or other failures to perform, and therefore, D.R. Horton has

first breached any contract with Defendant and its causes of action arising out of the contract(s) are barred and must be dismissed.

**FURTHER ANSWERING AND AS AND ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(No Relationship Sufficient to Support Indemnity)

66. That there does not exist any relationship between Galloway-Bell and D.R. Horton sufficient to support a claim for indemnity between them and such constitutes a complete defense to the claims for indemnity.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Incorporation of Defenses Raised by Others)

67. Defendant hereby incorporates the defenses raised by any other Defendant to the extent said defenses might be applicable to it.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Reservation and Non-Waiver)

68. This Defendant reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Improper Service of Process)

69. That the service of process was insufficient and the within action should be dismissed pursuant to the provisions of Rule 12(b)5, SCRCP.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Rule 8(c) SCRCP)

70. To the extent applicable, this Defendant raises all affirmative defenses required by Rule 8(c) SCRCP.

WHEREFORE, Third-Party Defendant, Galloway-Bell, prays that this Court dismiss all claims against it with prejudice, award it a judgment and actual, special, and consequential damages on its Third-Party Claims, pre-judgment and post-judgment interest, grant it reasonable attorney's fees and costs, and for any such other and further relief this Court may deem just and proper. Third-Party Defendant, Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II demands a trial by jury.

Galloway-Bell's Answer to DRH 3PCs
Case No: 2019-CP-04-1942

ROSS & CRISTALDI, LLC

s/ Phil Cristaldi

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Attorneys for Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II

Mt. Pleasant, South Carolina

March 8, 2022

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

NATALIE ZITEK, INDIVIDUALLY, AND)
ON BEHALF OF ALL OTHERS SIMILARLY)
SITUATED,)

Plaintiff,)

vs.)

D.R. HORTON, INC., JANE DOE #1-10;)
AND JOHN DOE #1-50,)

Defendants.)

D.R. HORTON, INC.)

THIRD-PARTY PLAINTIFF,)

V.)

AJ LANDSCAPING & GRADING, LLC)
A/K/A A J LANDSCAPING & GRADING,)
LLC; ALLPRO TEXTURES, LLC; ALPHA)
OMEGA CONSTRUCTION GROUP, INC.;)
AMERICAN CONCRETE AND PRECAST,)
INC. A/K/A ACP CONCRETE, INC.; A & J)
FRAMING, INC.; ALPHA E.M.C.; A-Z, INC.;)
ATLANTA FLOOR DESIGNS CENTER; A)
GRADE ABOVE OTHERS, LLC; BRAND-)
VAUGHAN LUMBER CO, INC.; BKF)
BUILDERS, INC.; BLUE RIDGE BUILDING)
PRODUCTS, LLC; BUILDERS)
DESIGNHOUSE, LLC; BMC EAST LLC;)
BUILDERS FIRSTSOURCE SOUTHEAST)
GROUP, LLC A/K/A BUILDERS)
FIRSTSOURCE, INC.; BRAVO)
CARPENTERS, INC.; CARYL MECHANICS)
II, INC. A/K/A CARYL MECHANICALS,)
INC.; CANNADAY SIDING & GUTTER,)
INC.; COLEMAN FLOOR, LLC; CORTES)
PAINTING, LLC; CBU ENTERPRISES, INC.;)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2019-CP-04-01942

**THIRD-PARTY DEFENDANT RITE
RUG COMPANY, INC. A/K/A RITE
RUG CO.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO D.R.
HORTON, INC.'S THIRD-PARTY
CLAIMS**

CPI SECURITY SYSTEMS, INC.; DOM)
 GROUP, LLC; FERGUSON ENTERPRISES)
 ENTERPRISFIVE STAR CONSTRUCTION)
 INC.; FIVE STAR FOUNDATIONS, LLC;)
 GALLOWAY-BELL, INC. A/K/A)
 GALLOWAY-BELL, INC. II; GET)
 FLOORED, LLC; GBS BUILDING SUPPLY -)
 US LBM, LLC F/K/A GBS BUILDING)
 SUPPLY, INC.; GENERAL SHALE BRICK)
 INC.; GREENER PASTURES, INC. A/K/A)
 GREENER PASTURES OF AIKEN, LLC;)
 INSTALLED BUILDING PRODUCTS, LLC)
 A/K/A INSTALLED BUILDING PRODUCTS)
 II, LLC; JLS MASONRY, INC.; KINGS)
 LANDSCAPING, LLC; LANDSHAPERS,)
 LLC; LADE-DANLAR, INC.; LANSING)
 BUILDING PRODUCTS, INC.; LONG)
 HEATING & AIR CONDITIONING, INC.;)
 MANALE LANDSCAPING, LLC; MJ)
 COWBOYS, LLC; M & L GENERAL)
 CONSTRUCTION, LLC A/K/A M & L)
 GENERAL CONSTRUCTION, INC. M&L)
 REYNA CONSTRUCTIONS, LLC; M&M)
 FOUNDATIONS, LLC; NAZARETH)
 BUILDERS, LLC; NB CONTRACTORS,)
 LLC; POINSETT DEVELOPMENT, LLC;)
 POINSETT HOMES, LLC; P&T)
 CONSTRUCTION, INC. A/K/A P)
 & T CONSTRUCTION, INC.; P & L)
 ENTERPRISES, LLC; PROBUILD)
 COMPANY, LLC A/K/A PROBUILD)
 HOLDINGS, INC.; RITE RUG COMPANY,)
 INC. A/K/A RITE RUG CO.; RODNEY)
 HOWARD GRADING INC. A/K/A RODNEY)
 HOWARD GRADING CO.; SANDLAPPER)
 CONCRETE, LLC; SODFATHER INC.;)
 LANDSCAPE CONTRACTORS; STOCK)
 BUILDING SUPPLY, LLC; TOPBUILD)
 HOME SERVICES, INC. A/K/A GALE)
 CONTRACTORS SERVICE; TUCKER)
 MATERIALS, INC. A/K/A GYPSUM; UTM)
 ENTERPRISES, INC.; AND WILLOW TREE)
 LANDSCAPING, INC.,)
)
 THIRD-PARTY DEFENDANTS,)
)

TO: JOHN T. CRAWFORD, JR., ESQUIRE, JASON IMHOFF, ESQUIRE, KYLE MCGANN, ESQUIRE, AND F. JAMES WARMOTH, ESQUIRE, ATTORNEYS FOR DEFENDANT/THIRD-PARTY PLAINTIFF D.R. HORTON, INC.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service of this Notice upon you or as soon thereafter as counsel may be heard, the undersigned attorney for Third-Party Defendant Rite Rug Company, Inc. a/k/a Rite Rug Co., (“Rite Rug”), will move before the presiding Judge of the Anderson County Court of Common Pleas for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting Rite Rug summary judgment as to Third-Party Plaintiff D.R. Horton, Inc.’s (“D.R. Horton”) third-party claims D.R. Horton’s claims for negligence, breach of express and implied warranty, and breach of contract *only*, on the grounds that there is no genuine issue as to any material fact and Rite Rug is entitled to judgment as a matter of law. Rite Rug is not moving at this time for summary judgment as D.R. Horton’s equitable indemnity claims but fully reserves the right to do so at a later date.

Rite Rug asserts that there exists no genuine issue of material fact and it is entitled to judgment as a matter of law on the following grounds:

1. D.R. Horton’s claims for contractual indemnity are barred pursuant to S.C. Code Ann. § 32-2-10 *et seq.* and *D.R. Horton, Inc. v. Builders FirstSource-Se Grp., LLC*, 422 S.C. 144, 810 S.E.2d 41 (Ct. app. 2018);
2. The agreement entitled “South Carolina Independent Contractor Agreement” dated June 3, 2013 between Rite Rug and D.R. Horton is illegal and thus unenforceable. *See D.R. Horton, Inc. v. Builders FirstSource-Se. Grp., LLC*, 422 S.C. 144, 810 S.E.2d 41 (Ct. App. 2018);
3. The contractual indemnity provision found in the agreement entitled “South Carolina Independent Contractor Agreement” dated June 3, 2013 between Rite Rug and D.R.

Horton violates the requirements set forth in *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018), reh'g denied (Oct. 18, 2018); and

4. D.R. Horton's claims for negligence, breach of express and implied warranty and breach of contract against Rite Rug are all conditioned on liability to Plaintiff and are merely indemnity claims in disguise. *See Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Constr., LLC*, 413 S.C. 615, 776 S.E.2d 426 (S.C. Ct. App. 2015).

Rite Rug's Motion is based upon the pleadings, discovery, affidavits, exhibits, deposition transcripts, and other admissible evidence as well as the applicable common law and statutory law of the State of South Carolina. Further, Rite Rug reserves the right to submit any Memorandum in Support of its position and to supplement and/or amend this Motion, presenting any additional arguments as may be appropriate or as may arise in the pendency of this motion.

It is further requested, in the interests of judicial economy and the efficient uses of resources for all parties involved, that this Motion be added to the hearing roster scheduled in front of Judge Sprouse on September 5, 2022. The issues and arguments are, upon information and belief, similar to those presented in multiple other motions for summary judgment as to D.R. Horton's Third-Party claims. Rite Rug therefore respectfully requests that this Motion be scheduled for a hearing during the same time as the other motions on September 5, 2022.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Charles O. Williams, III
CHARLES O. WILLIAMS, III (SC Bar No. 69495)
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ATTORNEY FOR DEFENDANT RITE RUG
COMPANY, INC. A/K/A RITE RUG CO.

August 26, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	Docket No.: 2019-CP-04-1942
	)	
NATALIE ZITEK, INDIVIDUALLY,	)	
AND ON BEHALF OF ALL OTHERS	)	
SIMILARLY SITUATED,	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT AJ LANDSCAPING &
	)	GRADING'S NOTICE OF
D.R. HORTON, INC., JANE DOE	)	MOTION AND MOTION FOR
#1-10, AND JOHN DOE #1-50,	)	SUMMARY JUDGEMENT
	)	
Defendants.	)	
	)	
D.R. HORTON, INC.,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
AJ LANDSCAPING & GRADING,	)	
LLC, A/K/A A J LANDSCAPING &	)	
GRADING, LLC, ALLPRO	)	
TEXTURES, LLC, ALPHA OMEGA	)	
CONSTRUCTION GROUP, INC.,	)	
AMERICAN CONCRETE AND	)	
PRECAST, INC., A/K/A ACP	)	
CONCRETE, INC., A & J FRAMING,	)	
INC., ALPHA E.M.C., A-Z, INC.,	)	
ATLANTA FLOOR DESIGNS	)	
CENTER, A GRADE ABOVE	)	
OTHERS, LLC, BRAND-VAUGHAN	)	
LUMBER CO, INC., BKF BUILDERS,	)	
INC., BLUE RIDGE BUILDING	)	
PRODUCTS, LLC, BUILDERS	)	
DESIGNHOUSE, LLC, BMC EAST	)	
LLC, BUILDERS FIRSTSOURCE	)	
SOUTHEAST GROUP, LLC A/K/A	)	
BUILDERS FIRSTSOURCE, INC.,	)	
BRAVO CARPENTERS, INC.,	)	
CARYL MECHANICS II, INC. A/K/A	)	

CARYL MECHANICALS, INC.,)
 CANNADAY SIDING & GUTTER,)
 INC., COLEMAN FLOOR, LLC,)
 CORTES PAINTING, LLC, CBU)
 ENTERPRISES, INC., CPI)
 SECURITY SYSTEMS, INC., DOM)
 GROUP, LLC, FERGUSON)
 ENTERPRISES, INC., FIVE STAR)
 CONSTRUCTION INC., FIVE STAR)
 FOUNDATIONS, LLC,)
 GALLOWAY-BELL, INC., A/K/A)
 GALLOWAY-BELL, INC. II, GET)
 FLOORED, LLC, GBS BUILDING)
 SUPPLY, INC., GENERAL SHALE)
 BRICK INC., GREENER PASTURES,)
 INC., A/K/A GREENER PASTURES)
 OF AIKEN, LLC, INSTALLED)
 BUILDING PRODUCTS, LLC A/K/A)
 INSTALLED BUILDING PRODUCTS)
 II, LLC, JLS MASONRY, INC.,)
 KINGS LANDSCAPING, LLC,)
 LANDSHAPERS, LLC, LADE-)
 DANLER, INC., LANSING)
 BUILDING PRODUCTS, INC., LONG)
 HEATING & AIR CONDITIONING,)
 INC., L & M ELECTRIC, INC.,)
 MANALE LANDSCAPING, LLC, MJ)
 COWBOYS, LLC, M & L GENERAL)
 CONSTRUCTION, LLC, A/K/A M & L)
 GENERAL CONSTRUCTION, INC.,)
 M&L REYNA CONSTRUCTION,)
 LLC, M&M FOUNDATIONS, LLC,)
 NAZARETH BUILDERS, LLC, NB)
 CONTRACTORS, LLC, POINTSETT)
 DEVELOPMENT, LLC, POINSETT)
 HOMES, LLC, P&T)
 CONSTRUCTION, INC., A/K/A P & T)
 CONSTRUCTION, INC. P & L)
 ENTERPRISES, LLC, PROBUILD)
 COMPANY, LLC A/K/A PROBUILD)
 HOLDINGS, INC., RITE RUG)
 COMPANY, INC., A/K/A RITE RUG)
 CO., RODNEY HOWARD GRADING)
 INC., A/K/A RODNEY HOWARD)

GRADING CO., SANDLAPPER)
 CONCRETE, LLC, SODFATHER)
 INC., LANDSCAPE CONTRACTORS,)
 STOCK BUILDING SUPPLY, LLC,)
 TOPBUILD HOME SERVICES, INC.,)
 A/K/A GALE CONTRACTORS)
 SERVICE, TUCKER MATERIALS,)
 INC., A/K/A GYPSUM UTM)
 ENTERPRISES, INC., AND WILLOW)
 TREE LANDSCAPING, INC.,)
)
 Third-Party Defendants.)
 _____)

TO: D.R. HORTON AND THEIR COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that undersigned counsel for AJ Landscaping & Grading (“AJ Landscaping”) moves this Court for an Order for Summary Judgment and/or Dismissing Third-Party Plaintiff D.R. Horton, Inc.’s (“D.R. Horton”) claims against AJ Landscaping pursuant to Rules 12 and/or 56 of the South Carolina Rules of Civil Procedure.

The grounds for this Motion are:

1. D.R. Horton’s claims for Contractual Indemnity against AJ Landscaping are against public policy and unenforceable pursuant to the Anti-Indemnity Statute, S.C. Code Ann. § 32-2-10 (2007);
2. D.R. Horton’s contract with AJ Landscaping is against public policy, illegal, and therefore unenforceable. *D.R. Horton, Inc. v. Builders FirstSource-Se. Grp., LLC*, 422 S.C. 144, 810 S.E.2d 41 (Ct. App. 2018);
3. D.R. Horton’s Contractual Indemnity provision fails to clearly and unequivocally show the parties intended AJ Landscaping to indemnify D.R. Horton for its own negligence. *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018), reh’g denied (Oct. 19, 2018);
4. D.R. Horton’s claims for Negligence, Breach of Express and Implied Warranty, and Breach of Contract are solely conditioned on its potential

liability for damages to Plaintiffs, Natalie Zitek et al., making them merely indemnity claims in disguised, and, therefore, these claims should be dismissed pursuant to *Stoneledge at Lake Keowee Owners' Assoc. Inc. v. Clear View Construction, Inc.*, 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015) and *Stoneledge at Lake Keowee Owners' Assoc. Inc. v. Builders First Source-Southeast Group*, 413 S.C. 630, 776 S.E.2d 434 (Ct. App. 2015); and

5. D.R. Horton has unclean hands, and therefore cannot recover in equity. *Clear view Construction, Inc.*, 413 S.C. 630 and *Inglese v. Beal*, 403 S.C. 290, 742 S.E.2d 687 (Ct. App. 2013).

WHEREFORE for the foregoing reasons, AJ Landscaping respectfully requests this Court enter an Order granting its Motion for Summary Judgment and dismissing third-party Plaintiff D.R. Horton's claims. AJ Landscaping will support this Motion with a Memorandum of Law, and reserves the right to supplement this Motion and present additional argument.

TURNER PADGET GRAHAM & LANEY, P.A.

s/Christopher D. Scalzo

Christopher D Scalzo (SC Bar No. 70522)

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CScalzo@turnerpadget.com

Greenville, South Carolina
August 29, 2022

ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

Natalie Zitek, individually, and on behalf
of all others similarly situated,)

Plaintiff)

vs)

D.R. Horton, Inc., Jane Doe #1-10; and,
John Doe #1-50,)

Defendant)

D.R. HORTON, INC.)

Third-Party Plaintiff)

vs)

AJ LANDSCAPING & GRADING,)
LLC, A/K/A AJ LANDSCAPING &)
GRADING, LLC; ALLPRO)
TEXTURES, LLC; ALPHA OMEGA)
CONSTRUCTION GROUP, INC.;)
AMERICAN CONCRETE AND)
PRECAST, INC.; A/K/A ACP)
CONCRETE, INC.; A&J FRAMING,)
INC; ALPHA E.M.C.; A-Z, INC.;)
ATLANTA FLOOR DESIGNS)
CENTER; A GRADE ABOVE)
OTHERS, LLC; BRAND-VAUGHAN)
LUMBER CO, INC.; BKF BUILDERS,)
INC.;BUILDERS DESIGNHOUSE,)
LLC; BMC EAST LLC D/B/A)
COLEMAN FLOOR, LLC; BUILDERS)
FIRSTSOURCE SOUTHEAST GROUP,)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No. 2019-CP-04-1942

**DEFENDANT D.R. HORTON, INC.'S
MEMORANDUM IN OPPOSITION TO
THIRD-PARTY DEFENDANTS FIVE STAR
FOUNDATIONS, LLC, LONG HEATING &
AIR CONDITIONING, INC., CARYL
MECHANICS II, INC. A/K/A CARYL
MECHANICALS, INC., ALPHA OMEGA
CONSTRUCTION GROUP, INC., GENERAL
SHALE BRICK, INC., P&T CONSTRUCTION,
INC., KINGS LANDSCAPING, LLC, AJ
LANDSCAPING & GRADING, LLC,
LANDSHAPERS, LLC, RITE RUG
COMPANY, INC. A/K/A RITE RUG CO.,
ATLANTA FLOOR DESIGNS CENTER,
ALLPRO TEXTURES, LLC, AND MANALE
LANDSCAPING, LLC'S MOTIONS FOR
SUMMARY JUDGMENT**

LLC, A/K/A BUILDERS)
 FIRSTSOURCE, INC; BRAVO)
 CARPENTERS, INC.; CARYL)
 MECHANICS II, INC., A/K/A CARYL)
 MECHANICALS, INC.; CANNADAY)
 SIDING & GUTTER, INC.; CORTES)
 PAINTING, LLC; CBU ENTERPRISES,)
 INC.; CPI SECURITY SYSTEMS, INC.;)
 DOM GROUP, LLC; FERGUSON)
 ENTERPRISES, INC.; FIVE STAR)
 CONSTRUCTION INC.; FIVE STAR)
 FOUNDATIONS, LLC; GALLOWAY-)
 BELL, INC. A/K/A GALLOWAY-)
 BELL, INC. II; GET FLOORED, LLC;)
 GBS BUILDING SUPPLY – US LBM,)
 LLC, F/K/A GBS BUILDING SUPPLY,)
 INC.; GENERAL SHALE BRICK INC.;)
 GREENER PASTURES, INC. A/K/A)
 GREENER PASTURES OF AIKEN,)
 LLC; IBP ASSET, LLC D/B/A BLUE)
 RIDGE BUILDING PRODUCTS; JLS)
 MASONRY, INC.; KINGS)
 LANDSCAPING, LLC;)
 LANDSHAPERS, LLC; LADE-)
 DANLAR, INC.; LANSING BUILDING)
 PRODUCTS, INC.; LONG HEATING &)
 AIR CONDITIONING, INC.; L&M)
 ELECTRIC, INC; MANALE)
 LANDSCAPING, LLC; MJ COWBOYS,)
 LLC; M&L GENERAL)
 CONSTRUCTION, LLC, A/K/A M&L)
 GENERAL CONSTRUCTION, INC.;)
 M&L REYNA CONSTRUCTION, LLC;)
 M&M FOUNDATIONS, LLC;)
 NAZARETH BUILDERS, LLC; NB)
 CONTRACTORS, LLC; POINSETT)
 DEVELOPMENT, LLC; POINSETT)
 HOMES, LLC; P&T CONSTRUCTION,)
 INC., A/K/A P&T CONSTRUCTION,)
 INC.; P&L ENTERPRISES, LLC;)
 PROBUILD COMPANY, LLC A/K/A)
 PROBUILD HOLDINGS, INC.; RITE)
 RUG CO.; RODNEY HOWARD)
 GRADING, INC. A/K/A RODNEY)
 HOWARD GRADING CO.;)
 SANDLAPPER CONCRETE, LLC;)

SODFATHER INC., LANDSCAPE)
 CONTRACTORS; STOCK BUILDING)
 SUPPLY, LLC; TOPBUILD HOME)
 SERVICES, INC., A/K/A GALE)
 CONTRACTORS SERVICE; TUCKER)
 MATERIALS, INC., A/K/A GYPSUM;)
 UTM ENTERPRISES, INC; DUPREE)
 PLUMBING COMPANY, INC. AND)
 WILLOW TREE LANDSCAPING, INC;)
 AND SILVER LINE BUILDING)
 PRODUCTS CORPORATION)
)

Third-Party

Defendants

TO: ALL COUNSEL OF RECORD:

COMES NOW, Defendant D.R. Horton, Inc. (“DRH”) and hereby responds to Third-Party Defendants Five Star Foundation, LLC (“Five Star”), Long Heating & Air Conditioning, Inc. (“Long”), Caryl Mechanics II, Inc. a/k/a Caryl Mechanicals, Inc. (“Caryl”), Alpha Omega Construction Group, Inc. (“Alpha”), General Shale Brick, Inc. (“Shale”), P&T Construction, Inc. (“P&T”), Kings Landscaping, LLC (“Kings”), AJ Landscaping & Grading, LLC (“AJ”), Landshapers, LLC (“Landshapers”), Rite Rug Company, Inc. a/k/a Rite Rug Co. (“Rite Rug”), Atlanta Floor Designs Center (“Atlanta Floor”), AllPro Textures, LLC (“AllPro”) and Manale Landscaping, LLC’s (“Manale”) (Collectively “Third-Party Defendants”) Motions for Summary Judgment, showing this honorable Court as follows:

I. STATEMENT OF FACTS

Plaintiff initiated this class action lawsuit on September 25, 2019, against DRH and Jane Doe #1-10 and John Doe #1-50 as Defendants. (See Plaintiff’s Complaint). The lawsuit concerns the construction of approximately 234 homes (the “Subject Properties”). As noted in the Complaint, “Defendants Jane Doe #1-10, whose true names are unknown (“Jane Doe Defendants”), are other entities or individuals who are actual or de facto joint venturers and/or

partners, control persons, and/or agents of DRH and/or each other in connection with the design, construction, and repair of the [Subject Properties].” (Id. at ¶8). Plaintiff further alleged “Defendants John Doe #1-50 (“John Doe Defendants”) are persons or entities who participated in the design, development, marketing, construction, repair, and/or sale of the [Subject Properties] as contractors, subcontractors, manufacturers, material supplier, consultants, architects, engineers, real estate agents, managers, marketers, laborers, or otherwise.” (Id. at ¶16). Plaintiff brought the following claims against Defendants: negligence and gross negligence, breach of implied warranties, and unfair trade practices.

However, DRH did not self-perform any of the work in the construction of the Subject Properties. In response to Plaintiff’s Complaint, DRH brought claims against the entities and individuals with whom it contracted with to provide labor and/or supply materials for the construction of the Subject Properties including the Third-Party Defendants. DRH brought the following claims against the Third-Party Defendants: contractual indemnification, equitable indemnification, breach of contract, breach of express warranties, breach of implied warranties, and negligence/gross negligence/recklessness.

DRH entered into agreements with subcontractors, including the Third-Party Defendants, to perform the work (collectively hereinafter referred to as the “ICAs”).¹ Each of the ICAs included indemnity provisions (collectively hereinafter referred to as the “Indemnity Provisions”).

The indemnity provision between DRH and AJ provides in relevant part:

The work performed by Subcontractor shall be at the exclusive risk of Subcontractor. To the fullest extent permitted by law, Subcontractor shall indemnify, defend (at Subcontractor’s sole expense) and hold harmless [DRH] ... from and against any and all claims for bodily injury or death, damages to property, demands, causes of action, suits, losses, judgments, obligations and any

¹ Copies of the ICAs are attached hereto as **Exhibit A**.

liabilities, costs and expenses (including, but not limited to investigation and repair costs, attorney fees and costs, and consultant's fees and costs), which arises or are in any way connected with the work performed, materials furnished, or services provided under this Agreement, but Subcontractor or its agents. ***Said indemnity and defense obligations, shall further apply, whether or not said claims arise out of the concurrent act, omission, or negligence of the [DRH], whether active or passive. Subcontractor shall not be obligated to indemnify or defend [DRH] or owner for claims found to be due in the sole negligence or willful misconduct of [DRH].*** (Emphasis added).²

The indemnity provision between DRH and Caryl, Long, Alpha, P&T, AllPro and Manale provides in relevant part:

[Subcontractor] hereby agrees to hold harmless, indemnify, protect and defend [DRH] ... from and against any and all demands, claims, causes of action, proceedings, lawsuits ... and expenses of any kind ... for damages from bodily or personal injury, death, the destruction or loss of property (including loss of use), or any other kind of damages or harm, arising out of, or resulting from, or related in any way to the work performed and/or the materials supplied under this contract, ***regardless of whether or not caused in part by [DRH].*** Such losses specifically include, but are in no way limited to losses arising out of or attributable to: (1) a breach of any warranties, representations, covenants or obligations of [subcontractor] set forth herein; (2) the work performed or to be performed or material supplied by the [subcontractor] ... (3) any negligent, grossly negligent and/or intentional act and/or omission of [subcontractor] ...; or (4) any negligent, grossly negligent, and/or intentional act and/or omission of [DRH] related in any way to the work. ***Notwithstanding the foregoing, nothing herein shall require indemnity for losses caused solely by fault or negligence of [DRH].*** (Emphasis added).

The indemnity provision between DRH and Shale provides in relevant part:

[Subcontractor] shall protect defend, indemnify, and hold [DRH] ... harmless from and against any and all claims, demands, lawsuits or other litigation...or other liability of every kind and character including all costs therefore and attorneys' fees ... on account of bodily or personal injury, death, or damage to or loss of personal

² There are two ICA agreements with AJ. The quoted language is from the ICA dated June 23, 2011. A second ICA agreement was entered into on May 27, 2013. The indemnity provision from the 2013 ICA agreement mirrors the language included in the ICAs with Caryl, Long, Alpha, and P&T quoted below.

property...arising out of or in connection with: (1) a breach of any warranties, representations, obligations, or covenants provided herein by [subcontractor]; (2) the work performed by the [subcontractor ...; (3) any negligent or intentional act and/or omission of the [subcontractor] ... ***except that [DRH] shall not be indemnified and held harmless for any negligent or intentional act or omission on the part of [DRH].*** (Emphasis added).

The indemnity provisions between DRH and Kings, Atlanta Floor, Landshapers, Rite Rug, and Five Star provides in relevant part:

[Subcontractor] shall protect, defend, indemnify and hold [DRH] ... harmless from and against any and all claims, demands, lawsuits or other litigation, actions...or other liability of every kind and character (including all costs thereof, attorneys' fees and interest) ... on account of bodily or personal injury, death, or damage to or loss of tangible or intangible property ... arising out of or in connection with: (1) breach of any warranties, representations, covenants, or other obligations of [subcontractor] set forth in this Agreement; (2) the work...; (3) any negligent or intentional act or omission of [subcontractor]... ***regardless of whether caused in part by [DRH]; (4) any negligent or intentional act or omission of [DRH] related in any way to the work ... Notwithstanding the foregoing, nothing shall require [subcontractor] to indemnify [DRH] against liability for damages arising ... from the sole negligence or sold intentional act or omission of [DRH].*** (Emphasis added).

The Third-Party Defendants contend that they are entitled to summary judgment because DRH's claims for breach of contract, breach of warranties, and negligence/gross negligence/recklessness are merely disguised claims for indemnity and DRH's claims for contractual indemnity are barred and unenforceable. Five Star and Shale further contend that they are entitled to summary judgment against DRH's contractual indemnity claims due to lack of a written contract. Five Star, Alpha, Caryl, Shale, Kings, P&T, AJ and AllPro further argue that they are entitled to summary judgment on the equitable indemnity claims because DRH has unclean hands.

For the reasons set forth below, the Third-Party Defendants' motions must be denied.

II. ARGUMENT & CITATION OF AUTHORITY

A. Applicable Standard

Summary judgment is only appropriate where the evidence shows that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law on that claim. Rule 56(c), SCRPC. In considering a motion for summary judgment, the trial court “must view the facts in the light most favorable to the non-moving party.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Moreover, “[a]ll ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party.” *Murray v. Holnam, Inc.*, 344 S.C. 129, 137, 542 S.E.2d 743, 747 (Ct. App. 2001).

B. The Indemnity Provisions are Not Illegal and Unenforceable

The Third-Party Defendants relying heavily on *DRH, Inc. v. Builders FirstSource-Se. Grp., LLC*, 422 S.C. 144, 148, 810 S.E.2d 41, 45 (Ct. App. 2018) contend that the Indemnity Provisions included in the ICAs are illegal and unenforceable because they are barred by S.C. Code § 32-2-10, *et. seq.* (the “Anti-Indemnity Statute”).

This perfunctory analysis is insufficient, as the South Carolina Court of Appeal’s decision in *Builders* made specific reference to the concealment and unreasonable award of damages, which impacted D.R. Hortons ability to recover under the indemnification agreement.³ In *Builders*, Patricia Clark (hereinafter “Clark”) filed a suit against D.R. Horton for negligence, breach of contract, multiple breaches of warranty and a violation of the South Carolina Unfair Trade Practice Act. *Id.* at 148. The lawsuit alleged various defects in the Clark home, including but not limited to, the work performed by Builders FirstSource. Clark and D.R. Horton participated in arbitration,

³ *Id.* at 153. “D.R. Horton cannot ask the arbitrator to conceal its reasons for an award, which may have included damages caused by its own negligence, then ask the circuit court to award it damages that would be barred by the statute.”

where Clark was awarded \$150,000. *Id.* However, the arbitration award did not indicate what damages the arbitrator found compensable. *Id.* Further, the arbitrator noted that “(c)ounsel for the parties have requested an order containing a monetary award only.” *Id.*

Following the arbitration award, D.R. Horton filed a complaint seeking contractual indemnification and contribution from Builders FirstSource for recovery of the arbitration award and attorney’s fees that D.R. Horton incurred as a result of the Clark suit. *Id.* Subsequently, Builders FirstSource filed a motion for summary judgement alleging D.R. Horton’s claim for contractual indemnification failed as the agreement required D.R. Horton to be indemnified from its own negligence. *Id.* at 148-49. Upon the request via multiple motions, the trial court granted Builders FirstSource’s motion for Summary Judgment. *Id.* at 149. D.R. Horton then appealed the trial court’s decision, asserting that the trial court erred by reading additional terms into the agreement and failed to require Builders FirstSource to pay the entire arbitration award and attorney’s fees. *Id.* at 150.

1. General Differences Between Zitek and Builders

The development of the Zitek Class Action is distinguishable as D.R. Horton has brought claims against all relevant subcontractors in this suit. First, Zitek is a class action involving potentially hundreds of homes and dozens of subcontractors. As a result of this complex litigation, D.R. Horton has filed third party claims against all subcontractors whose scope of work has been implicated in the Zitek Class Action⁴. Additionally, D.R. Horton has requested indemnification from all relevant subcontractors during the process of litigation with the Plaintiff. Overall, *Builders*

⁴ After filing the subject lawsuit, Plaintiff provided a Notice and Opportunity to Cure to D.R. Horton listing thirteen (13) categories of issues that were alleged to have been experienced by Plaintiff and similarly situated individuals. The subcontractors whose work was implicated by that notice have been named in the lawsuit.

is distinguishable based on the essential formation and development of the Zitek Class Action and therefore cannot be blindly applied to this case and requires further analysis.

Notwithstanding the clear differences between Builders and the current matter, the Third-party Defendants' position is further flawed because the Indemnity Provisions in this matter specifically exclude losses caused by the sole negligence of DRH.

The Anti-Indemnity Statute provides, in pertinent part, as follows:

Notwithstanding any other provision of law, a promise or agreement in connection with the design, planning, construction, alteration, repair or maintenance of a building ... purporting to indemnify the promisee, its independent contractors, agents, employees, or indemnitees against liability for damages arising out of bodily injury or property damage proximately caused by or resulting ***from the sole negligence of the promisee***, its independent contractors, agents, employees, or indemnitees is against public policy and unenforceable. Nothing contained in this section shall affect a promise or agreement whereby the promisor shall indemnify or hold harmless the promisee or the promisee's independent contractors, agents, employees or indemnitees against liability for damages resulting from the negligence, in whole or in part, of the promisor, its agents or employees.

(*Emphasis added*).

In D.R. Horton, Inc. v. Builders FirstSource-Se. Grp., LLC, the South Carolina Court of Appeals found that a prior version of DRH's ICA violated S.C. Code § 32-2-10. The former ICA required the indemnitee to indemnify DRH for claims "related in any way to the work, even when the loss is caused by the fault or negligence of the indemnitee." 422 S.C. 144, 148, 810 S.E.2d 41, 45 (Ct. App. 2018). As explained by the court,

[The Anti-Indemnity Statute] allows D.R. Horton and [the Third-Party Defendants] to agree that [the Third-Party Defendants] will indemnify D.R. Horton for damages caused by [Third-Party Defendants] or its subcontractors. To the extent the trial court found that aspect of the agreement to be against public policy, we disagree. However, we agree that the indemnification clause is void as against public policy to the extent it purports to require [Third-Party

Defendants] to indemnify D.R. Horton for damage caused by [D.R. Horton's] negligence or the negligence of its subcontractors.

Id. The court held that the contract at issue “purport[ed] to require [subcontractor] to indemnify D.R. Horton for its own negligence in violation of section 32-3-10.” *Id.*

In the present case, the Indemnity Provisions specifically exclude claims arising out of the sole negligence of DRH by providing:

- “nothing herein shall require indemnity for losses caused **solely** by fault or negligence of the [DRH]” (See ICA with Shale, Exhibit A) (*emphasis added*);
- “nothing herein shall require [subcontractor] to indemnify [DRH] against liability for damages ... proximately caused by or resulting from the **sole** negligence or the sole intentional act or omission of [DRH]” (See ICA with Kings, Atlanta Flooring, Landshapers, Rite Rug and Five Star, **Exhibit A**) (*emphasis added*);
- “Subcontractor shall not be obligated to indemnify or defend [DRH] or owner for claims found to be due in the **sole** negligence or willful misconduct of [DRH]” (See 2011 ICA with AJ, Exhibit A) (*emphasis added*); and
- “nothing herein shall require indemnity for losses caused **solely** by fault or negligence of [DRH]” (See ICA with Caryl, Long, Alpha, P&T, 2013 ICA with AJ, Allpro, and Manale **Exhibit A**) (*emphasis added*).

Because the ICAs with the Third-Party Defendants exclude claims arising out of DRH's sole negligence, the Indemnity Provisions do not violate Section 32-3-10 and are distinguishable from the agreement in *D.R. Horton, Inc. v. Builders FirstSource-Se. Grp., LLC*. See **Exhibit A**, the ICAs.

C. **The Indemnity Provisions Comply With The Requirements Set Forth In Concord & Cumberland Horizontal Prop. Regime V. Concord & Cumberland, LLC**

The Third-Party Defendants contend that the Indemnity Provisions do not comply with the requirements laid out in Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018) and are therefore unenforceable. The court in Concord held that when a party seeks indemnification for its own concurrent negligence, the clear and unequivocal standard applies. Id. at 649, 172. Additionally, “when an indemnity clause purports ‘to relieve an indemnitee from the consequences of its own negligence,’ [South Carolina] case law requires strict construction of the clause.” Id. at 650, 172 (quoting Laurens Emergency Med. Specialists, PA v. M.S. Bailey & Sons Bankers, 355 S.C. 104, 111 584 S.E.2d 375, 378-379 (2003)).

There were two indemnity agreements entered at issue in Concord. For the first agreement, the court found that the phrase “to the extent caused or alleged to be caused in whole or in part by any negligent act or omission of the [Muhler]” specifically limited Muhler’s obligation to indemnify to damages and losses caused by the negligence of the Muhler and its subcontractors.⁵ Id. at 654, 174. Additionally, the phrase “regardless of whether it is caused in part by a party indemnified hereunder” did not alter the limiting language. Id. Therefore, the general contractor was not entitled to indemnification from the subcontractor, Muhler, for the general contractor’s concurrent negligence pursuant to the first agreement.

⁵ The first indemnity agreement in Concord stated, in relevant part, as follows:

the Subcontractor shall indemnify and hold harmless the Owner, the Architect, the Contractor ... and other contractors and subcontractors ... from and against all claims, damages, loss and expenses, including but not limited to attorney’s fees, arising out of or resulting from the performance of the Subcontractor’s Work ...

- (a) ... to the extent cause or alleged to be caused in whole or in part by any negligent act or omission of the Subcontractor ... regardless of whether it is caused in part by a party indemnified hereunder.

Id. at 643, 168-169.

With regard to the second agreement, the court found that although the language was broader and excluded the limiting “to the extent caused” language from the first agreement, it still failed to include any reference to indemnification for the general contractor’s concurrent negligence.⁶ *Id.* at 656-657, 176. While “there is no verbatim phrase that must be used to meet the clear and unequivocal standard, there must be some language in an indemnity clause that clearly shows the parties’ intent to absolve the indemnitee of the consequences of its own concurrent negligence.” *Id.* at 657, 176 (citation omitted). Further, the court indicated that the following language may be sufficient to meet the clear and unequivocal standard: “[subcontractor] agrees to indemnify for all damages, regardless of whether the damages are caused in part by a party indemnified hereunder[.]” *Id.* at 656-657, 176.

The indemnity provisions between DRH and Five Star, Atlanta Flooring, Landshapers, Rite Rug, and Kings provide in relevant part:

[Subcontractor] shall protect, defend, indemnify and hold [DRH] harmless from and against any and all claims, demands, lawsuits or other ligation...including all costs, attorneys’ fees and interest...on account of bodily or personal injury, death, damage to or loss of tangible or intangible property ... arising out of or in connection with a) breach of any warranties, representations, covenants, or other obligations of [subcontractor] set forth in this agreement; (b) the work performed or materials supplied by [subcontractor] ... ; (c) any negligent or intentional act or omission of [subcontractor] ... ***regardless of whether or not caused in part by [DRH]; (4) any negligent or intentional act or omission of [DRH] related in any way to the work[.]*** (Emphasis added).

⁶ The second indemnity provision provided, in pertinent part,

In the event either Superior or Concord and Cumberland, LLC are sued hereafter ... alleging that one or more of the windows and/or doors do not comply with the original or amended contract documents, or are defectively installed, Muhler agrees to unconditionally indemnify both Superior and Concord and Cumberland, LLC ... and will pay all damages ... incurred by either or both[.]

Id. at 644, 169.

The indemnity provision between DRH and AJ provides in relevant part:

Said indemnity and defense obligations, shall further apply, *whether or not said claims arise out of the concurrent act, omission, or negligence of the [DRH]*, whether active or passive. (Emphasis added).

The indemnity provision between DRH and Caryl, Long, Alpha, P&T, AllPro, and Manale provides in relevant part:

[Subcontractor] hereby agrees to hold harmless, indemnify, protect and defend [DRH] ... from and against any and all demands, claims, causes of action, proceedings, lawsuits ... and expenses of any kind . for damages from bodily or personal injury, death, the destruction or loss of property (including loss of use), or any other kind of damages or harm, arising out of, or resulting from, or related in any way to the work performed and/or the materials supplied under this contract, *regardless of whether or not caused in part by [DRH]*. (Emphasis added).

The Indemnity Provisions between DRH and Five Star, Kings, Atlanta Flooring, Landshapers, Rite Rug, Allpro, Manale Caryl, Long, Alpha, P&T, and the 2013 ICA with AJs closely track the language suggested by the court in Concord. Similarly, the indemnity provision in the 2011 ICA with AJ clearly and unequivocally states that the indemnity obligation covers the concurrent negligence of DRH. The ICAs with Five Star, Atlanta Flooring, Landshapers, Rite Rug, AllPro, Manale, Kings, Caryl, Long, Alpha, P&T, and AJ, specifically provides that they will indemnify DRH for certain losses regardless of whether or not the losses caused in part by DRH. The Indemnity Provisions clearly and unequivocally show that the parties intended to absolve DRH of the consequences of its own concurrent negligence. Therefore, the Indemnity Provisions meet the standard set forth in Concord and are enforceable. See **Exhibit A**, the ICAs.

Furthermore, Five Star and Shale contend they are entitled to summary judgment as they do not have a contract with DRH. However, DRH has an ICA with each of these third-party defendants. See **Exhibit A**, the ICAs.

D. DRH Claims for the Third-Party Defendants' Contractual Duty to Defend is Not Applicable Under S.C. Ann. Code § 32-2-10.

The Third-Party Defendants contend that the Indemnity Provisions do not comply with the requirements laid out in the ICAs as they are contrary to each other and in violation of S.C. Ann. Code § 32-2-10. Specifically, Third Party Defendants reference Section 10.1, which addresses the Third-Party Defendants indemnification obligations under the ICA, and Section 10.2 which establishes the duty of the Third-Party Defendants and their insurers to defend DRH, including but not limited to attorneys' fees and costs. Section 10.2 between DRH and King provides in relevant part:

Indemnity Not Exclusive Remedy. Any payments by Contractor under Section 10 to or on behalf of the indemnitee shall be in addition to all other legal remedies available to the indemnitee and shall not be considered the indemnitees exclusive remedy. Indemnitee shall have the right if it so chooses in its absolute discretion to defend all claims which may be asserted, and contractor will reimburse indemnitee for all expenditures that owner may incur on account of the claim.

Third-Party Defendants have attempted to conflate section 10.1 and 10.2 of the ICAs by stating that the provisions are contrary to each other and in violation of S.C. Ann. Code § 32-2-10. As a preliminary matter, the Anti-Indemnity Statute does not address the duty to defend obligation but rather specifically addresses obligations to indemnify a party. Accordingly, Third-Party Defendants reliance on this statute is misplaced.

Further, these interpretations are contrary to the actual language of the indemnity clause. The section of the indemnity clause that excludes indemnity for sole acts of the indemnitee's negligence also applies to the duty to defend. The ICA specifically state that nothing "shall require the contractor **to defend**, insure, indemnify or hold indemnitee harmless for liability or claims arising out of bodily injury to person, death, or damage to property caused by or resulting from the sole negligence or sole intentional act or omission of indemnitee." Additionally, the first sentence

in 10.1 indicates that the indemnity obligations are being provided to as permitted by law, “To the fullest extent permitted by Law, Contractor shall protect, defend indemnify...” These cited references clearly qualify the obligations of the contractor to D.R. Horton.

Finally, 16.2 of the ICA provides that, “The provisions of this Agreement shall be independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

“A severable contract is one in its nature and purpose susceptible of division and apportionment, having two or more parts, in respect to matters and things contemplated and embraced by it, not necessarily dependent upon each other, nor is it intended by the parties that they shall be. **The entirety or severability of a contract depends primarily upon the intent of the parties** rather than upon the divisibility of the subject, although the latter aids in determining the intention. We think it a significant indication of the nature of the contract and the intent of the parties that the document embodying the agreement of the parties provides for a mutual exchange of performances which is indicative of a severable contract.” Columbia Architectural Grp., Inc. v. Barker, 274 S.C. 639, 641, 266 S.E.2d 428, 429 (1980), citing Field v. Byrd, 73 S.C. 1, 6, 51 S.E. 678, 679 (1905) (*emphasis added*).

The presence of a severability clause argues in favor of the conclusion that the parties intended that the contract be severable rather than entire. “The Agreement here contains a severability clause, reflecting that if any part of the contract is found ‘unenforceable for any reason, the remainder shall remain enforceable.’ Given this intent and our belief that removing the unconscionable clause does not disrupt the core of the parties’ bargain, we disagree with the circuit court that the entire Agreement must fall.” Doe v. TCSC, LLC, 430 S.C. 602, 846 S.E.2d 874 (S.C.

App. 2020) (voiding an arbitration clause for unconscionability but not invalidating the entire contract) (citing *Columbia Architectural Grp.*).

Therefore, to the extent 10.2 is found to be in violation of the Anti-Indemnity Statute, that section can be severed without rendering 10.1 unenforceable.

E. DRH's Claims For Negligence, Breach Of Warranties, And Breach Of Contract Are Independently Viable

DRH could sue and recover damages against the Third-Party Defendants under theories of negligence, gross negligence, recklessness, breach of contract, and breach of warranties, related to construction deficiencies, regardless of whether Plaintiff ever filed a lawsuit. Therefore, DRH's causes of action are not "disguised" equitable indemnity claims derivative of Plaintiff's lawsuit. DRH's rights to pursue these claims do not evaporate simply because DRH was not the first to discover the Third-Party Defendants' failures and a lawsuit was instituted by Plaintiff after the structure was sold. The Third-Party Defendants' reliance upon *Stoneledge v. Clear View, LLC*, 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015) (hereinafter referred to as "*Stoneledge I*") and *Stoneledge at Lake Keowee Owners' Ass'n v. Builders FirstSource-Southeast Grp.*, 413 S.C. 630, 776 S.E.2d 434 (Ct. App. 2015) (hereinafter referred to as "*Stoneledge II*") (collectively referred to as "*Stoneledge*") is misplaced. Moreover, the Third-Party Defendants' interpretation of the *Stoneledge* decisions is overbroad.

Instead, a more reasonable interpretation of the *Stoneledge* decisions is that if the general contractor alleges and proves damages that do arise separately from having to defend itself in the purchasers' lawsuit, the general contractor's claims for breach of warranty and negligence are independent from the equitable indemnity claim. Indeed, a careful reading of *Stoneledge* reveals that the court did not make a blanket bright line rule, but rather did an analysis, mostly of the

allegations in the third-party complaint, to determine if the general contractor had plead, alleged, or proved a factual issue of the existence of damages not arising from the plaintiffs' lawsuit.

As the court explained in *Stoneledge II*, “[t]he issue [the general contractor] raises – whether the circuit court properly interpreted its claims for breach of contract and breach of warranty as one claim for equitable indemnity – requires us to construe its cross-complaint, and thus presents a question of law.” *Stoneledge II* at 634. In determining that the general contractor’s claims for breach of warranty and breach of contract were equitable indemnity claims, the court explained that “[the general contractor’s] injuries arose exclusively from having to defend itself in [plaintiff’s] lawsuit.” *Id.* at 636.

In reviewing the general contractor’s allegations, the court held that the

allegations demonstrate [the general contractor] did not sustain its own damages as a result of any breach of contract or breach of warranty by the respondents. Rather, the allegations show [plaintiff] is the party that suffered damages, and [the general contractor’s] injuries *arose exclusively from having to defend itself in [plaintiff’s] lawsuit*. Consequently, the damages [the general contractor] seeks to recover resulted only from its potential liability to [plaintiff] and from the expenses [the general contractor] incurred defending itself.

Id. at 634. (Emphasis added). The court then highlighted this point further:

[u]nder [the general contractor’s] own allegations, its cross-claims arose only when it faced potential liability for [plaintiff’s] damages and incurred fees and costs defending against [plaintiff’s] lawsuit.

Id. at 637.

The *Stoneledge* court looked to two federal court cases in making this decision: *South Carolina National Bank v. Stone*, 749 F. Supp. 1419 (D.S.C. 1990) and *United States Fidelity & Guaranty Co. v. Patriot's Point Development Authority*, 788 F. Supp. 880 (D.S.C. 1992) (“USF&G”). As explained by the *Stoneledge* court,

In Stone, the defendants asserted cross-claims for breach of contract, negligence, and fraud against co-defendants that settled with the plaintiffs. The district court barred the non-settling defendants from asserting these cross-claims against the settling defendants because it found they were not independent causes of action. The court explained the cross-claims arose only if the non-settling defendants were liable to the plaintiffs, and these purported causes of action are nothing more than claims for ... indemnification with a slight change in wording.

Similarly, in USF&G, the defendants argued they had “independent claims” against a co-defendant in addition to their claim for indemnification. The district court barred the defendants from bringing these claims, finding *“without plaintiffs suing the ... defendants[,] the ‘independent claims’ ... would not exist,”* and thus “these claims are really nothing more than claims for indemnity.” Id. We agree with Stone and USF&G and find the reasoning in those decisions applies to this case. Under [the general contractor’s] own allegations, its cross-claims arose only when it faced potential liability for [plaintiff’s] damages and incurred fees and costs defending against [plaintiff’s] lawsuit.

Stoneledge II at 636-637 (emphasis added).

Here, Plaintiff’s lawsuit did not give rise to DRH’s legal rights against the Third-Party Defendants. DRH can bring claims of implied warranties negligence/gross negligence/recklessness against the Third-Party Defendants. See Kennedy v. Columbia Lumber and Mfg. Co., Inc., 384 S.E.2d 730, 299 S.C. 335 (S.C. 1988). Those rights existed before the lawsuit was initiated by Plaintiff, which only provided notice of those issues to DRH. Thus, these claims, which existed but were latent, are not disguised indemnity claims derivative of the Plaintiff’s lawsuit – they are preexisting claims which are separate and distinct from DRH’s claim for equitable indemnity. Moreover, in addition to the damages DRH is incurring related to defending this lawsuit, DRH seeks to recover for extra workload, repairs or repair costs of the defective work, costs of investigation, and damage and harm to reputation. (DRH’s Amended Answer to Plaintiff’s Complaint and Crossclaims, ¶¶ 87, 96, and 112).

These separate damages are explained by the court in Addy v. Bolton, 257 S.C. 28, 183 S.E.2d 708 (1971). In Addy, the defendant owner of a building was sued by its tenant when the building caught fire. The building owner then sued the contractor whose negligent work caused the fire. The owner's recovery of fees and costs from the negligent contractor was upheld by the South Carolina Supreme Court, reasoning that "the weight of authority sustains [the building owner's] right of recovery, either on the theory of an implied contract to indemnify, or because they were put to the necessity of defending themselves against the claim by the tortious conduct of the contractor, or by his breach of contract." Addy at 33. As explained by the Stoneledge court, "[u]nlike in this case, the Addy appellants did suffer their own damages independent of their obligation to defend themselves in the underlying lawsuit." Stoneledge II at 639 (emphasis added).

The facts in Addy are aligned with the facts of this case. Like the building owner in Addy, DRH is forced to defend itself from the Plaintiff's claims arising from the Third-Party Defendants' tortious conduct (negligent performance of work) and breach of warranties (failure to perform work in a workmanlike manner). Moreover, DRH seeks not only damages related to defending this lawsuit, but also for costs to investigate and repair the deficient or defective work, attorneys' fees and costs, and damage to reputation. These facts distinguish this case from Stoneledge I and Stoneledge II. DRH's damages are thus recoverable under the separate causes of action it has pled, and those claims must remain in this action.

F. Dismissing DRH's Crossclaims Would Not Be Appropriate Because Discovery Is Not Complete

The Third-Party Defendants Motions for Summary Judgment are premature because discovery is in its infancy. The depositions of Five Star, Caryl, Alpha, P&T, Kings, AJ, Allpro, Rite Rug, Landshapers, Atlanta Flooring, and Manale have not been taken in this case thus far.

DRH is in the process of scheduling these depositions. At this point in the litigation, it is premature to rule upon a motion for summary judgment before discovery is concluded and before the main parties to the motion are deposed.

Furthermore, Shale contends they are entitled to Summary Judgment as there is no claim that the materials supplied by Shale were defective. As stated above, discovery is still ongoing. As such, it would be premature to grant Shale summary judgment until discovery has been completed.

G. DRH Does Not Have Unclean Hands And Can Recover In Equity

Five Star, Alpha, Caryl, Shale, Kings, Allpro, P&T, and AJ contend that DRH cannot recover under its equitable indemnity claim because DRH is not without fault. However, they cannot meet their burden of proof to obtain judgment as a matter of law on DRH's equitable indemnity claim by arguing that the jury *might* find DRH liable to Plaintiff. Because there is a question of fact as to whether DRH is at fault for the alleged construction defects, Five Star, Alpha, Caryl, Shale, Kings, Allpro, P&T, and AJ's motions for summary judgment as to DRH's claim for equitable indemnity should be denied.

South Carolina courts have consistently found that equitable indemnity claims may be brought against a negligent co-defendant during the initial action. *See, e.g., Stoneledge at Lake Keowee Owners' Ass'n v. Clear View Constr., LLC*, 413 S.C. 615, 622, 776 S.E.2d 426, 430 (Ct. App. 2015) (stating that "[w]e agree Addy controls this case to the extent it shows Marick may assert a claim for equitable indemnity against a negligent co-defendant"). Additionally, *Stoneledge* held that the lower court erred in granting summary judgment on the merits of the general contractor's equitable indemnity crossclaim because the general contractor presented a question of fact as to whether it was at fault for the alleged construction defect.

“[T]he doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.” *Wachovia Bank, N.A. v. Coffey*, 389 S.C. 68, 75, 698 S.E.2d 244, 247 (Ct. App. 2010) (citation omitted). Five Star, Alpha, Caryl, Shale, Kings, Allpro, P&T, and AJ bear the burden of proof in seeking summary judgment on such an affirmative defense. However, they have failed to come forward with any evidence that DRH has unclean hands as a matter of law.

It is well settled that where a party is exposed to liability to a third party due to the conduct of another, through no fault of its own, that party may recover in equitable indemnity against the second party. See *Town of Winnsboro v. Wiedeman-Singleton, Inc.*, 303 S.C. 52, 398 S.E.2d 500 (Ct. App. 1990). Moreover, a general contractor is not automatically responsible for the negligence of a subcontractor. See *Fields v. J. Haynes Waters Builders*, 376 S.C. 545, 658 S.E.2d 80 (S.C. 2008).

It is clear that there is a factual issue whether or not DRH appropriately supervised and oversaw the project. DRH did not self-perform any of the construction on the project, and therefore, relied on the subcontractors, including Five Star, Alpha, Caryl, Shale, Kings, Allpro, P&T, and AJ, for their knowledge, expertise, experience and installation. Because there is a question of fact as to whether DRH had fault, the Third-Party Defendants’ unclean hands defense does not preclude DRH’s claim for equitable indemnity at this time.

CONCLUSION

Based on the foregoing, the Third-Party Defendants have not met their burden of proof, and therefore, the Third-Party Defendants’ Motions for Summary Judgment on DRH’s Crossclaims must be denied.

WHEREFORE, Defendant DRH shall, and hereby does, move the Court for an Order

denying the Third-Party Defendant's Motions for Summary Judgment on DRH's Crossclaims.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

John T. Crawford, Jr. (SC Bar # 69682)

Jason M. Imhoff (SC Bar # 69355)

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Counsel for Defendant D.R. Horton, Inc.

September 7, 2022

Greenville, South Carolina

CROWN

COMMUNITIES, INC.

SUBCONTRACTOR/VENDOR AGREEMENT

Name of Subcontractor/Vendor: Antonio Jimenez AJ Landscaping & Grading
 Tax ID or Social Security Number: 910 74 6311
 Name of Owner(s): Antonio Jimenez
 Home Address: 117 Eastview Cir
 City: Simpsonville State: SC Zip Code: 29681
 Business Address: 117 Eastview Cir Business Phone: 864 304 0386
 City: Simpsonville SC State: SC Zip Code: 29681

This AGREEMENT is entered into this 23 day of Jun, 2011, between Crown Communities, Inc. (and/or its subsidiary(ies), as applicable) ("Contractor") and the "Subcontractor/Vendor" identified above, whereby the parties agree to the following terms and conditions:

- 1. GENERAL DESCRIPTION OF WORK.** The labor, services, and/or equipment to be furnished by Subcontractor are as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. The address set forth in Exhibit "A" shall be hereinafter referred to as the "work" to be performed hereunder, and shall include progress payments, if applicable, and all other charges proposed by Subcontractor. Any and all work must be completed to the sole and absolute satisfaction of Contractor at the agreed price. It is expressly understood and agreed by Subcontractor that Contractor will not pay "extras" for work otherwise agreed upon herein. Further, the "work" shall include any and all communities and/or projects in which Subcontractor performs services for Contractor, whether or not expressly outlined in Exhibit "A."

- 2. REPRESENTATION AND WARRANTIES.** Subcontractor agrees, represents and warrants that:

All work shall be performed in a good and workmanlike manner in accordance with standard industry practices. All labor and material shall meet or exceed all requirements relating to the home building industry, including, without limitation, FHA, VA, local building code and Contractor requirements. With respect to any home upon which Subcontractor performs work, all labor and material utilized by Subcontractor in connection therewith shall be free from defect for a period of at least one (1) year from the date Contractor transfers such home to the original buyer of said home. In the event of any faulty, defective or improper work discovered within the time period referred to in the previous sentence, Subcontractor shall remove and/or replace the work at its own expense as directed by Contractor and/or the home owner. Subcontractor hereby assigns and conveys to Contractor all rights and privileges under any manufacturer or other third-party warranties covering materials and systems utilized, installed and/or implemented by Subcontractor in connection with the work. Notwithstanding the foregoing, Contractor may (at its discretion) pursue any claim for defects against Subcontractor and/or third parties. In addition to the matters set forth above, with respect to any defect that is not readily visible to inspection or otherwise detectable, Subcontractor expressly agrees that the warranties set forth herein shall extend for a period of one (1) year from the date that any such defect is detected. Subcontractor shall pay for all damages, direct and consequential, suffered by Contractor as a result of defects in the work, failure to perform in accordance with the terms of this agreement, or any breach of the warranties contained herein, and all costs associated with correcting, removing, replacing or repairing the work.

The job site(s) will be kept reasonably neat at all times and Subcontractor shall thoroughly clean the job site(s) upon completion of the work, (including the sweeping of the home) and remove all refuse from the job site(s) to an area designated by the Contractor.

Subcontractor warrants that all materials and equipment furnished under this agreement will be new unless otherwise specified in this agreement.

Compliance with law. Subcontractor shall keep itself fully informed of all local, state, and national laws (including, without limitation, codes, regulations, safety practices and permits) which in any manner affect those persons Subcontractor engages or employs in the work, and is solely responsible for compliance with all federal and state laws regarding non-discrimination in hiring practices and non-employment of illegal aliens. All work shall be performed in accordance with applicable federal, state and local safety and health requirements (including OSHA). Subcontractor will be held responsible for any and all fines (including, without limitation, OSHA) incurred by the Contractor due to the negligence of the Subcontractor. All Subcontractor debris (work related and personal) will be cleaned up by the Subcontractor on a daily basis.

Flammable Materials. Subcontractor shall not burn any waste material on the job site, nor shall it store any such waste and/or flammable materials and/or equipment less than forty (40) feet from the outside walls of any building(s) on the job site.

Initial - Subcontractor/Vendor AJ
 Initial - Crown Communities, Inc. PJ

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Taxes. Subcontractor shall pay any and all applicable federal, state, and/or local taxes arising out of this contract or any purchase order, including taxes measured by wages, salaries, or other remunerations, and sales tax.

3. **PRICING.** Subcontractor shall provide pricing to Contractor and all pricing will be approved by Contractor's Director of Purchasing prior to the commencement of work. Such pricing shall be organized by commodity and as set forth in Exhibit "B," attached hereto and incorporated herein by this reference. Further, pricing shall include all miscellaneous fees and expenses of Subcontractor, including, without limitation, fuel, freight and applicable taxes (or shall specify that taxes are not included). Amounts not included in Exhibit "B" will not be paid by Contractor. Purchase Orders will not be issued until all pricing is received, reviewed and authorized by the Director of Purchasing. Any price changes must be submitted in writing to Purchasing a minimum of 30 days prior to the anticipated price increase and any price increases must be authorized by Purchasing prior to taking effect, and, to the extent approved, shall replace the pricing identified in Exhibit "B," as applicable. Approved Purchase Orders which have been released will not incur any price increases. Subcontractor is solely responsible for withholding social security and all employment-related taxes for all personnel (third party or otherwise) performing work for Subcontractor under this agreement.
4. **MATERIALS/INSPECTIONS.** All materials furnished by or on behalf of Subcontractor shall comply with all local, state and federal laws and regulations. If Subcontractor supplies materials that are not in compliance with all local, state and federal laws and regulations, or do not meet Contractor's specifications, purchase order or plans, then such material shall be returnable to Subcontractor at Subcontractor's sole expense and Subcontractor shall replace such unsatisfactory materials with materials which meet the above detailed criteria. If Subcontractor releases, wastes, or destroys any material not supplied or included in Subcontractor's contract price during the performance of work, then Contractor shall have the right to charge such loss against any amounts still owing to Subcontractor.
5. **JOB PROGRESS AND COORDINATION.** Subcontractor shall commence the work pursuant to Contractor's project schedule and shall complete the work as rapidly as job conditions permit. Contractor shall not be liable to Subcontractor for any delays in completing the work, regardless of cause. Subcontractor shall, at all times, employ sufficient workforce and supply a sufficient quantity of material to keep pace and proper order with the progress of the project and in accordance with the time schedule established by Contractor. The provisions of section 17 may be invoked by Contractor should Subcontractor fail to fully comply with this paragraph.
6. **PAYMENT.** Contractor shall be liable for payment to Subcontractor in accordance with the agreed schedule for work and material furnished pursuant to the following terms:
 - A. Subcontractor shall submit a sworn statement of twice as to laborers and materialmen, together with the amount due or to become due to each; and
 - B. Subcontractor shall submit executed lien waivers, including partial waivers from its subcontractors and suppliers, as well as any other data required by Contractor.
 - C. Contractor shall have the right to issue a two-party check to Subcontractor and its subcontractors, material suppliers, or equipment suppliers if Subcontractor fails to provide lien waivers or partial lien waivers as may be required by Contractor.
 - D. Contractor shall not pay any finance charges incurred by Subcontractor in connection with past due amounts owed by Subcontractor to its subcontractors, material suppliers and/or equipment suppliers.

Contractor reserves the right to order a change in work, and the contract sum shall be increased or decreased accordingly. Subcontractor shall have no claim for payment in excess of the amount on issued purchase orders.

WITHHOLDING OF PAYMENTS. Subcontractor expressly agrees that payments may be withheld by Contractor and all costs incurred by Contractor shall be charged against monies due Subcontractor under this agreement (and/or any other agreements with Contractor) if:

- E. Work is found to be defective and is not remedied in a timely manner;
- F. Another subcontractor is damaged by an act for which the Subcontractor is responsible;
- G. Subcontractor fails to perform warranty services as required by this agreement.

CROWN PAYMENT POLICY

- H. Purchase orders must be submitted for payment. Subcontractor may attach and reference its invoice to the purchase order, and that invoice will be referenced on the payment voucher. If no invoice is submitted, then the purchase order will be referenced on the payment voucher. Request P.O. on Delano or email spencer@cmnpl.org for a purchase order.
- I. In the event a VPO (Variance Purchase Order) is required, Subcontractor must obtain same via the job superintendent and/or area manager.
- J. Purchase orders/invoices may be submitted for payment after work is completed to the satisfaction of Contractor or its designee.
- K. If the purchase order contains an incorrect price, or if detailed items are missing, Subcontractor shall contact Contractor's purchasing department before commencing work. Subcontractor shall not commence work without a corrected or additional PO. Further, Subcontractor acknowledges and agrees that its commencement of work shall be deemed to represent acceptance of the purchase order governing the work. No additional amounts under the approved purchase order will be allowed without Contractor's prior approval.
- L. Labor and material bills are generally paid on a weekly cycle unless otherwise agreed. **INSERT PAYMENT CYCLE noted on the DATE AFTER approval.**

Initial - Subcontractor/Vendor AJ
Initial - Crown Communities, Inc. RL

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M. For the avoidance of doubt (and in furtherance of the provisions of Section 23), under no circumstances shall payment be made to Contractor for Purchase Order/Invoice submitted over 90 days after the closing of the home to which same relate.

7. **INSPECTION BY SUBCONTRACTOR.** Subcontractor shall be responsible for inspecting any "work" of another subcontractor that may effect the work to be performed hereunder, and shall report in writing to Contractor any defects in such third party work upon discovery of same (and prior to Subcontractor commencing work), or it shall be deemed to have accepted such third party work as correct, and it to be incorporated into the work to be performed hereunder. Further, Subcontractor shall share in the expense incurred by Contractor in correcting any deficient third party work of which it should have notified Contractor (but failed to do so) in accordance with the preceding sentence.

8. **INSURANCE.** Before commencing the work as contemplated herein, Subcontractor (and its subcontractors) shall procure and maintain at its (and/or their, respectively) expense, until completion and final acceptance of the work, the following insurance from insurance companies satisfactory to Contractor. Further, Contractor shall be identified as an "additional insured" on any such policies:

- (i) Commercial general liability insurance, with the following minimum limits of liability: (i) bodily injury, \$1,000,000 each occurrence, \$1,000,000 aggregate and (ii) property damage, \$1,000,000 each occurrence, \$2,000,000 aggregate.
- (ii) Contractual liability insurance, sufficient to cover Subcontractor's indemnity obligations hereunder.
- (iii) Workers' compensation as required by the State of Georgia. Subcontractor is responsible for carrying its own workers' compensation insurance in accordance with the laws of the State of Georgia. Subcontractor is required by law to give notice to the Georgia Workers' Compensation Commission and its employees stating whether Subcontractor has elected to carry workers' compensation. Contractor is not responsible for obtaining workers' compensation coverage for Subcontractor.
- (iv) Automobile and motor vehicle (owned, non owned, and hired); bodily injury (\$100,000/\$300,000) and property damage (\$100,000/\$100,000)
- (v) Subcontractor shall insure or assume responsibility for losses to tools, clothes, equipment, and materials owned by it, its subcontractors (if any), employees, or others who may assist in the performance of the work.

9. **TAXPAYER CERTIFICATION.** Subcontractor must complete a Form W-9 - Request for Taxpayer Identification Number and Certification and submit same to Contractor contemporaneously with this agreement.

10. **CORRECTIONS FOR DEFECTIVE WORK.** Prior to the commencement of the warranty period (Section 2), if Contractor notifies the Subcontractor (orally or in writing) that the work does not conform to the terms of the specific requirements, purchase order, and/or plans or specifications relating thereto, Subcontractor shall correct such defective work within forty-eight (48) hours and shall bear the entire cost of doing so, including the cost incurred by the disturbance of work to be completed by other subcontractors. Failure by the Subcontractor to correct such work within forty-eight (48) hours shall cause an automatic breach of this agreement, and the provisions of Section 17 may be invoked by Contractor.

11. **PATENTS.** Subcontractor hereby covenants and agrees to indemnify Contractor, its successors, assigns, and customers from any and all manner of claims, or suits for patent infringement or violation of patent, copyright, trademark, and/or trade secret rights, including all costs Contractor may incur in defending any such actions. Subcontractor shall pay all applicable royalty and license fees.

12. **ENCUMBRANCES.** Subcontractor shall turn over the work in good condition and free and clear of all claims, encumbrances or liens, and shall protect Contractor and the home owner from all claims, encumbrances or liens arising out of Subcontractor's performance of any specific requirements relating to the work and/or applicable purchase order(s). Subcontractor shall, at its own cost and expense (including attorney's fees), defend all such and pay any claims or liens established. Subcontractor further agrees to cause any such suit or lien relating to work to be removed from the subject premises within ten (10) days after Contractor's written demand, and should Subcontractor fail to do so, Contractor may do so at Subcontractor's expense, which cost shall be immediately due Contractor.

13. **LABOR DISPUTES/ WORK STOPPAGE.** Subcontractor shall not be relieved of its obligations hereunder due to any labor disputes or work stoppages involving its employees. If Subcontractor's progress is impeded due to a labor dispute and/or work stoppage, then Subcontractor shall, upon twenty-four (24) hours notice from Contractor, turn all incomplete work over to Contractor and shall release Contractor from its then remaining obligations to Subcontractor in connection with the work. Contractor shall have the right to employ a third party to complete the work. Contractor will notify Subcontractor of any cost increase to Contractor due to such a dispute or stoppage, and such increase shall be chargeable to Subcontractor upon final completion of the work.

14. **NONCOMPLIANCE CHARGES OR CANCELLATION.** If a specific homeowner for whom a subject home is being built stops, cancels and/or terminates any specific requirement, purchase order, and/or other order relating to the work to be performed by Subcontractor hereunder, then Contractor shall be entitled to terminate any such specific requirement, purchase order and/or other order and shall be liable to Subcontractor only for the portion of the Subcontractor's fee as is related to the percentage of the work then completed.

15. **ASSIGNMENT.** Subcontractor may not assign or transfer any interest under this contract or any purchase order, including assignment of monies due, without Contractor's prior written consent (which consent may be withheld in Contractor's sole discretion). Subcontractor shall be responsible to Contractor for all acts or omissions of Subcontractor's assignees, subcontractors, or transferees.

16. **SAFETY.** Subcontractor shall conduct its work in a safe manner, in accordance with the latest revised edition of the Manual of Accident Prevention in Construction of the Associated General Contractors of America, Inc., and shall abide by all other applicable federal, state, and local safety laws, ordinances, regulations, standards, and rules. Subcontractor shall require all of its subcontractors to so comply and shall

be solely responsible for the protection and safety of its workers. Subcontractor shall conduct safety training sessions for its employees at least once per calendar quarter. Such training shall be as set forth in Exhibit "C" attached hereto and incorporated herein by this reference. It is hereby understood and agreed that the Subcontractor is wholly responsible for the supervision of its employees, and

Initial - Subcontractor/Vendor A.J.
Initial - Crown Communities, Inc. LS

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Subcontractor agrees that it shall not look to Contractor (nor any of its employees) for same. Subcontractor agrees to indemnify, defend and hold Contractor harmless from and against any and all liability or loss Contractor may incur for Subcontractor's non-compliance therewith.

17. TERMINATION. In the event Subcontractor shall default in any respect in the full, faithful and punctual performance of any of its obligations hereunder and such default shall continue for twenty-four (24) hours after notice thereof, or Subcontractor shall become insolvent or shall make assignment for the benefit of creditors, or shall file or become involved in any reorganization or other proceeding in bankruptcy, or shall fail to adequately man the job, or perform the work in a satisfactory manner, then, in any such event, Contractor shall have the right to terminate this Agreement in whole or in part. Upon termination, Contractor shall have the right to take possession of the work to be performed by Subcontractor hereunder and of all material, tools, equipment and appliances of Subcontractor located on the premises and finish the work by whatever method Contractor may deem expedient. In such a case, Subcontractor shall not be entitled to receive any further payments under this agreement or any purchase order, and this remedy is in addition to, and not in lieu of, any and all other remedies at law available to Contractor. Contractor shall have the right to terminate this contract or limit the Subcontractor to other jobs at its sole option.

18. INDEMNIFICATION. The work performed by Subcontractor shall be at the exclusive risk of Subcontractor. To the fullest extent permitted by law, Subcontractor shall indemnify, defend (at Subcontractor's sole expense) and hold harmless Contractor, and owner (if different from Contractor), from and against any and all claims for bodily injury or death, damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including, but not limited to investigation and repair costs, attorney fees and costs, and consultant fees and costs), which arise or are in any way connected with the work performed, materials furnished, or services provided under this Agreement, by Subcontractor or its agents. Said indemnity and defense obligations shall further apply, whether or not said claims arise out of the contract, act, omission, or negligence of the indemnified parties, whether active or passive. Subcontractor shall not be obligated to indemnify or defend Contractor or owner for claims found to be due to the sole negligence or willful misconduct of indemnified parties.

19. LIENS AND CLAIMS. Subcontractor shall fully protect, indemnify, defend and save harmless Contractor from and against any and all liens and/or claims of laborers, mechanics, material men and/or other third parties performing services for Subcontractor in connection with the work to be performed hereunder. In the event that any such lien shall be filed or claim asserted, Subcontractor shall promptly remove or discharge, or cause to be removed or discharged, such lien or claim. If Subcontractor shall fail to so remove or discharge same within the (5) days after notice from Contractor, Contractor shall have the right to remove or discharge such lien or claim by bonding, payment or otherwise. The amount of any payment, cost and/or expense made or incurred by Contractor in connection with the removal or discharge of any such lien or claim may be deducted by Contractor from any payments or amounts otherwise then due or to become due to Subcontractor, whether under this agreement or from any other source.

20. MISCELLANEOUS PROVISIONS.

- (a) **Entirety Binding.** This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, devisees, administrators, executors and legal representatives; provided, however, that nothing in this section shall be construed to authorize the Subcontractor to make an assignment or transfer otherwise prohibited by this agreement.
- (b) **Paragraph headings.** The paragraph titles are for convenience only in locating information and in no way alter or limit the text of the provisions of this agreement.
- (c) **No third party beneficiary.** No provisions contained in this agreement shall create or give to third parties any claim or right of action against Contractor or Subcontractor beyond such as may legally exist in the absence of such provision.
- (d) **Governing law.** This agreement shall be construed under the laws of the State of Georgia and venue in any suit brought on this agreement or the work to be performed hereunder shall be conclusively in Gwinnett County, Georgia.
- (e) **Notice.** Any notice or communication must be in writing and given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt, or by delivering the same in person or by facsimile. Such notice shall be deemed received on the date on which it is hand delivered or faxed or on the third business day following the date on which it is so mailed. For purpose of notice, the addresses of the parties shall be:

If to Contractor: Attn: Rick Thompson
1571 Dogwood Drive SW
Cumming, GA 30042
Fax # 678-303-0224

If to Subcontractor: Attn: Antonio or Bill
Fax # 864 399 9036

Any party may change its address for notice by written notice given to the other parties.

- (f) **Severability.** If any provision of this agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable and this agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof; and the surviving provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as part of this agreement a provision as similar in its terms to such illegal, invalid or unenforceable as may be possible and be legal, valid and enforceable.
- (g) **Amendments.** This agreement may only be amended by an instrument in writing executed by both Contractor and Subcontractor and executed after the effective date of this agreement.

Initial - Subcontractor/Vendor AW
 Initial - Crown Communities, Inc. RL

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- (h) **Subcontractor.** The parties agree that Subcontractor and its employees are not employees of Contractor, but rather that Subcontractor is an independent contractor for Contractor. Contractor will have no control, direction or dominion over Subcontractor or the way in which Subcontractor performs the work.
- (i) **Authority.** Subcontractor has no independent authority to act for or on behalf of Contractor except as is provided herein. No other power, authority or use is granted or implied. Subcontractor represents and warrants that the person signing this agreement has the authority to enter into such agreement, including the provisions in paragraph 18, on behalf of Subcontractor.
- (j) **Entire agreement.** This agreement represents the entire agreement by and between the parties, and it may not be changed except by written agreement duly executed by all parties.
- (k) **No waiver.** The failure or delay in the enforcement of the rights detailed in this Agreement by Contractor shall not constitute a waiver of those rights or be deemed a basis for estoppel.
- (l) **Customer Service.** Subcontractor shall comply with the provisions of Exhibits "D-1" and "D-2," attached hereto and incorporated hereto by this reference.
- (m) **Waiver of Subrogation.** Subcontractor waives all rights of subrogation against Contractor and/or the home owner with respect to losses, claims or costs arising out of or in connection with the work.
- (n) **Customer Contact Information.** Subcontractor acknowledges and agrees that Contractor has a general policy of not disseminating homeowner and/or customer information to Subcontractor without such homeowner and/or customer's consent. And, further, that Contractor shall not be required to disseminate any such information and/or seek any such consent unless it elects to do so in its exercise of its sole discretion.

21. TERMS

1. **Specific requirements-** an addendum to this agreement, which lists the type, price, and other specifications of the work to be performed and materials to be supplied.
2. **Purchase order-** each time Subcontractor performs work at a different home address, a corresponding purchase order shall be submitted to Contractor. The amount of such purchase order shall correspond to the agreed price stated in the specific requirements of Subcontractor's most recent bid sheet or quote. The absence of a purchase order does not void this agreement.
3. **Plans and specifications-** renderings of the home are to be constructed as drawn by a certified architect or engineer or other drawings detailing the construction of the home.
4. **Homeowner-** person or persons for whom the home is being constructed pursuant to a purchase agreement with Contractor.

22. TIME SCHEDULE.

Work shall be performed in a timely manner. Failure to complete work in a timely manner shall be grounds for termination of the agreement. Any delays should be reported to Contractor (via the on-site builder) immediately.

23. SPECIAL PROVISIONS.

Invoices must be submitted for payment to Crown Communities, Inc. within 90 days after the closing of a subject home. Subcontractor expressly acknowledges and agrees that it shall not be entitled to payment on any invoice submitted after the aforementioned date. Further, after such 90 day period, Contractor shall have no duty to seek reimbursement of any overpayments which may have been previously made to Subcontractor.

24. CONFIDENTIAL INFORMATION.

As used in this agreement, the term "Confidential Information" shall mean any and all documents, information, documentation (including this agreement), ideas, techniques, trade secrets, reports, notes, plans, sales contracts, employee records, sales figures, vendor and subcontractor rates of pay, concepts, plans and data relating to Contractor which may be communicated by Contractor to Subcontractor, whether in writing, by computer memory, orally or in any other form or manner, provided, however, that the term "Confidential Information" shall not include information which (i) is or becomes generally available to the public other than as a result of a disclosure by Subcontractor in violation of this agreement, (ii) was within Subcontractor's possession or knowledge prior to its being furnished pursuant to this Agreement, (iii) is independently developed by Subcontractor under circumstances not involving a breach of this agreement, or (iv) is publicly disclosed pursuant to a lawful requirement or request from a governmental agency acting within its jurisdiction. Subcontractor acknowledges the confidential and proprietary nature of the Confidential Information, and agrees to use the Confidential Information for the sole purpose of performing its work hereunder. Subcontractor agrees that without the express written consent of Contractor, it will not, at any time, (a) divulge, furnish, disclose or make accessible to any person, firm, organization or corporation, in any manner whatsoever, any Confidential Information, or (b) use any Confidential Information for any purpose other than performing the work hereunder. Subcontractor acknowledges that the Confidential Information is of such character as to render the same unique and therefore agrees to disclose or use thereof in violation of the within covenants may cause irreparable damage to Contractor. Accordingly, Subcontractor agrees and consents that in the event that any action or proceeding shall be instituted by Contractor to enforce the confidentiality provisions of this agreement, Subcontractor waives the claim or defense in such action that there is adequate remedy at law available to Contractor and shall not urge in any such action or proceeding the claim or defense that such remedy at law exists. The parties agree that Contractor's remedies for any breach of this agreement shall be cumulative, and the seeking or obtaining of injunctive relief shall not preclude a claim or award for damages or other relief.

EXECUTED, THIS THE 23 DAY OF Jun., 2011

BY:

[Signature]

BY:

AJ Landscaping & Grading LLC

TITLE:

Crown Communities, Inc.

TITLE:

Owner
Subcontractor

EXHIBIT A

Initial - Subcontractor/Vendor

AJ *RT*

Initial - Crown Communities, Inc.

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Scope of Work

10/19/11

Initial - Subcontractor/Vendor AJ
Initial - Crown Communities, Inc. R.

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Exhibit B

Contract Pricing

\$375 x 1000 bricks
AJ Landscaping & Grading
Antonio Jimenez
117. Eastview circle
Simpsonville, SC 29681

10/19/11

Initial - Subcontractor/Vendor

AJ

Initial - Crown Communities, Inc.

R.

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KDC 013411

Exhibit C
Safety Training

THE CONTRACTOR AGREES TO COMPLY WITH THE REQUIREMENTS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT, TO INCLUDE BUT NOT LIMITED TO THE FOLLOWING CRITERIA:

OSHA STANDARD

***PERSONAL PROTECTIVE EQUIPMENT**

Hard hats

Eye Protection

Proper Footwear/Clothing

Dust, Mists, Paint, Fibrous Materials

***EXTERIOR FALL PROTECTION IN USE**

Roofs

Landings & Decks

Stairs

Open sided platforms

Scaffolding

Handrails

GENERAL GUIDELINES

Shall be worn on all Crown Communities, Inc. sites

Is required whenever there are flying particles that could strike the eyes

Appropriate for the job being done such as carpentry wearing a shoe with a hole that will resist nail penetration and wear gloves, long sleeves and long pants when appropriate

Dust masks or appropriate respiratory equipment shall be used

A spotter or safety guard shall be used on roofs with pitch up to 8:12 and ridge height is 25 feet or less. Over 8:12 pitch conventional fall protection shall be used

If the landing and/or deck is over 6 feet above the adjacent surface there must be a standard guardrail

No point of access can have a step greater than 19 inches

If there are 4 or more risers or 30 inches of rise, (whichever is less) then there must be a handrail

All platforms 6 feet or more above the adjacent surface must be guarded with a standard guardrail

Set up on firm solid ground

No bricks, blocks, or scrap lumber used to level the Scaffold

Scaffolding over 10 feet high must have guardrail, mid rail, and toe board on all open sides

Stairs with more than 3 risers must be equipped with a handrail located between 30" and 36" above the stairs tread in-line with the riser

Initial - Subcontractor/Vendor AD

Initial - Crown Communities, Inc. RT

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Stair rails	Handrail must be continuous and be located a minimum of 3' out from the wall. Any stairs with an open side of 4' or more must be equipped with a stair rail on the open side. Stair rail shall be no less than 36" from the top of the stair rail to the surface of the tread, in line with the face of the riser at the forward edge of the tread.
Floor Opening	Any opening in the floor greater than 12"x12" must be properly guarded or covered.
Wall Opening	Any opening in a wall that is greater than 18"x30" is considered to be a "wall opening" and must be guarded if there is greater than a 4 foot fall to the adjacent surface.
Windows	Then the window has not been installed and the distance from the window sill to the ground is greater than 4 feet; the window must be guarded as follows: *If the sill height is between 12" and 30" above the floor there must be standard guard rail located at 42" high. *If the sill height is between 4" and 12" above the floor there must be standard guard rail at 42" and a mid-rail halfway between the sill and the guard rail. *If the sill height is less than 4" above the floor, there must be a standard guardrail, mid-rail and a 4" toe board.
*LADDERS	
Good Condition ✓	No broken side rails or steps, no loose side rails and all braces located by the manufacturer are in place and undisturbed.
Proper Use	Used according to manufacturer's safe use instructions. Example: step ladders must be opened and rising on all four feet.
*TRENCHING AND EXCAVATION	
Protective System	If the excavation is 5 feet or deeper then a protective system must be used. protective systems include: Shoring, Shoring and Benching.
Perimeter Guarding	If the excavation or trench could pose a fall risk to workers on the job, or the general public, there need to be a barrier in place that will restrict access to the site.
*POWER TOOLS	
Condition	No broken handles, switches or casings.
Guard	All guards must be in operational condition.
Cords	No breaks in the insulation. Be of the size and type specified by the manufacturer of the equipment being powered.

Initial - Subcontractor/Vendor AJ
Initial - Crown Communities, Inc. P.I.

***EXTENSION CORDS**

Condition
Proper Ground
GFI Protected

No breaks in the insulation or splices in the cord
Equipped with ground probe
All extension cords must be provided with a GFI as close to the power source as possible, or be covered by a written, signed equipment grounding program

***LP TANKS**

Stored & Secured

All LP tanks must be stored on a flat, level surface. Secured from falling over, in an area that protects them from being struck by equipment and vehicles, and if there is over 500 lbs. in total quantity, the storage area cannot be within 25 feet of any building or structure

***GROUND FAULT PROTECTION**

GFI temp poles

All temporary power poles must provide GFI protection
GFI breaker must be checked before using to insure they are working

Generator GFI protected

Workers are not to use t-poles tagged as unsafe
If the generator is over 5000 it must be grounded

***GENERATORS, COMPRESSORS AND MIXERS**

Condition
Guards
Cords & Hoses

Must be in good working order with no broken, missing or modified components

All moving parts, rollers, blades, gears, pulleys and pinch points are to be guarded

Are to be in good condition with no breaks or homemade repairs

***HOUSEKEEPING**

Material stored properly

Material stored in a manner that would not pose a hazard

Work Areas/Passageways

Stacked in a manner that would resist falling over

Clear of debris, firm and scrap lumber, lumber with nails protruding from it

Combustibles storage

Combustibles and flammables stored in an appropriate area that is identified by the job site superintendent

Flammable and combustible liquids stored in an approved metal safety can

Initial - Subcontractor/Vendor A J
Initial - Crown Communications, Inc. RT

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Exhibit D-1

Job Site Requirements

Initial - Subcontractor/Vender AJ R.
Initial - Crown Communities, Inc. _____

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Exhibit D-2**Customer Service Requirements**

1. The Trade Partner will warrant the quality of their work for a period of and (1) year from the date of closing of the house or as outlined in our printed United Home Insurance Company Limited Warranty booklet for specifications that are covered under Warranty. A 30 day "grace period" from closing date is requested due to volume and scheduling.
2. The Trade Partner shall have seven (7) days in which to correct any Warranty problem. If the problem is not corrected within seven (7) days then Crown Communities, Inc. shall correct the problem and will back charge the Trade Partner.
3. Trade Partner shall be responsible for Customer Service work at entire satisfaction regardless of whether it was higher work. Trade Partner shall further assign an individual qualified in making repairs of said nature, to work directly with Crown Communities, Inc. Customer Service Department and/or the Builder handling walk-throughs.
4. To mitigate the amount of time required by the Homeowner to take off work to have walk-through or service work completed, Crown Communities, Inc. will attempt to schedule all Trade Partners in during working hours to complete their task. The Trade Partner will be given five days notice to work within this schedule. If possible, if the work area is unclear, the Trade Partner shall use this work to coordinate with the Builder or Area Warranty Manager before attempting the work. Because of the complexity of scheduling the Homeowner and other trades in the proper sequence, the Trade Partner will be expected to meet this schedule. Crown Communities, Inc. will compensate Homeowners affected by missed appointments out of pocket due to the Trade Partner from normal billing. Missed appointments will then be rescheduled at the Homeowner's convenience, i.e., after work and/or weekends.
5. Trade Partner employees shall be identifiable by a company logo or name tag affixed to clothing when serving a Crown Communities, Inc. Homeowner.
6. Trade Partners shall provide customer service/warranty department an emergency/after hour's contact number. Trade Partners shall also provide Crown Communities, Inc. customer service/warranty department an additional contact number for emergency/after hours service in the event their "on call" service personnel fails to respond in a timely manner. "Timely Manner" shall be defined as to the seriousness (nature) of the emergency call.
7. When Trade Partner is requested by Crown Communities, Inc. to contact the Homeowner to schedule an appointment it shall be the Trade Partner's responsibility to inform the Crown Communities, Inc. Customer Service/Warranty Department of the scheduled appointment date. Trade Partner shall inform Crown Communities, Inc. customer service/warranty department as to the outcome of said appointment, i.e., completed, parts ordered, etc. within three days of appointment.
8. Trade Partner will be responsible for clearing the job site upon completion of their work. Failure to do so will result in a back charge to the Trade Partner for clearing services.

Initial - Subcontractor/Vendor AS
 Initial - Crown Communities, Inc. AW

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ACKNOWLEDGMENT

These specifications are a part of the Contractor's Scope of Work. Crown Communities, Inc. and all of its entities reserves the right to modify or amend any of the above general specifications at any time, and will notify the contractor as soon as any change is initiated.

All invoices must be accompanied by a notarized lien waiver and must be turned into the job-site Superintendent for approval prior to standard pay dates.

Contractor

AJ Landscaping & Fire/Pag - LLC

By: Antonio Jimenez

Date: 6/23/11

Builder:

an entity of Crown Communities, Inc.

By: Phil Thompson

Date: _____



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR ALPHA OMEGA CONSTRUCTION GROUP, INC. ("Contractor")
 Sole Proprietorship ☐ Partnership ☒ Corporation ☐ L.L.C. ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No.: 26-3212467
 Name of Owner(s)/Officer(s): CHRIS STAFFORD
 Division Name GREENVILLE, SC Area Name _____ Assigned Vendor No. _____
 Address for All Notices: PO BOX 3196
 City MATTHEWS State NC Zip Code: 28106
 Telephone: 704 821-6510 Fax: 704 821-7058 E-Mail Address: alpha@alpha-omegacorp.com
 Insurance Carriers ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 11 day of FEBRUARY, 2010, between
D.R. HORTON INC. ("Owner") and Contractor

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of the Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement (the "Work") shall include all work performed and materials supplied by Contractor to Owner including but not limited to the labor, services and/or materials, equipment, transportation, or facilities necessary to complete the construction-related activities generally described in Exhibit A. The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing will not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to or in place of Contractor. Contractor will be awarded Work on a lot by lot basis. To the extent Exhibit A contains more than one type of construction-related activity, Contractor must clarify with Owner before the Work commences as to which construction-related activity it has been awarded for the lot in question.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, method and performance of the Work. Contractor shall not be considered an agent or employee of Owner for any purpose, nor shall any employees or permitted subcontractors of Contractor. Contractor shall not represent itself as the agent of Owner unless owner has specifically permitted Contractor to do so in writing. The results achieved shall satisfy the requirements of this Agreement. Contractor shall be responsible for the performance of its employees and permitted subcontractors, and all personnel used by Contractor in the performance of Work shall be qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further agrees to provide written notification to all of its present and future employees of Contractor's provision for Worker's Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work herein covered or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall pay and shall be solely responsible for all tax withholding, Social Security, state unemployment and all other withholding as required by law Contractor's employees, agents or permitted subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNLESS CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule, the superseded Pricing Schedule shall remain in effect for Purchase Orders issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing of the house incorporating the Work from Owner to a purchaser. Contractor hereby agrees that timely invoicing is an important and material term to this agreement, and timely invoicing is a part of Contractor's performance of all material terms of this contract. Contractor hereby waives payment for any Work where Contractor fails to invoice Owner in a timely manner in conformity to this agreement. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR

Executed this 11 day of FEBRUARY, 2010.

Owner:
By D.R. Horton Inc.
Name Edmund J. Stafford Jr.
Title PURCHASING
Division President

Contractor:
By ALPHA OMEGA CONSTRUCTION GROUP, INC.
Name Chris Stafford
Title OPERATIONS DIRECTOR

INITIALS: OWNER [Signature] CONTRACTOR CK

7392318

KDC 013324

ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO SUBCONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN AND THAT OWNER DOES NOT AGREE TO PAY TO SUBCONTRACTOR INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF DELAYED PAYMENTS.

4.2 Payment to Subcontractors. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed from Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties, and these joint payments shall satisfy amounts owed by Owner to Contractor, notwithstanding the fact that the third parties may not endorse the checks. In any instance where Owner receives written notice from one of Contractor's sub-contractors, whereby the subcontractor claims a failure to be paid for the Work, Owner reserves the right to pay the subcontractor directly or to make payment payable to both the Contractor and its subcontractor.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the Contract Price shall waive and release all claims against Owner and the property under this Agreement, but shall not waive any claims of Owner arising out of Work later found to be defective and shall not release Contractor from liability for warranties and warranty service and/or defective Work. Contractor shall remedy any defects and pay for any damage resulting from any defects in or caused by the Work or as required by any other contracts between Owner and Contractor or by law or customary practice. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or assigns is an acceptance of the Work or materials not in compliance with this Agreement.

5. SCHEDULE OF WORK.

5.1 Time is of the Essence. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work.

5.2 Construction Schedule. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.3 Commencement of the Work. Owner shall issue an authorization (either pursuant to a written purchase order, payment schedule, or work invoice ("Purchase Order") or verbal instructions from an authorized Owner representative) to commence the Work and Contractor shall not commence the Work at a job location until Contractor has received instructions to begin Work at a specific job location. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.4 Changes in Construction Schedule. Contractor agrees that Owner shall have the right to make changes to the schedule of Work at Owner's discretion and agrees to comply with such changes.

6. PERFORMANCE STANDARDS.

6.1 Applicable Standards. Contractor shall perform all Work in a good and workmanlike manner, in accordance with the plans and specifications of Owner, according to industry standard practices, and warrants that the Work will meet or exceed FHA minimum property standards, VA requirements, all laws (statutory or common) and regulations, and any applicable building code requirements.

6.2 Contractors' Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized Owner's employee and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications as the plans and specifications affect the Work and materials incorporated in the Work, and that the plans and specifications are clear and unambiguous, and has accepted and agreed to be bound by all such requirements.

6.3 Government Requirements. Contractor will comply with all applicable federal, state, local, and county statutes, ordinances, regulations, codes, licensing requirements and standards, and the requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 as amended, as well as the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., or similar laws or regulations, and the rules, regulations, or orders of all public authorities relating to performance of the Work, including without limitation, the procurement and posting of all required permits and notices. In addition, Contractor will not discriminate in its hiring or employment and will follow all state and federal employment laws or regulations. Contractor shall perform background checks and use only appropriate employees to perform warranty or repair work after a house is occupied.

6.4 Indemnity. To the fullest extent allowed by law, Contractor will agree to indemnify, defend, and hold Owner harmless from all actions, claims, investigations or other acts to enforce such laws or regulations, and further agrees to indemnify Owner from the payment of any fine, penalty or damages imposed, levied, assessed, or found as a result of the Contractor's failure to comply with or adhere to the applicable laws and regulations, or from Contractor's failure to cause its employees or subcontractors to comply with such laws and regulations.

6.5 Observation and Testing by Owner and Repair by Contractor. Owner shall have the right to observe or test the Work at any time during or after construction, but that observation or testing is solely for the benefit of Owner's and is not for Contractor's benefit. Owner's failure to note defects in the Work during an inspection will not waive any of Contractor's obligations, representations or warranties related to the Work. Notwithstanding anything contained in this Agreement to the contrary, all Work shall be performed and any defects shall be corrected timely and in accordance with this Agreement to the satisfaction of Owner.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work, and shall report in writing to Owner any defects prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractor's work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses and approvals necessary for or applicable to the performance of the Work.

6.8 Change Orders. The Contractor shall furnish the materials for and to make all changes requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed,

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(ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location, and (iv) work site safety requirements

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste materials or rubbish caused by its operations and shall remove all of Contractor's materials, and if materials are furnished by Owner, Contractor shall move all usable materials provided by Owner to a location designated by Owner. Contractor shall sweep out any waste material from inside the home under construction upon completion of its operation. All refuse shall be placed in receptacles provided or at locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up activities and collect a one hundred dollar (\$100.00) fine from Contractor for each incident. The cost of such clean-up and the aforementioned fine shall be deducted from any sums owed by Owner to Contractor, or shall be immediately payable by Contractor upon demand therefore by Owner.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from or in any way related to the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Owner reserves the right to set minimum standards or rules relating to Work on its site. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OWNERS MINIMUM REQUIREMENTS. THE OWNER ASSUMES NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe condition or practice observed on the Work Site. Further, Contractor shall immediately notify Owner of any accidents or injuries on the Work Site. Contractor shall have an ongoing safety program and conduct inspections to determine that safe working conditions and equipment exist and safe practices are observed. Contractor shall prohibit and prevent the presence of children under age eighteen (18) from the Work Site.

7.1 Safety Laws and Indemnity Agreement. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards, statutes, and industry best practices concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations. Contractor shall provide Owner with written verification of its compliance with all applicable safety and health standards and regulations, including but not limited to OSHA's Hazard Communication Standard for the Construction Industry, 29 C.F.R. §1926.59 et seq., and provide written notice to Owner of the contact person responsible for Contractor's compliance with all safety and health standards and regulations. To the fullest extent allowed by law, Contractor agrees to indemnify, defend, and hold Owner harmless from all actions prosecuted to enforce and the payment of any fine or penalty imposed under such safety laws and regulations and shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work.

7.2 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, permitted subcontractors or suppliers at a job location or performance of the Work by any person under the influence of alcohol or drugs.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate corporations, and successors and assigns, that all labor performed and materials furnished by Contractor shall conform to the specifications of this Agreement, shall be free from any defects or deficiencies in workmanship or materials, and will comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, will meet or exceed the FHA/VA minimum property standards, and will comply with the Residential Warranty Corporation ("RWC") Program and the applicable limited warranty standards, which Contractor has read and understands and to which Contractor agrees to be bound. All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects for purposes of Contractor's obligations under this Contract. Contractor shall make good and promptly repair all Work not complying with the standards set forth in this section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Paragraph 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, the initial homeowner of the property on that is the subject of the Work: (i) for a period of ten (10) years all structural elements, including, but not limited to, roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; (d) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (i) any statutory warranty or (ii) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner (a "Homeowners Warranty"). Contractor expressly agrees to be bound by any such Homeowners Warranty and to the extension of warranty period hereunder. Furthermore, notwithstanding the foregoing, Contractor agrees that all express and implied warranties shall remain in full force and effect for so long as Owner is obligated to warrant the Work pursuant to applicable law. Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Homeowners Warranty that is longer than the Warranty Periods stated above, provided, however, failure to give that notice will not affect the extension of the Warranty Period to the applicable warranty period under the Homeowner's Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not effect, minimize, or in any way obviate Contractor's warranty obligations, Contractor's indemnity obligations, or the ability of Owner to request Contractor to perform warranty services in the future.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment, and shall furnish all certificates required by any municipality and/or VA and/or FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and are not in limitation of periods of applicable statutes of limitation.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Project is located.

9.3 Lien Claim Indemnity. If any liens are filed against Owner relating to portions of the Work for which Owner has paid Contractor, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such lien or affidavit to be removed.

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and released of record. Contractor agrees to **INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS** from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any liens relating to portions of the Work for which Owner has paid Contractor, and further agrees at Owners' request to any or all of the following: (i) procure a bond to indemnify Owner and any home purchaser from Owner, in an amount sufficient to discharge that lien, or (ii) refund to Owner all moneys, including any additional amount necessary to cover all of Owner's or home purchaser's attorneys' fees and court costs paid in discharging the lien, whichever remedy Owner elects in its sole and absolute discretion, or (iii) provide sworn testimony that payment has already been made to Contractor for the work for which the alleged lien applies.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY AGREES TO HOLD HARMLESS, INDEMNIFY, PROTECT AND DEFEND OWNER, ITS PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THE AFOREMENTIONED ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "INDEMNITEE"), FROM AND AGAINST ANY AND ALL DEMANDS, CLAIMS, ACTIONS, CAUSES OF ACTION, PROCEEDINGS, LAWSUITS, SETTLEMENTS, JUDGMENTS, FINES, PENALTIES, LOSSES, ATTORNEYS FEES, LITIGATION COSTS, INTEREST, AND EXPENSES OF ANY KIND (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "LOSSES") FOR DAMAGES FROM BODILY OR PERSONAL INJURY, DEATH, THE DESTRUCTION OR LOSS OF PROPERTY (INCLUDING LOSS OF USE), OR ANY OTHER KIND OF DAMAGES OR HARM, ARISING OUT OF, OR RESULTING FROM, OR RELATED IN ANY WAY TO THE WORK PERFORMED AND/OR THE MATERIALS SUPPLIED UNDER THIS CONTRACT, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY INDEMNITEE. SUCH LOSSES SPECIFICALLY INCLUDE, BUT ARE IN NO WAY LIMITED TO LOSSES ARISING OUT OF OR ATTRIBUTABLE TO: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR OBLIGATIONS OF CONTRACTOR SET FORTH HEREIN; (2) THE WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR, CONTRACTOR'S AGENTS OR EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, AND/OR ALL OTHER ENTITIES OVER WHOM THE CONTRACTOR MAY EXERCISE CONTROL (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "CONTRACTOR'S AGENTS"); (3) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF CONTRACTOR AND/OR CONTRACTOR'S AGENTS; OR (4) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE INDEMNITY FOR LOSSES CAUSED SOLELY BY FAULT OR NEGLIGENCE OF THE INDEMNITEE. THE LOSSES DESCRIBED HEREIN SHALL INCLUDE, BUT ARE NOT LIMITED TO, DEMANDS, CLAIMS, OR ACTIONS ASSERTED BY (1) ANY PRESENT OR FUTURE OWNER OF THE HOUSE INCORPORATING THE WORK; AND (2) ANY OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY CONTRACTOR AND/OR CONTRACTOR'S AGENTS). THE INDEMNIFICATION OBLIGATION UNDER THIS CONTRACT SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. THE INDEMNITY PROVISIONS CONTAINED HEREIN ARE INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY LAW.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. IT IS THE EXPRESS INTENTION OF THE PARTIES THAT CONTRACTOR'S INDEMNITY OBLIGATIONS HEREIN WILL SURVIVE THE TERMINATION OF CONTRACTOR OR THIS AGREEMENT. INDEMNITEE SHALL HAVE THE RIGHT, AT ITS DISCRETION AND CHOOSING, TO DEFEND ANY AND ALL CLAIMS WHICH MAY BE ASSERTED AGAINST IT, AND CONTRACTOR AGREES TO REIMBURSE INDEMNITEE FOR ANY AND ALL EXPENDITURES WHICH INDEMNITEE MAY MAKE OR INCUR ON ACCOUNT OF ANY SUCH CLAIM.

10.3 CONTRACTOR AND CONTRACTOR'S AGENTS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS OR EQUIPMENT.

10.4 Subcontractor's and Supplier's Indemnity Obligations. Contractor shall require each of its subcontractor to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required in this section and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms as Section 13. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the actions of any subcontractor engaged by Contractor, whether in written agreement or otherwise, or who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed to be the obligation of the subcontractors to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with completed operations coverage which contains a per occurrence limit of no less than one million dollars (\$1,000,000.00), and an aggregate limit of no less than two million dollars (\$2,000,000.00) protecting against liability for bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type of, or nature of, the Work or limit the type of structure on which the Work is to be performed. The CGL Policy shall not contain a deductible or self-insured retention of more than \$25,000.00. Contractor shall continuously maintain a CGL Policy covering completed operations for any applicable statute of repose for commencing lawsuits associated with the Work.

11.2 Other Insurance. Contractor agrees to carry (i) Worker's Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Worker's Compensation obligations imposed by law; (ii) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than one million dollars (\$1,000,000.00) and an aggregate of no less than one million dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (iii) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person (Bodily Injury) and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner as an Additional Insured on the CGL Policy or policies required above covering both on-going operations and completed operations (equivalent to form CG20101185 or form CG2037). Coverage obtained by Contractor naming Owner as an Additional Insured shall be primary with any insurance of Owner being excess coverage. That insurance coverage will be carried continuously during the term of this Agreement and thereafter as required by this Agreement with insurance companies acceptable to Owner in its sole and absolute discretion. That insurance shall provide for a waiver of subrogation. All insurance shall be with

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a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the required policies. Each Certificate of Insurance or policy shall contain an unqualified clause to the effect that the policy shall (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days' prior written notice to Owner, (ii) be earned continuously from the date of commencement of the Work until expiration of the period of the Contractor's warranty provided in this Agreement, (iii) specifically identify Owner as an Additional Insured, and (iv) indicate that coverage applies in the state where the Work is being performed. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself and the Work required to be performed under this Agreement.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER IN ITS SOLE AND ABSOLUTE DISCRETION) IN EFFECT AT THE TIME WORK IS PERFORMED TO COMPENSATE OWNER FOR ANY ADDITIONAL COSTS OF ITS WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS CONTRACT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work to the extent permitted under this Agreement, Contractor guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Owner as an Additional Insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or another contractor's work is damaged by an act for which Contractor, or its employees, agents or subcontractors, are responsible, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct such Work, replace or repair any defective material, or repair any damage. Contractor shall make all repairs and correct such within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours notice on a non-emergency basis, or (ii) retain a third party or undertake to perform those duties, and retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld resulting in a deficiency, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and reasonable attorneys' fees, incurred by Owner, and shall pay to Owner this amount within thirty (30) days of demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Paragraph 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or permitted subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties, (ii) claims or liens are filed against the job location as a result of Contractor's actions or omissions, (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement, Exhibit A of this Agreement, or the specifications, (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order that is Contractor's obligation under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary tools, material, or equipment for, or cleaned up after, the Work; (viii) Contractor fails to comply with any other provision of this Agreement.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement and rights and remedies available under this Agreement shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. Owner shall have a right to collect from Contractor its reasonable attorneys' fees and expenses incurred in enforcing Contractor's obligations.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These Disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking equitable relief from and arbitrator or a court of appropriate jurisdiction.

13.3 Arbitration. If mediation fails, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq., regardless of any other choice of law provision in any underlying contract or this Agreement. All demands for arbitration shall be made before the expiration of the applicable statutes of limitations and repose. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court of competent jurisdiction.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrators mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes, is over \$200,000, but only one arbitrator shall be appointed if the Dispute is 200,000 or less. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of a mediator or arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint a mediator or arbitrator. The AAA's Code of Arbitrator Ethics (revised March 1, 2004) is applicable to all arbitrations.

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13.5 Rules. To the extent not in conflict with the Federal Arbitration Act, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner may join Contractor in any litigation, mediation, or arbitration initiated against Owner by a third person so that the rights of all parties (Owner, Contractor, Subcontractor, or any third person) shall be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner where necessary to facilitate resolution in a single forum. If multiple lawsuits or arbitrations are commenced, they shall all be consolidated into a single proceeding. Notwithstanding any other provision of this section, if a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect to unilaterally waive mediation or arbitration and litigate the Dispute with Contractor.

14. TERMINATION.

14.1 Termination by Owner for Cause or Convenience. This Agreement shall remain in full force and effect until terminated in writing by mailing notice to the other Party. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) Days' written notice before the effective date of termination, and shall perform fully under this Agreement during that notice period. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.3 Survival. All obligations, duties and warranties for Work performed under this Agreement shall survive termination.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement, (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement, (iii) this Agreement is or will be (when executed) a binding obligation of Contractor, enforceable in accordance with its terms, (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority, (v) Contractor has, and each Contractor's employees, agents or permitted subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement, (vi) Contractor is in compliance with all governmental requirements to which it is subject, and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement, and with respect to prices and quantities only, the Price Schedule and all written Purchase Orders shall be the entire agreement between Owner and Contractor related to the Work, and there are no other agreements, oral or written, made by or relied upon by Owner and Contractor. Except as otherwise provided in this Agreement, no provision of this Agreement may be amended or supplemented except in writing signed by both Owner and Contractor.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights and obligations are not assignable or transferable without the express written consent of Owner, who may consent can be withheld in Owner's sole and absolute discretion. Subject to the restrictions and prohibitions on assignment set forth in this section, the terms of the Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Contractor shall provide and transfer ownership to any and all samples and/or shop drawings requested by Owner.

18. NOTICES. All notices required pursuant to this Agreement or otherwise shall be in writing and shall be delivered to the respective business address of Owner and Contractor. However, Contractor's business address shall be as noted on page one (1) of this Agreement. Notices shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by overnight delivery service, and upon confirmation if sent by facsimile transmission.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or articles.

SOUTH CAROLINA REVISED 7/23/2007

INITIALS: OWNER KA, CONTRACTOR AK

KDC 013329

PERFORMANCE REQUIREMENTS AND SPECIFICATIONS**"Exhibit A"**

DESCRIPTION: ROOFING-LABOR AND MATERIALS

PERFORMANCE REQUIREMENTS:

Roofed areas shall remain watertight for a period of two (2) years, and shall maintain their uniform appearance while withstanding weather conditions with winds up to fifty (50) mph for a period as specified by the Manufacturer's warranty.

Hard hats and appropriate safety equipment are to be worn at all times while on D.R. Horton's property. The contractor shall ensure that each crew leader has attended the appropriate OSHA approved "Competent Person" training course.

NON-PERFORMANCE REMEDY

The Contractor or Manufacturer shall repair or replace all areas damaged by work not meeting the performance standard. Leaks and damage caused by snow and ice buildup, or homeowner neglect, will not be the Contractor's responsibility. D.R. Horton will make the determination for all remedial actions,

SPECIFICATIONS AND SCOPE OF WORK

1. All places where the roof meets a vertical wall on the rake shall be step flashed. All horizontal roof to wall connections shall be flashed a minimum of 10" in each direction with 28 gauge aluminum flashing.
2. Contractor to inspect and correct, if necessary, all flashing adjoining the roof surface which has been installed by others. Including the reinstallation of any pipe boots and vent pipe flashing that may need to be removed during scope of work. Do not start until all roof vents and pipes are cut through roof.
3. Shingles to lap over rake mold or gable ends one (1") inch.
4. Gable overhang is to be cut square and true.
5. Shingles are to be approved by D.R. Horton specifications.
6. All invoices for completed work must be approved by jobsite Builder.
7. All valleys are to be lapped and cut, closed valley lapped with extra felt run down the valley.
8. Contractor to dispose of debris from jobsite caused by his operation.
9. Contractor's warranty to be two years from closing date.
10. Price includes installing vent-a-ridge where shown on drawings. Cut out felt sufficiently at ridge vent locations to allow proper air passage.
11. Counter flashing to be neat and free from defects on brick applications (where applicable).
12. Contractor to notify Builder of improper cricket construction.
13. Contractor shall not install roofing over improperly nailed roof decking.
14. Contractor shall notify Builder if gap between roof deck and fascia board exceeds 1/4".

Contractor agrees to comply with all applicable building codes, ordinances and OSHA regulations.

ACKNOWLEDGEMENT

These specifications are a part of the contract identified above. D.R. Horton, Inc. reserves the right to modify or amend any of the above general specifications at any time, and will notify the contractor as soon as any change is initiated.

All invoices must be accompanied by a notarized lien waiver and must be turned into the job-site Builders for approval prior to standard pay dates.

Contractor:

Builder:

Alpha Omega Construction Group, Inc.

D.R. Horton, Inc.

By:

By:

Date:

Date:

Revised 7/27/2004

Page 1 of 1

Initial

KDC 013330



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

B27000

NAME OF CONTRACTOR Atlanta Flooring Design Ctrs Inc (Contractor)
 Sole Proprietorship ☐ Partnership ☐ Corporation ☒ LLC ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No.: 581621134
 Name of Owner(s)/Officer(s): Donny Phillips
 Address for All Notices: 3005 Swiftwater Park Dr Bldg 2
 City: Suwanee State: GA Zip Code: 30024
 Telephone: 770-476-8300 Fax: 770-476-0308 Mail Address: Cindy@atlantaflooringdesign.com
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 2nd day of July, 15, between D.R. Horton Inc & D.R. Horton ("Owner") and Contractor Inc - Regent LLC

1. **SCOPE OF WORK.** This Agreement is entered on a blanket basis. The terms of this Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement shall include all work performed and materials supplied by Contractor, directly or indirectly, to Owner, including but not limited to the labor, services and/or materials, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized by written purchase order, or similar document by Owner's authorized field personnel (the "Work"). The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing shall not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to, or in place of, Contractor.

2. **INDEPENDENT CONTRACTOR STATUS.** Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, method and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further shall provide written notification to all of its present and future employees of Contractor's provision for Workers Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 **Pricing Schedule.** The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 **Taxes.** Contractor shall be solely responsible for and will pay all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 **Price Increases.** NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNTIL CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule implementing a price increase, the superseded Pricing Schedule shall remain in effect for Purchase Orders, as defined herein, issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 **Invoices.** Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing from Owner to a purchaser of the house incorporating the Work. To the extent permitted by law, Contractor waives its right to payment for any Work not invoiced in a timely manner. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order, as defined herein.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO CONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN. CONTRACTOR AGREES THAT OWNER DOES, AND WILL, NOT OWE INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF ANY DELAYED PAYMENT.

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA, IF ANY.

Executed this 2nd day of July

Owner: [Signature]
 By: [Signature]
 Name: [Signature]
 Title: Division President

Contractor: [Signature]
 By: [Signature]
 Name: Cindy K. Craig
 Title: Contract Mgr

INITIALS: OWNER [Initials], CONTRACTOR [Initials]

4.2 Contractor Payments. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed by Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Unless otherwise agreed by Owner and Contractor, payment to Contractor shall be made by check. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties; and these joint payments shall satisfy amounts owed by Owner to Contractor, whether or not all parties endorse the checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the contract price shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of or resulting from the Work and shall not release Contractor from any obligations under this Agreement, including but not limited to liability for warranties, warranty service, or any other liability for alleged defects in the Work. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or customers or assigns shall constitute an acceptance of the Work or materials not in compliance with this Agreement, or be used in any way as evidence of acceptance by Owner.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.2 Authorization and Commencement of the Work. Authorization for any Work shall be in writing, either pursuant to a written purchase order, work invoice, or similar document ("**Purchase Order**"). Contractor shall have no authority to commence the Work at any specific job location until Owner has issued instructions to proceed. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.3 Changes in Construction Schedule. Owner shall have the right to make changes to the schedule of Work at Owner's sole discretion, and Contractor shall comply with such changes. Contractor shall not be entitled to any additional compensation for such schedule changes.

6. PERFORMANCE OF THE WORK.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FIA minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all laws (statutory and common law), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements). In the event of conflicting provisions, specifications will take precedence over the drawings; the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive; later modifications or changes will supersede or take precedence over earlier provisions. Contractor shall immediately notify Owner in writing of any allegedly conflicting provisions.

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall have absolute authority to act, in all respects, on behalf of and for Contractor.

6.3 Contractor's Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized employee of Owner and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, and that the plans and specifications are clear and unambiguous, and that Contractor has accepted and agreed to be bound by all such requirements.

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, rules, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "**Requirements**"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS** from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, regardless of any alleged fault of Owner. In addition, Contractor shall not discriminate illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform warranty or repair work after a house is occupied.

6.5 Observation, Inspection and Testing. Owner and any government agency inspector ("**Inspector**") shall have the right, but not the obligation, to observe, inspect or test the Work at any time during or after construction, but that observation, inspection or testing is solely for the benefit of Owner and is not for Contractor's benefit. Contractor shall cooperate with Owner and Inspector during any such inspection. The failure by Owner or Inspector to note defects in the Work during an inspection shall not waive or vary any of Contractor's obligations, representations or warranties related to the Work.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses, approvals, and as-built drawings necessary for, or applicable to, the performance of the Work. Contractor shall provide copies to Owner immediately upon request.

6.8 Change Orders. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("**Change Order**") or Purchase Order signed by Owner and Contractor before the commencement of such changes. Contractor shall comply with any Change Order requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site safety.

INITIALS: OWNER , CONTRACTOR CUC

requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not limited to trash, unused building materials, garbage, refuse or rubbish ("Waste"), caused by its operations and shall remove all of Contractor's materials at the conclusion of the Work. If materials are furnished by Owner, Contractor shall move all usable materials at the conclusion of the Work to a location designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon demand by Owner and may be deducted by Owner from any sums owed to Contractor.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

7.2 Safety Laws. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations ("Safety Law"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of, or noncompliance with, the Safety Law, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation or noncompliance by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, of the Safety Law, or safety citation, regardless of any alleged fault of Owner. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and, if required by law, provide written notice to Owner of the contact person responsible for Contractor's safety compliance.

7.3 Hazardous Materials. Contractor shall not permit any Hazardous Substances, defined below, to be brought onto or stored at any job site or used in the construction of the Work, except for commonly used construction materials, provided however, that all such material shall be handled in full compliance with all laws, ordinances and regulations. All notices required to be given with respect to such products shall be given by Contractor. Contractor shall not release or dispose, nor allow any other person to release or dispose, of Hazardous Substances or waste at any job site or into the soil, drains, surface or ground water, or air. "Hazardous Substance" means any substance or material which any state, federal or local governmental authority determines or designates as capable of posing a risk of injury to health, safety, property or the environment.

7.4 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, agents, subcontractors or suppliers at a job location, or performance of the Work by any person under the influence of alcohol or drugs. "Drugs" shall include any substance, whether or not illegal, which upon exposure, ingestion, inhalation, injection or by any other introduction, may impair one's ability to safely perform the Work.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. For the longer of ten years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work shall conform to the specifications of this Agreement (including but not limited to the standards referenced in Subsection 6.1), shall be free from any defects or deficiencies in workmanship or materials, shall comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, shall meet or exceed the FHA/VA minimum property standards, and shall comply with the Home Owners' Warranty, defined below and its applicable warranty standards (which Contractor has read and understands). All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects. Contractor shall be liable to make good or promptly repair all Work not complying with the standards set forth in this Section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Subsection 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, any initial home purchaser of property subject to the Work: (i) for a period of ten (10) years all structural elements, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor, and (iii) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (a) any statutory warranty or (b) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner, including but not limited to the Residential Warranty Corporation Program (a "Home Owners' Warranty"). Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Home Owners Warranty that is longer than the warranty periods stated above; provided, however, failure to give that notice will not affect the extension of the warranty period to the applicable warranty period under the Home Owners Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform warranty services thereafter.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product information, and guarantees by manufacturers on components of the Work, including any appliances or equipment, and shall furnish all certificates required by any third parties such as any municipality, the VA, or the FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and shall not limit or reduce any applicable statutes of limitation.

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including,

INITIALS: OWNER [Signature], CONTRACTOR CAC

but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. TO THE EXTENT PERMITTED BY LAW, CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS OR SIMILAR CLAIMS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Work is located.

9.3 Lien Claim Indemnity. If any liens, affidavits of claim, stop payment notices, or lis pendens arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such liens, affidavits of claim, stop payment notices, or lis pendens to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such liens, affidavits of claim, stop payment notices, or lis pendens, and further agrees immediately upon Owner's request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge any and all liens, affidavits of claim, stop payment notices, or lis pendens, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any home purchaser in discharging the liens, affidavits of claim, stop payment notices, or lis pendens whichever remedy Owner elects in its sole and absolute discretion. The provisions of this paragraph shall be in addition to any rights Owner may have under applicable law with respect to such liens, affidavits of claim, stop payment notices, or lis pendens.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF, ATTORNEYS' FEES AND INTEREST), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (2) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR OR BY CONTRACTOR'S AGENTS OR EMPLOYEES, OR BY ITS SUPPLIERS OR SUBCONTRACTORS OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES; (3) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, SUPPLIERS OR SUBCONTRACTORS, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR (4) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF INDEMNITEE RELATED IN ANY WAY TO THE WORK. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY INDEMNITEE AGAINST LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR AGREES THAT ITS OBLIGATIONS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

10.3 NO BAILMENT. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, ALL SUBCONTRACTORS, AND SUPPLIERS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS, MATERIALS, OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS, MATERIALS OR EQUIPMENT.

10.4 Subcontractors and Suppliers Indemnity Obligations. Contractor shall require each of its subcontractors to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth in Section 13 of this Agreement. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the acts and omissions of any subcontractor or supplier who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed also to be the obligation of the subcontractors or suppliers to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

INITIALS: OWNER M, CONTRACTOR che

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with products-completed operations coverage, which contains a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit of no less than Two Million Dollars (\$2,000,000.00) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products-completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type, nature, or volume of the Work or limit the type of structure or number of units on which the Work is to be performed. The CGL policy shall not contain a deductible or self-insured retention of more than \$25,000.00, and shall allow the satisfaction of any and all deductible or self-insured retention through payments made by any third party, including but not limited to Owner or any additional insured, co-insureds, co-insurers, or insureds other than the primary or first named insured. Contractor shall continuously maintain a CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work.

11.2 Other Insurance. Contractor agrees to carry (a) Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law; (b) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (c) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person for bodily injury and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner, D.R. Horton, Inc., and all affiliates and subsidiaries of D.R. Horton, Inc., (collectively "Horton") as named, Additional Insureds, specifically identifying Horton, on the CGL Policy and policies required above covering both ongoing operations and completed operations (equivalent in scope to form CG 2010 1185 or, if unavailable, both forms CG 2010 1001 and CG 2037 1001). Coverage obtained by Contractor with Horton as an additional insured shall be primary, with any insurance of Horton being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work; (iii) provide for a waiver of subrogation; (iv) indicate that coverage applies in the state where the Work is being performed; and (v) be with a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement. In the event that Contractor obtains insurance coverage that is broader than the minimums required by this Agreement, this Agreement shall be deemed to require the broader coverage, including but not limited to any greater limits.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, portions of policies (including but not limited to declarations pages and endorsements), or certified copies of the required policies, as requested by Owner.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT ESTABLISHED BY OWNER BY OWNER POLICY WITH RESPECT TO PARTICULAR TRADE CATEGORIES IN ITS SOLE AND ABSOLUTE DISCRETION IN EFFECT AT THE TIME WORK IS PERFORMED) TO COMPENSATE OWNER REASONABLY FOR ANY ADDITIONAL COSTS OF ITS WORKERS COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS AGREEMENT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Horton as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

11.7 Subrogation. Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including but not limited to claims relating to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Owner or any Indemnitee, and any of their consultants, subcontractors, agents, employees and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or if another contractor's work, or other property, is damaged by an act or omission of Contractor, its employees, agents, suppliers, or subcontractors, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location as a result of Contractor's acts or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (iv) Contractor

INITIALS: OWNER  CONTRACTOR 

fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or (viii) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may set off from amounts owing to Contractor hereunder any amounts owing by Contractor to Owner's parent company, any subsidiary or affiliate, under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Dispute") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking other relief.

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("FAA"). All demands for arbitration shall be made before the expiration of the applicable statutes of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified or corrected only as permitted by the FAA.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator(s) mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes against Owner, is for \$1,000,000 or more, but only one arbitrator shall be appointed if the Dispute is for less than \$1,000,000. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

13.5 Rules. To the extent not in conflict with the FAA, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) can be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner. If multiple lawsuits or arbitrations are commenced, Owner in its sole discretion may consolidate them into a single proceeding. Notwithstanding any other provision of this Section 13, if Owner determines in its sole discretion that a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect unilaterally to waive mediation or arbitration and to litigate the Dispute in court with Contractor.

14. TERMINATION.

14.1 Termination by Owner. This Agreement shall remain in full force and effect until terminated in writing by Owner by mailing notice to Contractor. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) days written notice to Owner before the effective date of any termination by Contractor, and shall perform fully under this Agreement during that notice period.

14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement; (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement; (iii) this Agreement is or will be (when executed) a binding obligations of Contractor, enforceable in accordance with its terms; (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority; (v) Contractor has, and each Contractor's employees, agents or subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement; (vi) Contractor is in compliance with all governmental requirements to which it is subject; and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

INITIALS: OWNER [Signature], CONTRACTOR [Signature]

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to amend and supersede all prior Independent Contractor Agreements (other than any Master National Independent Contractor Agreement) or other prior understandings or written or oral agreements, specifically including but not limited to all prior pre-printed standard contractor/subcontractor agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods or services or both by Contractor relating to the subject matter herein. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work and shall be deemed subject to the terms of this Agreement. Any future Pricing Schedules or Purchase Orders entered into hereafter shall also be deemed to be subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices and quantities of sale only. Nothing in any subsequent agreement or document, unless a new Independent Contractor Agreement, shall alter the terms set forth in this Agreement. To the extent possible, this Agreement shall be deemed to supplement the terms of any other agreement or document, unless a new Independent Contractor Agreement. In the event of any conflict between this Agreement and other such documents, this Agreement shall be deemed to control and prevail. Except as otherwise provided in this Agreement, no amendment or supplement to this Agreement shall be valid or binding unless in writing and signed by both Owner and Contractor. Notwithstanding anything in this Subsection to the contrary, this Agreement shall not amend or supersede any Master National Independent Contractor Agreement, but shall supplement its terms. In the event of a conflict, to the extent permitted by law, the Master National Independent Contractor Agreement shall control.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights, responsibilities, and obligations under this Agreement are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Any attempted assignment shall be null and void. This restriction includes, without limitation, the delegation or subcontracting of any Work or any amounts which may become due to Contractor as a result of the Work. Contractor shall remain fully liable under this Agreement regardless of any consent by Owner to any assignment or delegation of duties by Contractor, including but not limited to any work by a subcontractor. Contractor shall ensure that any subcontractor receives a copy of this Agreement and agrees in writing to be fully responsible for all obligations of Contractor under this Agreement, including but not limited to the insurance and indemnity provisions. Contractor shall also ensure that Owner is an intended third party beneficiary of any subcontractor agreement by including a specific provision to that effect. Contractor shall be responsible for enforcing any warranties given by its subcontractors, suppliers or manufacturers. Nothing contained herein, however, shall create any contractual relationship between Owner and any subcontractor, nor create any obligation on the part of Owner to make payment of any sums to any subcontractor. Subject to the restrictions and prohibitions on assignment set forth in this Subsection, the terms of this Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns. Owner may freely assign this Agreement, in whole or in part.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No act or conduct other than a specific, written waiver of a right shall be deemed a waiver by Owner. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

18. NOTICES. All notices required or permitted pursuant to this Agreement or otherwise shall be in writing and shall be delivered as follows: to Contractor at Contractor's business address as shown on page one (1) of this Agreement; to Owner through Owner's official Registered Agent for service of legal process in the state where the Work is performed at that Registered Agent's registered office. Notices may be given by personal delivery, facsimile, commercial overnight delivery service, personal delivery or ordinary mail and shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by commercial overnight delivery service, and upon confirmation if sent by facsimile transmission or by personal delivery. Rejection, refusal to accept or the inability to deliver because of changed address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or subsections.

Floor Covering

SOUTH CAROLINA VERSION (REV. February 11, 2015)

INITIALS: OWNER M CONTRACTOR ckc



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

138 4843

NAME OF CONTRACTOR CARYL MECHANICALS II, INC ("Contractor")
 Sole Proprietorship ☐ Partnership ☒ Corporation ☐ L I C ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No. 20-521569
 Name of Owner(s)/Officer(s): MATT WALKER
 Division Name _____ Area Name _____ Assigned Vendor No. _____
 Address for All Notices: 5910 STOCKBRIDGE DRIVE
 City MONROE State NC Zip Code: 28110
 Telephone () 714 860-4521 Fax: () 714 860-4521 E-Mail Address: M.WALKER@CARYLMECHANICALS.COM
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 21st day of OCT, 2009, between
D. R. HORTON INC ("Owner") and Contractor

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of the Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement (the "Work") shall include all work performed and materials supplied by Contractor to Owner including but not limited to the labor, services and/or materials, equipment, transportation, or facilities necessary to complete the construction-related activities generally described in Exhibit A. The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing will not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to or in place of Contractor. Contractor will be awarded Work on a lot by lot basis. To the extent Exhibit A contains more than one type of construction-related activity, Contractor must clarify with Owner before the Work commences as to which construction-related activity it has been awarded for the lot in question.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, method and performance of the Work. Contractor shall not be considered an agent or employee of Owner for any purpose, nor shall any employees or permitted subcontractors of Contractor. Contractor shall not represent itself as the agent of Owner unless owner has specifically permitted Contractor to do so in writing. The results achieved shall satisfy the requirements of this Agreement. Contractor shall be responsible for the performance of its employees and permitted subcontractors, and all personnel used by Contractor in the performance of Work shall be qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further agrees to provide written notification to all of its present and future employees of Contractor's provision for Worker's Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work herein covered or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall pay and shall be solely responsible for all tax withholding, Social Security, state unemployment and all other withholding as required by law Contractor's employees, agents or permitted subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNLESS CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule, the superseded Pricing Schedule shall remain in effect for Purchase Orders issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing of the house incorporating the Work from Owner to a purchaser. Contractor hereby agrees that timely invoicing is an important and material term to this agreement, and timely invoicing is a part of Contractor's performance of all material terms of this contract. Contractor hereby waives payment for any Work where Contractor fails to invoice Owner in a timely manner in conformity to this agreement. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR

Executed this 21st day of OCT, 2009

Owner: Danand P. Jeanfreau Jr. Contractor: Matt Walker
 By: ED JEANFREAU By: MATT WALKER
 Name: JEANFREAU Name: MATT WALKER
 Title: PURCHASING Title: PRINCIPAL
 Division President

INITIALS: OWNER [Signature] CONTRACTOR [Signature]

ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO SUBCONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN AND THAT OWNER DOES NOT AGREE TO PAY TO SUBCONTRACTOR INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF DELAYED PAYMENTS.

4.2 Payment to Subcontractors. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Order, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed from Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties, and these joint payments shall satisfy amounts owed by Owner to Contractor, notwithstanding the fact that the third parties may not endorse the checks. In any instance where Owner receives written notice from one of Contractor's sub-contractors, whereby the subcontractor claims a failure to be paid for the Work, Owner reserves the right to pay the subcontractor directly or to make payment payable to both the Contractor and its subcontractor.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the Contract Price shall waive and release all claims against Owner and the property under this Agreement, but shall not waive any claims of Owner arising out of Work later found to be defective and shall not release Contractor from liability for warranties and warranty service and/or defective Work. Contractor shall remedy any defects and pay for any damage resulting from any defects in or caused by the Work or as required by any other contracts between Owner and Contractor or by law or customary practice. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or assigns is an acceptance of the Work or materials not in compliance with this Agreement.

5. SCHEDULE OF WORK.

5.1 Time is of the Essence. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work.

5.2 Construction Schedule. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.3 Commencement of the Work. Owner shall issue an authorization (either pursuant to a written purchase order, payment schedule, or work invoice ("Purchase Order") or verbal instructions from an authorized Owner representative) to commence the Work and Contractor shall not commence the Work at a job location until Contractor has received instructions to begin Work at a specific job location. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.4 Changes in Construction Schedule. Contractor agrees that Owner shall have the right to make changes to the schedule of Work at Owner's discretion and agrees to comply with such changes.

6. PERFORMANCE STANDARDS.

6.1 Applicable Standards. Contractor shall perform all Work in a good and workmanlike manner, in accordance with the plans and specifications of Owner, according to industry standard practices, and warrants that the Work will meet or exceed FHA minimum property standards, VA requirements, all laws (statutory or common) and regulations, and any applicable building code requirements.

6.2 Contractors' Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized Owner's employee and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications as the plans and specifications affect the Work and materials incorporated in the Work, and that the plans and specifications are clear and unambiguous, and has accepted and agreed to be bound by all such requirements.

6.3 Government Requirements. Contractor will comply with all applicable federal, state, local, and county statutes, ordinances, regulations, codes, licensing requirements and standards, and the requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 as amended, as well as the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., or similar laws or regulations, and the rules, regulations, or orders of all public authorities relating to performance of the Work, including without limitation, the procurement and posting of all required permits and notices. In addition, Contractor will not discriminate in its hiring or employment and will follow all state and federal employment laws or regulations. Contractor shall perform background checks and use only appropriate employees to perform warranty or repair work after a house is occupied.

6.4 Indemnity. To the fullest extent allowed by law, Contractor will agree to indemnify, defend, and hold Owner harmless from all actions, claims, investigations or other acts to enforce such laws or regulations, and further agrees to indemnify Owner from the payment of any fine, penalty or damages imposed, levied, assessed, or found as a result of the Contractor's failure to comply with or adhere to the applicable laws and regulations, or from Contractor's failure to cause its employees or subcontractors to comply with such laws and regulations.

6.5 Observation and Testing by Owner and Repair by Contractor. Owner shall have the right to observe or test the Work at any time during or after construction, but that observation or testing is solely for the benefit of Owner's and is not for Contractor's benefit. Owner's failure to note defects in the Work during an inspection will not waive any of Contractor's obligations, representations or warranties related to the Work. Notwithstanding anything contained in this Agreement to the contrary, all Work shall be performed and any defects shall be corrected timely and in accordance with this Agreement to the satisfaction of Owner.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work, and shall report in writing to Owner any defects prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractor's work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses and approvals necessary for or applicable to the performance of the Work.

6.8 Change Orders. The Contractor shall furnish the materials for and to make all changes requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed;

INITIALS: OWNER  CONTRACTOR 

(ii) governing storage of materials on the job location, (iii) regulating trash pick-up and waste collection at the job location, and (iv) work site safety requirements

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste materials or rubbish caused by its operations and shall remove all of Contractor's materials, and if materials are furnished by Owner, Contractor shall move all usable materials provided by Owner to a location designated by Owner. Contractor shall sweep out any waste material from inside the home under construction upon completion of its operation. All refuse shall be placed in receptacles provided or at locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up activities and collect a one hundred dollar (\$100.00) fine from Contractor for each incident. The cost of such clean-up and the aforementioned fine shall be deducted from any sums owed by Owner to Contractor, or shall be immediately payable by Contractor upon demand therefore by Owner.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from or in any way related to the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Owner reserves the right to set minimum standards or rules relating to Work on its site. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OWNERS MINIMUM REQUIREMENTS. THE OWNER ASSUMES NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe condition or practice observed on the Work Site. Further, Contractor shall immediately notify Owner of any accidents or injuries on the Work Site. Contractor shall have an ongoing safety program and conduct inspections to determine that safe working conditions and equipment exist and safe practices are observed. Contractor shall prohibit and prevent the presence of children under age eighteen (18) from the Work Site.

7.1 Safety Laws and Indemnity Agreement. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards, statutes, and industry best practices concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations. Contractor shall provide Owner with written verification of its compliance with all applicable safety and health standards and regulations, including but not limited to OSHA's Hazard Communication Standard for the Construction Industry, 29 C.F.R. §1926.59 et seq., and provide written notice to Owner of the contact person responsible for Contractor's compliance with all safety and health standards and regulations. To the fullest extent allowed by law, Contractor agrees to indemnify, defend, and hold Owner harmless from all actions prosecuted to enforce and the payment of any fine or penalty imposed under such safety laws and regulations and shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work.

7.2 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, permitted subcontractors or suppliers at a job location or performance of the Work by any person under the influence of alcohol or drugs.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate corporations, and successors and assigns, that all labor performed and materials furnished by Contractor shall conform to the specifications of this Agreement, shall be free from any defects or deficiencies in workmanship or materials, and will comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, will meet or exceed the FHA/VA minimum property standards, and will comply with the Residential Warranty Corporation ("RWC") Program and the applicable limited warranty standards, which Contractor has read and understands and to which Contractor agrees to be bound. All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects for purposes of Contractor's obligations under this Contract. Contractor shall make good and promptly repair all Work not complying with the standards set forth in this section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Paragraph 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, the initial homeowner of the property on that is the subject of the Work: (i) for a period of ten (10) years all structural elements, including, but not limited to, roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems, (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; (d) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (i) any statutory warranty or (ii) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner (a "Homeowners Warranty"). Contractor expressly agrees to be bound by any such Homeowners Warranty and to the extension of warranty period hereunder. Furthermore, notwithstanding the foregoing, Contractor agrees that all express and implied warranties shall remain in full force and effect for so long as Owner is obligated to warrant the Work pursuant to applicable law. Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Homeowners Warranty that is longer than the Warranty Periods stated above, provided, however, failure to give that notice will not affect the extension of the Warranty Period to the applicable warranty period under the Homeowner's Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty obligations, Contractor's indemnity obligations, or the ability of Owner to request Contractor to perform warranty services in the future.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment, and shall furnish all certificates required by any municipality and/or VA and/or FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and are not in limitation of periods of applicable statutes of limitation.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Project is located.

9.3 Lien Claim Indemnity. If any liens are filed against Owner relating to portions of the Work for which Owner has paid Contractor, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such lien or affidavit to be removed.

INITIALS: OWNER  CONTRACTOR 

and released of record. Contractor agrees to **INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS** from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any liens relating to portions of the Work for which Owner has paid Contractor, and further agrees at Owner's request to any or all of the following: (i) procure a bond to indemnify Owner and any home purchaser from Owner, in an amount sufficient to discharge that lien, or (ii) refund to Owner all monies, including any additional amount necessary to cover all of Owner's or home purchaser's attorneys' fees and court costs paid in discharging the lien, whichever remedy Owner elects in its sole and absolute discretion, or (iii) provide sworn testimony that payment has already been made to Contractor for the work for which the alleged lien applies.

10. CONTRACTOR'S INDEMNITY.

10.1 **GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY AGREES TO HOLD HARMLESS, INDEMNIFY, PROTECT AND DEFEND OWNER, ITS PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THE AFOREMENTIONED ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "INDEMNITEE"), FROM AND AGAINST ANY AND ALL DEMANDS, CLAIMS, ACTIONS, CAUSES OF ACTION, PROCEEDINGS, LAWSUITS, SETTLEMENTS, JUDGMENTS, FINES, PENALTIES, LOSSES, ATTORNEYS FEES, LITIGATION COSTS, INTEREST, AND EXPENSES OF ANY KIND (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "LOSSES") FOR DAMAGES FROM BODILY OR PERSONAL INJURY, DEATH, THE DESTRUCTION OR LOSS OF PROPERTY (INCLUDING LOSS OF USE), OR ANY OTHER KIND OF DAMAGES OR HARM, ARISING OUT OF, OR RESULTING FROM, OR RELATED IN ANY WAY TO THE WORK PERFORMED AND/OR THE MATERIALS SUPPLIED UNDER THIS CONTRACT, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY INDEMNITEE. SUCH LOSSES SPECIFICALLY INCLUDE, BUT ARE IN NO WAY LIMITED TO LOSSES ARISING OUT OF OR ATTRIBUTABLE TO: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR OBLIGATIONS OF CONTRACTOR SET FORTH HEREIN; (2) THE WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR, CONTRACTOR'S AGENTS OR EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, AND/OR ALL OTHER ENTITIES OVER WHOM THE CONTRACTOR MAY EXERCISE CONTROL (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "CONTRACTOR'S AGENTS"); (3) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF CONTRACTOR AND/OR CONTRACTOR'S AGENTS; OR (4) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE INDEMNITY FOR LOSSES CAUSED SOLELY BY FAULT OR NEGLIGENCE OF THE INDEMNITEE. THE LOSSES DESCRIBED HEREIN SHALL INCLUDE, BUT ARE NOT LIMITED TO, DEMANDS, CLAIMS, OR ACTIONS ASSERTED BY (1) ANY PRESENT OR FUTURE OWNER OF THE HOUSE INCORPORATING THE WORK; AND (2) ANY OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY CONTRACTOR AND/OR CONTRACTOR'S AGENTS). THE INDEMNIFICATION OBLIGATION UNDER THIS CONTRACT SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. THE INDEMNITY PROVISIONS CONTAINED HEREIN ARE INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY LAW.**

10.2 **INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. IT IS THE EXPRESS INTENTION OF THE PARTIES THAT CONTRACTOR'S INDEMNITY OBLIGATIONS HEREIN WILL SURVIVE THE TERMINATION OF CONTRACTOR OR THIS AGREEMENT. INDEMNITEE SHALL HAVE THE RIGHT, AT ITS DISCRETION AND CHOOSING, TO DEFEND ANY AND ALL CLAIMS WHICH MAY BE ASSERTED AGAINST IT, AND CONTRACTOR AGREES TO REIMBURSE INDEMNITEE FOR ANY AND ALL EXPENDITURES WHICH INDEMNITEE MAY MAKE OR INCUR ON ACCOUNT OF ANY SUCH CLAIM.**

10.3 **CONTRACTOR AND CONTRACTOR'S AGENTS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS OR EQUIPMENT.**

10.4 **Subcontractor's and Supplier's Indemnity Obligations.** Contractor shall require each of its subcontractor to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required in this section and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms as Section 13. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the actions of any subcontractor engaged by Contractor, whether in written agreement or otherwise, or who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed to be the obligation of the subcontractors to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 **General Liability.** Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with completed operations coverage which contains a per occurrence limit of no less than one million dollars (\$1,000,000.00), and an aggregate limit of no less than two million dollars (\$2,000,000.00) protecting against liability for bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations, (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit), (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type of, or nature of, the Work or limit the type of structure on which the Work is to be performed. The CGL Policy shall not contain a deductible or self insured retention of more than \$25,000.00. Contractor shall continuously maintain a CGL Policy covering completed operations for any applicable statute of repose for commencing lawsuits associated with the Work.

11.2 **Other Insurance.** Contractor agrees to carry (i) Worker's Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Worker's Compensation obligations imposed by law, (ii) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than one million dollars (\$1,000,000.00) and an aggregate of no less than one million dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment, and (iii) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person (Bodily Injury) and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 **General Requirements Applicable to All Required Insurance.** Contractor shall add Owner as an Additional Insured on the CGL Policy or policies required above covering both on-going operations and completed operations (equivalent to form CG20101185 or form CG2037). Coverage obtained by Contractor naming Owner as an Additional Insured shall be primary with any insurance of Owner being excess coverage. That insurance coverage will be carried continuously during the term of this Agreement and thereafter as required by this Agreement with insurance companies acceptable to Owner in its sole and absolute discretion. That insurance shall provide for a waiver of subrogation. All insurance shall be with

INITIALS: OWNER 6/11, CONTRACTOR M. Al.

a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the required policies. Each Certificate of Insurance or policy shall contain an unqualified clause to the effect that the policy shall (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days' prior written notice to Owner, (ii) be carried continuously from the date of commencement of the Work until expiration of the period of the Contractor's warranty provided in this Agreement, (iii) specifically identify Owner as an Additional Insured, and (iv) indicate that coverage applies in the state where the Work is being performed. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself and the Work required to be performed under this Agreement.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER IN ITS SOLE AND ABSOLUTE DISCRETION) IN EFFECT AT THE TIME WORK IS PERFORMED TO COMPENSATE OWNER FOR ANY ADDITIONAL COSTS OF ITS WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS CONTRACT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work to the extent permitted under this Agreement, Contractor guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Owner as an Additional Insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or another contractor's work is damaged by an act for which Contractor, or its employees, agents or subcontractors, are responsible, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct such Work, replace or repair any defective material, or repair any damage. Contractor shall make all repairs and correct such within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours notice on a non-emergency basis, or (ii) retain a third party or undertake to perform those duties, and retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld resulting in a deficiency, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and reasonable attorneys' fees, incurred by Owner, and shall pay to Owner this amount within thirty (30) days of demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Paragraph 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or permitted subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location as a result of Contractor's actions or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement, Exhibit A of this Agreement, or the specifications; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order that is Contractor's obligation under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary tools, material, or equipment for, or cleaned up after, the Work; (viii) Contractor fails to comply with any other provision of this Agreement.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement and rights and remedies available under this Agreement shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. Owner shall have a right to collect from Contractor its reasonable attorneys' fees and expenses incurred in enforcing Contractor's obligations.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These Disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking equitable relief from and arbitrator or a court of appropriate jurisdiction.

13.3 Arbitration. If mediation fails, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq., regardless of any other choice of law provision in any underlying contract or this Agreement. All demands for arbitration shall be made before the expiration of the applicable statutes of limitations and repose. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court of competent jurisdiction.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrators mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes, is over \$200,000, but only one arbitrator shall be appointed if the Dispute is 200,000 or less. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of a mediator or arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint a mediator or arbitrator. The AAA's Code of Arbitrator Ethics (revised March 1, 2004) is applicable to all arbitrations.

INITIALS: OWNER EL, CONTRACTOR mm

13.5 Rules. To the extent not in conflict with the Federal Arbitration Act, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner may join Contractor in any litigation, mediation, or arbitration initiated against Owner by a third person so that the rights of all parties (Owner, Contractor, Subcontractor, or any third person) shall be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner where necessary to facilitate resolution in a single forum. If multiple lawsuits or arbitrations are commenced, they shall all be consolidated into a single proceeding. Notwithstanding any other provision of this section, if a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect to unilaterally waive mediation or arbitration and litigate the Dispute with Contractor.

14. TERMINATION.

14.1 Termination by Owner for Cause or Convenience. This Agreement shall remain in full force and effect until terminated in writing by mailing notice to the other Party. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) Days' written notice before the effective date of termination, and shall perform fully under this Agreement during that notice period. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.3 Survival. All obligations, duties and warranties for Work performed under this Agreement shall survive termination.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement, (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement, (iii) this Agreement is or will be (when executed) a binding obligation of Contractor, enforceable in accordance with its terms, (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority, (v) Contractor has, and each Contractor's employees, agents or permitted subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement, (vi) Contractor is in compliance with all governmental requirements to which it is subject, and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement, and with respect to prices and quantities only, the Price Schedule and all written Purchase Orders shall be the entire agreement between Owner and Contractor related to the Work, and there are no other agreements, oral or written, made by or relied upon by Owner and Contractor. Except as otherwise provided in this Agreement, no provision of this Agreement may be amended or supplemented except in writing signed by both Owner and Contractor.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights and obligations are not assignable or transferable without the express written consent of Owner, who may consent can be withheld in Owner's sole and absolute discretion. Subject to the restrictions and prohibitions on assignment set forth in this section, the terms of the Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Contractor shall provide and transfer ownership to any and all samples and/or shop drawings requested by Owner.

18. NOTICES. All notices required pursuant to this Agreement or otherwise shall be in writing and shall be delivered to the respective business address of Owner and Contractor. However, Contractor's business address shall be as noted on page one (1) of this Agreement. Notices shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by overnight delivery service, and upon confirmation if sent by facsimile transmission.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or articles.

SOUTH CAROLINA REVISED 7/23/2007

INITIALS: OWNER BA, CONTRACTOR ML

PERFORMANCE REQUIREMENTS AND SPECIFICATIONS
"Exhibit A"

DESCRIPTION: HVAC

PERFORMANCE REQUIREMENTS

Contractor will warrant the installation of each installed HVAC unit. Contractor agrees to provide all labor, material, hand tools, equipment (including safety equipment), supervision, supplies and other incidentals necessary to install the heating, ventilating and air conditioning (HVAC) work and perform all such work in accordance with the house plans, specifications addenda and other documents that make up the contract documents.

All work shall meet or exceed the requirements of the D.R. Horton Protection Plan and all applicable building codes.

Hard hats and appropriate safety equipment are to be worn at all times while on D.R. Horton's property. The contractor shall ensure that each crew leader has attended the appropriate OSHA approved "Competent Person" training course.

NON-PERFORMANCE REMEDY

Contractor is also responsible for all inspections and work must conform to all city, county, and state code requirements per area. Contractor is responsible for all costs associated with failed inspections.

SPECIFICATIONS AND SCOPE OF WORK

Work shall comply with, or exceed the most restrictive requirements of this specification or the latest adopted standards of the following publications, which form a part of this specification: (LCO, ASHRAE, ANSI, ASME, NBS, NEC, NFPA, SMC, SMACNA, ARI, SGC, IRC, CABO, and OSHA)

The HVAC Trade partner shall use the design standards described in the most current edition of Manual J and D.R. Horton "u" value calculations for walls, ceilings and floors.

The basic system should be bid including all labor and materials necessary to install a complete job. A system shall be identified by its total BTUH cooling capacity by designating indoor coil and outdoor coil tonnage. The system shall include:

1. Attic installation of a vertical flow furnace
 2. Zoned system with all two-story plans. One zone and thermostat for each floor. (minimum)
 3. Dampers as needed or at builder's direction
 4. Attic run duct work (no risers)
 5. 50' or less of line set (copper run)
 6. Maximum of five (5) line terminations
 7. Master and Hall bath exhaust fan with vent to outside (supplied and wired by others)
 8. Powder room exhaust fan/light with vent to outside (supplied and wired by others)
 9. Run Type "A" gas vents for furnace and water heater through chase and attic terminating with approved storm collar and cap. Type "C" single wall vent can be used from furnace to water heater "T" if applicable
 10. Dryer vent to be 4" Type "C" with approved 4" vent cap.
 11. Condensation drain piping and traps
 12. Low-voltage wiring needed to operate the system
 13. Gas venting, vent pipe, caps, transitions for both heating systems and water tank
 14. Pressure testing of gas lines
 15. A minimum of one return per floor (return size per code)
 16. A return in all master bedrooms. All returns will be carefully checked to assure all trash has been removed prior to installation.
 17. Mount thermostat 5' above finished floor per plan location. Mount the 2nd thermostat in the master bedroom
-
1. Coordinate the location and installation of ducts, freon and condensation lines with other trades and D.R. Horton to ensure a free and unencumbered area for the runs.
 2. Coordinate with the drywall trade contractor to insure that all return air plenums are properly and completely sealed and free of air loss.

Revised 7/27/2004

Page 1 of 1

Initials M.W.

3. Start up, test and balance entire system as well as check for leaks. **(Including all gas hook ups and gas range.)**
4. Clean up all materials resulting from the work and remove from the site or place in on-site disposal container. (If available).
5. Install specified range and cook-top exhaust and bath venting.
6. Cut, Core and patch as required to complete work, holding responsibility for finished workmanship on any and all modification to structure during install.
7. 4" wide nail protector (HVAC Strap) to be used at all top plate penetrations and trim nails @ weinscoat.

Under no circumstances shall a truss member be cut or altered. Truss systems incompatible with ductwork shall be brought to the attention of DR Horton and shall be replaced or modified per truss manufacturer's specifications. All gas pipes shall be installed and tested in accordance with the Standard Gas Code. Penetration for main gas service line shall be set 6" above finish floor.

Contractor must clean up any trash and waste and place in designated trash receptacle. House is to broom swept clean daily. Contractor agrees to comply with all applicable building codes, ordinances and OSHA regulations.

ACKNOWLEDGMENT

These specifications are a part of the contract identified above. D.R. Horton, inc. reserves the right to modify or amend any of the above general specifications at any time, and will notify the contractor as soon as any change is initiated.

Contractor:

CARYL MECHANIS II

By: [Signature]

Date: Jan 14, 2010

Builder

D.R. Horton, Inc.

By: Edmond B. Jeanfrean Jr

Date: 1/20/10

U-HURION
America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Five Star Foundation LLC ("Contractor")
 Sole Proprietorship ☐ Partnership ☐ Corporation ☒ L.L.C ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No.: 58-2445381
 Name of Owner(s)/Officer(s): Brian Forcier
 Division Name: GVL Area Name: 709 Assigned Vendor No.: 1518749
 Address for All Notices: PO Box 2739
 City: Greer State: SC Zip Code: 29652
 Telephone: (844) 877-3265; Fax: (844) 877-4932; E-Mail Address: FiveStarFoundation@hotmail.com
 Insurance Certificates: ATTACH OR THERE WILL AUTOMATICALLY BE REDUCTION IN PAYMENT TO CONTRACTOR.

This agreement (the "Agreement") is entered between DE Horton Inc ("Owner") and Contractor.

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of this Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement shall include all work performed and materials supplied by Contractor, directly or indirectly, to Owner, including but not limited to the labor, services and/or materials, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized by written purchase order, or similar document by Owner's authorized field personnel (the "Work"). The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing shall not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to, or in place of, Contractor.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, method and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further shall provide written notification to all of its present and future employees of Contractor's provision for Workers Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall be solely responsible for and will pay all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNTIL CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule implementing a price increase, the superseded Pricing Schedule shall remain in effect for Purchase Orders (defined herein) issued after any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO CONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN. CONTRACTOR AGREES THAT OWNER DOES, AND WILL, NOT OWE INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF ANY DELAYED PAYMENT.

THIS AGREEMENT CONSISTS OF EIGHT (8) PAGES.

Executed this 19 day of March, 2021.

Owner:
 DocuSigned by:
 By: Jason Powell
 Name: Jason Powell
 Title: Division President

Contractor:
 By: BC
 Name: Brian Forcier
 Title: Owner

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er than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing from Owner to a purchaser of the house incorporating the Work. All of Contractor's invoices shall be dated upon initial submittal. To the extent permitted by law, Contractor waives its right to payment for any Work not invoiced in a timely manner. Owner shall timely pay Contractor for completed, accepted Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, and Contractor provides invoices for progress payments, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order, as defined herein.

4.2 Contractor Payments. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed by Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Unless otherwise agreed by Owner and Contractor, payment to Contractor shall be made by check. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties; and these joint payments shall satisfy amounts owed Contractor, whether or not all parties endorse the checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the contract price shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of or resulting from the Work and shall not release Contractor from any obligations under this Agreement, including but not limited to liability for warranties, Corrective Services (defined hereinafter), or any other liability for alleged defects in the Work. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or customers or assigns shall constitute an acceptance of the Work or materials not in compliance with this Agreement, or be used in any way as evidence of acceptance by Owner.

4.4 PAYMENT DISPUTE. CONTRACTOR AGREES NOT TO MAKE ANY CLAIM, OR BRING ANY ACTION (INCLUDING BUT NOT LIMITED TO A LAWSUIT OR ARBITRATION), AGAINST OWNER FOR UNPAID WORK MORE THAN TWO (2) YEARS AFTER THE DATE OF A TIMELY SUBMITTED INVOICE OR REQUEST FOR PAYMENT FOR SUCH WORK. ANY CLAIM OR ACTION FOR THESE DAMAGES NOT BROUGHT WITHIN THIS TIME PERIOD SHALL BE BARRED AND WAIVED, WITHOUT REGARD TO ANY OTHER LIMITATIONS PERIOD SET FORTH BY LAW OR STATUTE.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. At all times during the progress of the Work, Contractor shall employ enough skilled workmen, and have on hand and maintain an adequate supply of materials and equipment, to complete the Work in accordance with Owner's construction schedule. Contractor agrees to keep itself continuously informed of the progress of the Project to coordinate with Owner all Work scheduled, and to cooperate with other contractors, architects, and engineers performing work on the Project. Owner, at its sole, absolute discretion, may alter the time, order, and priority for performance of all components of the Work without increase in price from or liability of any kind to Contractor or others. Contractor shall comply with such changes.

5.2 Authorization and Commencement of the Work. Authorization for any Work shall be in writing, either pursuant to a written purchase order, work invoice, or similar document ("**Purchase Order**"). Contractor shall have no authority to commence the Work at any specific job location until Owner has issued instructions to proceed. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

6. PERFORMANCE OF THE WORK.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FHA minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all laws (statutory and common), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements). In the event of conflicting provisions, specifications will take precedence over the drawings; the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive; later modifications or changes will supersede or take precedence over earlier provisions. Contractor shall immediately notify Owner in writing of any allegedly conflicting provisions.

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall have absolute authority to act, in all respects, on behalf of and for Contractor.

6.3 Contractor's Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized employee of Owner and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, and that the plans and specifications are clear and unambiguous, and that Contractor has accepted and agreed to be bound by all such requirements.

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "**Requirements**"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD HARMLESS** Owner from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of

INITIALS: OWNER JP, CONTRACTOR RF

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kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor. In addition, Contractor shall not discriminate illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform Corrective Services after a house is occupied.

6.5 Observation, Inspection and Testing. Owner and any government agency inspector ("Inspector") shall have the right, but not the obligation, to observe, inspect or test the Work at any time, but that observation, inspection or testing is solely for the benefit of Owner and is not for Contractor's benefit. Contractor shall cooperate with Owner and Inspector during any such inspection. The failure by Owner or Inspector to note defects in the Work during an inspection shall not waive or vary any of Contractor's obligations, representations or warranties related to the Work.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses, approvals, and as-built drawings necessary for, or applicable to, the performance of the Work. Contractor shall provide copies to Owner immediately upon request.

6.8 Change Orders. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes. Contractor shall comply with any Change Order requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including but not limited to, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site (defined below) safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not limited to trash, unused building materials, garbage, refuse or rubbish ("Waste"), caused by its operations and shall remove all of Contractor's materials at the conclusion of the Work. If materials are furnished by Owner, Contractor shall move all usable materials at the conclusion of the Work to a location designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon Owner's demand and may be deducted from any sums owed Contractor.

6.11 Stormwater Management.

6.11.1. Program Participation; Orientation Acknowledgment Receipt. Contractor, by signing this Agreement, acknowledges receipt of Owner's stormwater management program. Contractor agrees to keep itself fully informed, participate in, and comply with Owner's stormwater management program and agrees to provide program documents and training to Contractor's employees and subcontractors. Contractor agrees to hand deliver Owner's stormwater management program materials, when provided by Owner, to Contractor's employees and subcontractors (of every tier) who perform work in or deliver material or supplies to a Work Site. Owner may reasonably modify the stormwater management program and its requirements for future performance of the Work at any time in its sole discretion, and Contractor, its employees, and its subcontractors of every tier will comply with those modifications when provided. Upon Owner's request, Contractor shall provide a separate, signed acknowledgement and agreement that it shall comply with the Owner's stormwater management program and distribute Owner's stormwater management program materials as required.

6.11.2 NPDES and SWPPP Compliance. Without limiting the foregoing Subsections 6.4 and 6.11.1, Contractor represents, warrants and covenants that: (a) prior to performing any Work at a Work Site, Contractor will review and ensure that it understands the federal National Pollutant Discharge Elimination System ("NPDES") construction general permit ("CGP"), the stormwater construction general permit issued by the authorized state, and construction stormwater requirements of local government bodies applicable to the Work Site or Project (collectively the "Applicable Permits"), and the Work Site-specific Storm Water Pollution Prevention Plan and/or plan required by the Applicable Permits ("SWPPP"); and, (b) Contractor will comply with the terms, conditions and limitations of each such Applicable Permit and SWPPP, to the extent applicable to the Work. Upon Owner's request, Contractor shall provide a separate, signed acknowledgement and agreement that it shall comply with the Applicable Permits and SWPPP.

6.11.3 Program and Compliance Enforcement. In addition to any remedy for non-compliance within Owner's stormwater management program and any such other Owner deems reasonable given the circumstances in Owner's sole discretion, if Owner reasonably determines that Contractor has failed to comply with this Subsection 6.11, Owner may assess a daily fine against Contractor in such amount as Owner reasonably determines based upon the non-compliance, until Contractor has cured the non-compliant condition or practice. The amounts assessed under this Subsection 6.11.3 shall be deducted from any sums owed to Contractor or shall be immediately payable by Contractor upon demand. Nothing within this Subsection 6.11 shall: (y) relieve or absolve Contractor from its Indemnification Obligations, defined below; or, (z) limit potential consequences for failure(s) to comply with the Applicable Permits, SWPPP, or Owner's stormwater management program.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe

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DocuSign Envelope ID: 7C066C7F-895D-43E4-9338-02097CAD79F : observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

7.2 Safety Laws. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations ("Safety Law"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of, or noncompliance with, the Safety Law, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD HARMLESS Owner from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation or noncompliance by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, of the Safety Law, or safety citation. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and, if required by law, provide written notice to Owner of the contact person responsible for Contractor's safety compliance.

7.3 Hazardous Materials. Contractor shall not permit any Hazardous Substances, defined below, to be brought onto or stored at any job site or used in the construction of the Work, except for commonly used construction materials, provided however, that all such material shall be handled in full compliance with all laws, ordinances and regulations. All notices required to be given with respect to such products shall be given by Contractor. Contractor shall not release or dispose, nor allow any other person to release or dispose, of Hazardous Substances or waste at any job site or into the soil, drains, surface or ground water, or air. "Hazardous Substance" means any substance or material which any state, federal or local governmental authority determines or designates as capable of posing a risk of injury to health, safety, property or the environment.

7.4 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, agents, subcontractors or suppliers at a job location, or performance of the Work by any person under the influence of alcohol or drugs. "Drugs" shall include any substance, whether or not illegal, which upon exposure, ingestion, inhalation, injection or by any other introduction, may impair one's ability to safely perform the Work.

8. CONTRACTOR'S WARRANTIES.

8.1 Defective Work. For the longer of ten (10) years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work performed and provided shall conform to this Agreement (including but not limited to the standards referenced in Subsection 6.1) and shall be free from any defects or deficiencies in workmanship or materials. All Work not conforming to these requirements shall be considered defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects.

8.2 Homeowners Warranty. In addition to Contractor's warranties under Subsection 8.1 above, Contractor acknowledges that Owner provides its residential customers a warranty program, which consists of a limited one-year warranty from Owner, its parent company or one of its subsidiaries or affiliates, and a ten-year limited warranty from the Residential Warranty Company, LLC ("Homeowners Warranty"). Contractor agrees to be bound to Owner as Owner is bound to its customer under the Homeowners Warranty with regard to the warranties, standards, and obligations related to Contractor's Work covered by the warranty program. Contractor acknowledges that it has been provided a copy of the Homeowners Warranty, it has read and understands it, and it may be provided another copy at any time upon request.

8.3 Corrective Period. If the Work is determined by Owner to be defective or in breach of any warranty, including but not limited to the Homeowners Warranty, Contractor shall promptly correct, repair, or replace the defective Work promptly at Contractor's expense after Owner notifies Contractor of the defect and requests corrective work ("Corrective Services"). Corrective Services may be requested at any time after transfer of title from Owner to any initial home purchaser (or owners association) of the property subject to, benefiting from, or improved by the Work through the following periods: (i) for a period of ten (10) years for all structural elements of housing unit included in the Work, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilation/air conditioning components, including but not limited to units, condensers, duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing, pipes (supply and waste), and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, boxes, panels, plates, breakers, and connections up to the public utility connections; and (iii) all other elements of the Work not previously described for a period of one (1) year (the "Corrective Period"). Notwithstanding the foregoing, the Correction Period shall be expanded, but in no way limited, by any statutory warranty applicable to the Work. Owner will endeavor to notify Contractor of any such extension or expansion of the Corrective Period by way of a statutory warranty; however, failure to give such notice will not affect the extension or expansion of the warranty period to the applicable warranty period under the Homeowners Warranty. In the event Contractor's defective Work has damaged other work, or other work must be damaged or removed to correct Contractor's defective Work, Contractor shall bear the cost of correcting, replacing, or repairing such other work. The performance or fulfillment of any Corrective Services by Owner or any other third party will not affect, minimize, waive, or in any way obviate Contractor's liability or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform any Corrective Services thereafter. If Corrective Services are required in or will substantially affect any portion of the property in use by a residential occupier of the home, Contractor will endeavor to coordinate any Corrective Services with the owner and/or occupier as appropriate, and Owner will cooperate in this coordination, if necessary. This Corrective Period is not a limitation or shortening of any statute of limitations or repose, and is not related to or a limitation on when proceedings may be commenced to enforce any of Contractor's obligations under this Agreement.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product

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DocuSign Envelope ID: 7C066C7F-895D-43E4-9338-02097CAD79F s of the Work, including any appliances or equipment, and shall furnish all certificates required by any third parties such as any municipality, the VA, or the FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and shall not limit or reduce any applicable statutes of limitation.

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. TO THE EXTENT PERMITTED BY LAW, CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS OR SIMILAR CLAIMS AGAINST OWNER, OWNER'S PROPERTY, OR ANY OTHER PROPERTY RELATED TO THE WORK.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the lesser of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of this State.

9.3 Lien Claim Indemnity. If any liens, affidavits of claim, stop payment notices, or lis pendens arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such liens, affidavits of claim, stop payment notices, or lis pendens to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD HARMLESS Owner from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such liens, affidavits of claim, stop payment notices, or lis pendens, and further agrees immediately upon Owner's request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge any and all liens, affidavits of claim, stop payment notices, or lis pendens, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any of its customers in discharging the liens, affidavits of claim, stop payment notices, or lis pendens, within fifteen (15) days of written request by Owner demanding same, whichever remedy Owner elects in its sole and absolute discretion. This Subsection shall be in addition to any rights Owner has under applicable law with respect to such liens, affidavits of claim, stop payment notices, or lis pendens.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF, REASONABLE SETTLEMENT AMOUNTS, ATTORNEYS' FEES AND INTEREST), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (a) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (b) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO SERVICES PERFORMED OR MATERIALS SUPPLIED (OR TO BE PERFORMED OR SUPPLIED) BY CONTRACTOR OR ITS AGENTS, SUPPLIERS OR SUBCONTRACTORS OF ANY TIER; (c) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF CONTRACTOR OR ANY OF ITS EMPLOYEES, AGENTS, SUPPLIERS OR SUBCONTRACTORS OF ANY TIER RELATED IN ANY WAY TO THE WORK OR THIS AGREEMENT, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR, (d) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION, OR ANY STRICT LIABILITY, OF INDEMNITEE RELATED IN ANY WAY TO THE WORK, EXCEPTING ONLY LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY, WITH ALL DOUBTS RESOLVED IN FAVOR OF TRIGGERING CONTRACTOR'S DUTY TO DEFEND. THE DEFENSE DUTY IS TRIGGERED BY ALLEGATIONS IN A LAWSUIT OR OTHER SIMILAR ACTION, REGARDLESS OF WHETHER THEY ARE GROUNDLESS, FALSE OR FRAUDULENT, OR ALTERNATIVELY BY ANY FACTS (EXTRINSIC TO THE ALLEGATIONS) NOT PLED, OR NOT PLED WITH SPECIFICITY, BY THE CLAIMANT. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY INDEMNITEE AGAINST LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

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REES THAT ITS OBLIGATIONS UNDER THIS SECTION 10 SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION. ANY PAYMENTS BY CONTRACTOR UNDER THIS SECTION TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM. INDEMNITEE IS AN INTENDED THIRD PARTY BENEFICIARY OF THIS AGREEMENT.

10.3 NO BAILMENT. CONTRACTOR AND ITS EMPLOYEES, PERSONNEL, AGENTS, SUPPLIERS, AND SUBCONTRACTORS, OF ANY TIER, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST INDEMNITEE WITH RESPECT TO ANY LOSS OF, OR DAMAGE TO, SUCH TOOLS, MATERIALS, OR EQUIPMENT.

10.4 Subcontractors Indemnity Obligations. Contractor shall require each of its subcontractors to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the fullest extent permitted by law, Contractor shall require that each subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors to agree to submit to binding arbitration on the terms set forth in Section 13 of this Agreement. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the acts and omissions of any subcontractor who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed also to be the obligation of the subcontractors to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Requirements Applicable to All Required Insurance. Prior to commencing any Work under this Agreement, and until expiration of the periods set out below, Contractor shall maintain at its expense such insurance as will protect Contractor and Owner from claims and liabilities that may arise out of Contractor's operations under this Agreement, whether such operations are performed by Contractor or its subcontractors or suppliers, or any other person involved in performing Contractor's obligations under this Agreement. To the fullest extent permitted by law, all policies of insurance provided and maintained by Contractor pursuant to the Agreement shall provide for a waiver of subrogation in favor of Owner, D.R. Horton, Inc., all affiliates and subsidiaries of D.R. Horton, Inc., and their respective affiliates, officers, directors, and employees (collectively "Horton") for damages to the extent covered by such policies. All policies provided and maintained pursuant to this Agreement shall indicate that coverage applies in the state where the Work is being performed; and are written by an insurer licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor determines to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement. In the event that Contractor obtains insurance coverage that is broader than the minimums required by this Agreement, this Agreement shall be deemed to require the broader coverage, including but not limited to any greater limits and any excess or umbrella coverages. Coverage obtained by Contractor with Horton as an additional insured shall be primary and non-contributory, with any insurance of Horton being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work. Contractor shall immediately notify Owner in writing of any incident, occurrence, injury, or damages related in any way to the Work which may give rise to any claim or loss under any of the insurance coverages required by this Section 11. Horton is an intended third party beneficiary of this Agreement. In the event this Agreement is assigned to a third party not included within the definition of 'Horton', Contractor shall, from the date of the assignment, add the assignee as an insured as if it were originally included within the definition of 'Horton'; in addition, Contractor shall continue to maintain Horton as an insured, as required by the Agreement, after the assignment.

11.2 Commercial General Liability. Contractor shall maintain Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with a minimum per occurrence limit of no less than One Million Dollars (\$1,000,000), and a minimum aggregate limit of no less than Two Million Dollars (\$2,000,000). The CGL Policy shall apply separately to Contractor's Work under this Agreement, and shall protect against bodily injury, property damage, and personal injury claims arising from the exposures of: premises-operations; products-completed operations, including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); independent subcontractors; contractual liability covering the indemnity obligations set forth in this Agreement; and where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type, nature, or volume of the Work or limit the type of structure or number of units on which the Work is to be performed. The CGL Policy shall not contain a deductible or self-insured retention of more than Twenty Five Thousand Dollars (\$25,000), and shall allow the satisfaction of any and all deductible or self-insured retention through payments made by any third party, including but not limited to Owner or any additional insured, co-insureds, co-insurers, or insureds other than the primary or first named insured. Contractor shall continuously maintain its CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work. To the fullest extent permitted by law, Contractor shall add Horton as Additional Insureds, specifically identifying Horton, on the CGL Policy covering both ongoing operations and completed operations using endorsement form CG 20 10 11 85 or, if unavailable, both forms CG 20 10 10 01 and CG 20 37 10 01, or endorsement forms providing equivalent coverage.

11.3 Workers Compensation and Employers Liability Insurance. Contractor shall maintain Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law and Employer's Liability Insurance in an amount not

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DocuSign Envelope ID: 7C066C7F-895D-43E4-9338-02097CADC79F it for bodily injury, One Million Dollars (\$1,000,000) for bodily injury by disease, and One Million Dollars (\$1,000,000) for each employee for bodily injury by disease. The Workers Compensation and Employers Liability Policy shall not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner.

11.4 Business Automobile Insurance. Contractor shall maintain Business Automobile Liability Insurance coverage with limits of not less than One Million Dollars (\$1,000,000) per accident, specifying "all autos" coverage or "all owned, leased, hired or non-owned autos." The Business Automobile Liability Policy shall not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner. Owner shall be included as an Additional Insured on the Business Automobile Liability Policy.

11.5 Professional Liability Insurance. If Contractor's Work includes design or engineering services, Contractor shall maintain Contractor's Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000) and an aggregate of no less than One Million Dollars (\$1,000,000) protecting against faulty design and faulty professional judgment. The policy obtained to satisfy this requirement not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner.

11.6 Proof of Insured Status. Prior to commencing the Work, Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance signed by a duly authorized representative of the insurers and showing compliance with the insurance requirements set out above, including endorsements adding Horton as Additional Insured and waivers of subrogation. Alternatively, Owner reserves the right to request portions of policies (including but not limited to declarations pages and endorsements) or certified copies of the required policies. Contractor shall not be relieved of any indemnification obligation under this Agreement, including, but not limited to, those undertaken in Section 10 of this Agreement, by securing insurance coverage in accordance with Owner's insurance requirements or by Owner's approval of certificates of insurance or policies. Any acceptance of insurance coverage by Owner shall not be construed as accepting in any way deficiencies in the insurance.

11.7 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER BY OWNER POLICY WITH RESPECT TO PARTICULAR TRADE CATEGORIES IN ITS SOLE AND ABSOLUTE DISCRETION IN EFFECT AT THE TIME WORK IS PERFORMED) TO COMPENSATE OWNER REASONABLY FOR ANY ADDITIONAL COSTS OF ITS WORKERS COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR CONTRACTOR AND ITS EMPLOYEES UNDER THIS AGREEMENT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.8 Subcontractor Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Horton as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors to provide to Owner evidence of satisfactory insurance in accordance with this Agreement.

11.9 Subrogation. To the fullest extent permitted by law, Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including but not limited to claims relating to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Owner or any Indemnitee, and any of their consultants, subcontractors, agents, employees and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If, at any time prior to the beginning of the Corrective Period, Owners determines, in its sole, absolute discretion, that the Work is defective or incomplete, or if another contractor's work, or other property, is damaged by an act or omission of Contractor, or its employee, agent, supplier, or subcontractor, of any tier, or their respective employee or agent, Owner shall have the right to elect, at its sole, absolute discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs to complete, repair, or replace, plus any related costs or damage including re-inspection fees, with any excess to be paid to Contractor. If such costs exceed the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (a) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (b) claims or liens are filed against the job location as a result of Contractor's acts or omissions; (c) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (d) Contractor fails to perform, or to pay the costs and expenses of Corrective Services incurred by Owner, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (e) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (f) Contractor

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Owner or Contractor related directly or indirectly to the Work; (g) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or, (h) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may offset from amounts owing to Contractor hereunder any amounts owing by Contractor to Horton under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("**Disputes**") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described herein to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not mediate before seeking other relief.

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("**FAA**"). **IN MAKING THIS AGREEMENT, THE PARTIES ARE WAIVING THEIR RIGHTS TO FILE A LAWSUIT, TO HAVE A JURY RESOLVE ANY DISPUTE BETWEEN THEM, AND TO APPEAL THE DECISION OF THE ARBITRATOR TO A COURT OF LAW.** All demands for arbitration shall be made before the expiration of the applicable statutes of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified, or corrected only as permitted by the FAA.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator(s) mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes against Owner, is for One Million Dollars (\$1,000,000) or more, but only one arbitrator shall be appointed if the Dispute is for less than One Million Dollars (\$1,000,000). If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

13.5 Rules. To the extent not in conflict with the FAA, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("**AAA**") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) can be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner. If multiple lawsuits or arbitrations are commenced, Owner in its sole discretion may consolidate them into a single proceeding. Notwithstanding any other provision of this Section 13, if Owner determines in its sole discretion that a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect unilaterally to waive mediation or arbitration and to litigate the Dispute in court with Contractor.

14. TERMINATION.

14.1 Termination by Owner. This Agreement shall remain in full force and effect until terminated in writing by Owner by mailing notice to Contractor. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) days written notice to Owner before the effective date of any termination by Contractor, and shall perform fully under this Agreement during that notice period.

14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

INITIALS: OWNER DS, CONTRACTOR BF.

DocuSign Envelope ID: 7C068C7F-895D-43E4-9338-02097CAD79F : represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement; (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement; (iii) this Agreement is or will be (when executed) a binding obligations of Contractor, enforceable in accordance with its terms; (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority; (v) Contractor has, and each Contractor's employees, agents or subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement; (vi) Contractor is in compliance with all governmental requirements to which it is subject; and, (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to amend and supersede all prior Independent Contractor Agreements (other than any Master National Independent Contractor Agreement) for this State or other prior understandings or written or oral agreements regarding Work in this State, specifically including but not limited to all prior pre-printed standard contractor/subcontractor agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods or services or both by Contractor relating to the subject matter herein. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work and shall be deemed subject to the terms of this Agreement. Any future Pricing Schedules or Purchase Orders entered into hereafter shall also be deemed to be subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices and quantities of sale only. Nothing in any subsequent agreement or document, unless a new Independent Contractor Agreement for this State is executed, shall alter the terms set forth in this Agreement. To the extent possible, this Agreement shall be deemed to supplement the terms of any other agreement or document, unless a new Independent Contractor Agreement is executed. In the event of any conflict between this Agreement and other such documents, this Agreement shall be deemed to control and prevail. Except as otherwise provided in this Agreement, no amendment or supplement to this Agreement shall be valid or binding unless in writing and signed by both Owner and Contractor. Notwithstanding anything in this Subsection to the contrary, this Agreement shall not amend or supersede any Master National Independent Contractor Agreement, but shall supplement its terms. In the event of a conflict, to the extent permitted by law, the Master National Independent Contractor Agreement shall control.

16.2 Final Expression of Terms for Materials. The terms of this Agreement and the applicable Purchase Order or other ordering document from Owner constitute the final written expression of all the terms for each purchase of materials within the Work, and are a complete and exclusive statement of those terms. Owner accepts no changes in or additions to the provisions of this Agreement unless in writing, signed by Owner's duly authorized representative and such amendment conspicuously states it amends this Agreement, with a specific reference to this Agreement by title and date executed. Notwithstanding the foregoing, no signature upon any Contractor form or invoice shall constitute Owner's acceptance of or consent to any terms or conditions therein that differ from or add to the terms and conditions of this Agreement.

16.3 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.4 Assignability. Contractor's rights, responsibilities, and obligations under this Agreement are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Any attempted assignment shall be null and void. This restriction includes, but is not limited to, the delegation or subcontracting of any Work or any amounts which may become due to Contractor as a result of the Work. Contractor shall remain fully liable under this Agreement regardless of any consent by Owner to any assignment or delegation of duties by Contractor, including but not limited to any work by a subcontractor. Contractor shall ensure that any subcontractor receives a copy of this Agreement and agrees in writing to be fully responsible for all obligations of Contractor under this Agreement, including but not limited to the insurance and indemnity provisions. Contractor shall also ensure that Owner is an intended third party beneficiary of any subcontractor agreement by including a specific provision to that effect. Contractor shall be responsible for enforcing any warranties given by its subcontractors, suppliers or manufacturers. Nothing contained herein, however, shall create any contractual relationship between Owner and any subcontractor, nor create any obligation on the part of Owner to make payment of any sums to any subcontractor. Subject to the restrictions and prohibitions on assignment set forth in this Subsection, the terms of this Agreement shall be binding on and inure to the benefit of Owner, Contractor, and their respective successors, representatives, heirs and assigns. Owner may freely assign this Agreement, in whole or in part.

16.5 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.6 Waiver. No act or conduct other than a specific, written waiver of a right shall be deemed a waiver by Owner. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.7 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina, and is applicable to Work for all construction projects in this State. In the event Contractor performs any work for Owner, or its parent company, affiliate or subsidiary, for a project in another State, and Contractor has not executed a written Independent Contractor Agreement for that State or a project specific agreement related to that work, Contractor hereby agrees that such work shall be governed by the terms and conditions of the form Independent Contractor Agreement of Owner (in use at the time of execution of this Agreement) for that State, which shall be deemed effective on the day this Agreement is executed. Upon request, Owner will provide Contractor with applicable Independent Contractor Agreements.

17. CONFIDENTIALITY, DATA PRIVACY, AND DATA SECURITY.

17.1 Confidentiality. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner, including Personal Information, defined below, as confidential and proprietary information of Owner ("**Confidential Information**"), and, except as permitted by this Section, shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, except as permitted by

INITIALS: OWNER JP, CONTRACTOR BF

17.2 Data Privacy. To the extent Contractor receives or generates personal information (including, but not limited to, name and contact information) regarding individuals including, but not limited to, Owner's homebuyers, in the course of performing the Work ("**Personal Information**"), Contractor shall comply with all laws applicable to collection, processing, protection and destruction of Personal Information ("**Applicable Data Protection Legislation**"), including state data breach laws. Contractor agrees that it is a "service provider," or similar classification, under Applicable Data Protection Legislation. Contractor will not access, sell, use, disclose, reproduce or retain such Personal Information for purposes other than performance of the Work under the Agreement or to comply with applicable law. Contractor certifies, it understands and will comply with, the foregoing restrictions, and will ensure that third-parties to which it discloses Personal Information, if any, are likewise restricted pursuant to a written contract. Furthermore, Contractor shall comply with Owner's directions as to Personal Information, as may be necessary to comply with applicable law including, but not limited to:

17.2.1 Deletion of Personal Information. Upon written request from Owner regarding the Personal Information of an individual who has requested its deletion, Contractor will promptly, but in all cases within twenty (20) days of the request, delete the Personal Information in its possession or control and certify in writing to Owner that it has complied with the request. If Contractor is required or permitted to maintain such individual's Personal Information under applicable law, Contractor will not be required to comply with the deletion requirements of this Subsection as to such Personal Information and will instead provide, within twenty (20) days of the request, a written statement to Owner that identifies the reason for the non-deletion.

17.2.2 Access to Personal Information. Within twenty (20) days of a request by Owner, Contractor shall reasonably cooperate with Owner to identify and provide to Owner the specific pieces of Personal Information regarding an individual who has requested access to their Personal Information.

17.2.3 Correction of Personal Information. Within twenty (20) days of a request by Owner, Contractor shall reasonably cooperate with Owner to correct Personal Information regarding an individual who has requested correction to their Personal Information.

17.2.4 Individual Requests Received Directly by Contractor. If Contractor receives a request to delete, access, or correct Personal Information directly from an individual, Contractor will promptly, but in all cases within ten (10) days of receipt of the request, inform Owner of the request and, after consultation with Owner, instruct the individual to contact Owner directly.

17.3 Data Security. In compliance with applicable law and generally accepted industry practices, Contractor will implement and maintain organizational, administrative, physical, and technical safeguards ("**Safeguards**") to ensure the confidentiality and security of Confidential Information, including Personal Information, and to protect against any threats, hazards, and unauthorized, unlawful or accidental access, damage, destruction, loss, disclosure, processing, acquisition or use of Personal Information. These Safeguards will include, without limitation: (a) generally accepted industry practices for physical security of all premises; (b) generally accepted industry practices for precautions with respect to the employment, or hiring, of Contractor's personnel and third party service providers; (c) generally accepted industry practices for precautions with respect to access by Contractor's personnel and third party service providers; (d) an appropriate network security program with generally accepted industry practices for access and data integrity controls, testing and auditing of all controls, and appropriate corrective action and incident response plans; and (e) generally accepted industry practices for virus and malware protection. As part of such Safeguards, Contractor will only store and access Personal Information in the United States. Furthermore, within twenty (20) days of the expiration or termination of the Agreement or the request of Owner, Contractor will destroy all, or a requested portion, of Personal Information, all copies, reproductions, summaries or extracts thereof and all evaluations and analyses created by Contractor based on or derived from any Personal Information that are in Contractor's possession, and Contractor shall not retain copies, extracts or other reproductions of the Personal Information; provided, however, that, absent a request by Owner to delete specific Personal Information for which no legal basis exists for Contractor to retain such Personal Information, Contractor: (a) may retain one copy of the Personal Information with its legal counsel for use in connection with the obligations of Contractor hereunder; (b) shall not be required to destroy or return any system back-up media such as copies of any computer records or files containing Personal Information that have been created pursuant to automatic archiving or back-up procedures on secured central storage servers, which cannot reasonably be deleted or returned; and (c) may retain such copies as necessary for compliance with applicable law.

18. NOTICES. All notices required or permitted pursuant to this Agreement or otherwise shall be in writing and shall be delivered as follows: to Contractor at Contractor's business address as shown on page one (1) of this Agreement; to Owner through Owner's official Registered Agent for service of legal process in the state where the Work is performed at that Registered Agent's registered office. Notices may be given by personal delivery, facsimile, commercial overnight delivery service, personal delivery or ordinary mail and shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by commercial overnight delivery service, and upon confirmation if sent by facsimile transmission or by personal delivery. Rejection, refusal to accept or the inability to deliver because of changed address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its sections or subsections.

SOUTH CAROLINA VERSION (REV. AUGUST 26, 2020)

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INITIALS: OWNER JP CONTRACTOR BF

D-R HORTON
America's Builder

NORTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR General Shale Brick Inc. ("Contractor")
 Sole Proprietorship ☐ Partnership ☒ Corporation ☐ L.L.C. ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No.: 26-0454569
 Name of Owner(s)/Officer(s): D. TODD LAWSON (District Sales Manager)
 Division Name: Greensboro Area Name: DEVELOP Assigned Vendor Number: _____
 Address for All Notices: 114 Landmark Drive
 City: Greensboro State: NC Zip Code: 27409
 Telephone: (336) 662-0882 Fax: (336) 662-9423 E-Mail Address: TODD.LAWSON@GeneralShale.com
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.

This agreement (the "Agreement") is entered into on this 10th day of April, 2006, between General Shale Brick Inc. (hereinafter "Owner") and Contractor. DR

1. SCOPE OF WORK. All work performed by Contractor for Owner shall be subject to the terms and conditions of this Agreement. The work to be performed hereunder (the "Work") is the labor, services and/or materials, equipment, transportation, or facilities necessary to complete the construction related activities generally described in Exhibit A, and shall include all work performed by Contractor for Owner. The applicable quantities and pricing for the Work shall be that reflected in the price sheet, proposal, bid, purchase order, or other documentation most recently accepted and approved by Owner (the "Pricing Schedule"). It is understood and agreed that no Pricing Schedule will modify any of the terms of this Agreement. It is understood and agreed that Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to or in place of Contractor.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right to control the manner, method and performance of the Work, so long as the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible for the performance of its employees and permitted subcontractors, and all personnel used by Contractor in the performance of Work shall be qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further agrees to provide written notification to all of its present and future employees of Contractor's provision for Worker's Compensation insurance.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor acknowledges that this is a lump sum contract and that Contractor shall pay and shall be solely responsible for all withholding, Social Security, State unemployment and all other similar taxes for Contractor's employees, agents or permitted subcontractors. In addition Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work. Taxes will not be collected or paid by Contractor under this Agreement.

3.3 Price Increases. CONTRACTOR FURTHER AGREES THAT NO PRICE INCREASE SHALL BE BINDING UPON OWNER BEFORE CONTRACTOR GIVES OWNER (120) DAYS' WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule, the superceded Pricing Schedule shall remain in effect for Purchase Orders issued after the date of any new Pricing Schedule until the expiration of the notice period unless other prior written notice was given to Owner by Contractor.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of Ninety (90) days after completion of the Work or Thirty (30) days from the date of closing of the house incorporating the Work from Owner to a purchaser. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage. Contractor acknowledges and agrees that all Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order.

4.2 Payment to Subcontractors. Contractor acknowledges and agrees that no payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, if applicable) for such Work has been submitted to Owner for payment, which action shall constitute a representation and confirmation that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. As a condition to payment, Owner may require a full and complete release of all liens for materials furnished and labor performed from Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Owner may, at any time, in its discretion, make checks payable to Contractor and one or more third parties. Such payment shall be deemed satisfaction of amounts owed by Owner to Contractor, notwithstanding the fact that such third parties may not endorse said checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the Contract Price shall constitute a waiver of all claims against Owner under this Agreement, but shall not be construed as a waiver by Owner as to Work later found to be defective and shall not release Contractor from liability for warranties and warranty service and/or defective Work. Contractor shall remedy any defects and pay for any damage resulting from any such defects in or cause by the Work as set forth herein or as required by any other contracts between the parties or by law or customary practice. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or assigns constitute an acceptance of the Work or materials not in compliance with this Agreement.

THIS AGREEMENT CONSISTS OF FIVE (5) PAGES WITHOUT ADDENDA

Executed this 5th day of JUNE, 2006.

Owner:
 By: [Signature]
 Name: STANLEY J. JENSEN
 Title: Division President

Contractor:
 By: [Signature]
 Name: D. TODD LAWSON
 Title: District Sales Manager

INITIALS: Owner: [Signature] Contractor: DR

5. SCHEDULE OF WORK.

5.1 Time is of the Essence. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work.

5.2 Construction Schedule. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.3 Commencement of the Work. Owner shall issue authorization (either pursuant to a written purchase order, payment schedule, or work invoice (hereinafter the "Purchase Order") or verbal instructions from an authorized Owner representative to commence the Work, and Contractor shall not commence the Work at a job location until Contractor has received instructions to begin Work at a specific job location. Contractor shall commence the Work within three (3) days of notice to proceed from Owner, and if such work is interrupted at the direction of Owner, Contractor shall resume such work within two (2) working days from Owner's direction to resume.

5.4 Changes in Construction Schedule. Contractor agrees that Owner shall have the right to make changes to the schedule of Work at Owner's discretion and agrees to comply with such changes.

6. PERFORMANCE OF STANDARDS.

6.1 Applicable Standards. Contractor shall perform all Work in a good and workmanlike manner, in accordance with the plans and specifications of Owner, according to industry standard practices, and warrants that the Work will meet or exceed FHA minimum property standards, VDOT requirements, all laws (statutory and common) and regulations, and any applicable building code requirements.

6.2 Contractors Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized Owner's employee and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications as such plans and specifications affect the Work and materials incorporated therein, and has accepted all such requirements so specified.

6.3 Government Requirements. Contractor agrees to comply with all applicable federal, state, local, and county statutes, ordinances, regulations, codes, licensing requirements and standards, and the requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 and amendments thereto, as well as the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., similar laws or regulations, and the rules, regulations, or orders of all public authorities relating to performance of the Work, including without limitation the procurement and posting of all required permits and notices.

6.4 Indemnity. Contractor agrees to indemnify, defend, and hold Owner harmless from the payment of any fine or penalty imposed as a result of Contractor's failure to comply with applicable laws and regulations.

6.5 Observation and Testing by Owner and repair by Contractor. Owner shall have the right to inspect the Work at any time, but inspection shall not be construed as a waiver of any obligations, representations or warranties of Contractor as to the Work. Notwithstanding anything contained herein to the contrary, all Work shall be performed and any defects shall be corrected in accordance with this Agreement to the satisfaction of Owner.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work, and shall report in writing to Owner any defects prior to commencement of any Work, or Contractor shall be deemed to have accepted such work for inclusion into Contractor's Work.

6.7 Licenses, Permits and Approvals. Contractor shall secure and maintain all permits, licenses and approvals necessary for or applicable to the performance of the Work hereunder.

6.8 Change Orders. When Owner orders the Work in writing, Contractor shall make any and all changes in the Work as directed by Owner's authorized representative, and adjustments to the price shall be made only in accordance with a variance agreement or purchase order signed by Owner and Contractor prior to the commencement of such changes.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; and (iii) regulating trash pick-up and waste collection at the job location.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste materials or rubbish caused by its operations and shall remove all of Contractor's materials, and if materials are furnished by Owner, Contractor shall move all usable materials provided by Owner to a location designated by Owner. Contractor shall sweep out any waste material from inside the home under construction upon completion of their operation. All refuse shall be placed in receptacles provided or at locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up activities and collect a One Hundred Dollar (\$100.00) fine from Contractor. The cost of such cleanup and the aforementioned fine shall be deducted from any sums owed by Owner to Contractor, or shall be immediately payable by Contractor upon demand therefore by Owner.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, protect its employees and all other persons from risk of death, injury or bodily harm arising from or in any way related to the Work. Contractor shall immediately notify Owner's construction supervisors of any unsafe condition or practice observed on the Work site. Further, Contractor shall immediately notify Owner of any accidents or injuries on the Work site. Contractor shall conduct inspections to determine that safe working conditions and equipment exist and safe practices are observed, and accepts sole responsibility for providing a safe place to work for its employees and the employees of all subcontractors and material suppliers. Contractor shall prohibit and prevent the presence of children under age 18 from the work site.

7.2 Safety Laws and Indemnity Agreement. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq. and provide written notice to Owner of the contact person responsible for Contractor's safety compliance. Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work.

7.3 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, permitted subcontractors or suppliers at a job location or performance by any such person under the influence of alcohol or drugs.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate corporations, or successors and assigns, (hereinafter collectively referred to as the "Owner"), that all labor performed and materials furnished by Contractor shall conform to the

INITIALS: Owner: _____ Contractor: TDR

specifications of this Agreement, are free from any defects or deficiencies in workmanship or materials when judged by the standards of accepted residential construction industry trade practices, and are in accordance with the requirements of all applicable governing authorities, laws, regulations and ordinances, meet or exceed the FHA/VA minimum property standards, and will comply with any applicable limited warranty standards of any residential warranty program being provided by Owner to its customers ("Home Owners Warranty"), which Contractor has read, understands and agrees to be bound. Contractor agrees that all Work not conforming to the aforementioned requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the bid and free from defects. Contractor shall repair and make good all Work not complying with the standards set forth in this Section.

8.2 Homeowners Warranty. In addition to the foregoing warranty, Contractor expressly warrants that the Work shall remain free of defects for the following warranty periods: (1) for a period of ten (10) years all structural elements, including, but not limited to, roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (2) for a period of two (2) years all: (a) heating/ ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; (3) all other elements for a period of one (1) year. Notwithstanding the foregoing, in no event shall a warranty period for any system, element or other portion of the Work be less than the applicable warranty period for such system, element, or other portion of the Work under any residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner (a "Home Owners Warranty"). Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Home Owners Warranty which is longer than the Warranty Periods stated above; provided, however, failure to give such notice will not affect the extension of the Warranty Period to the applicable warranty period under the Home Owners Warranty.

8.3 Repair by Owner Does Not Waive Warranty. Contractor agrees that the performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty obligations, Contractor's indemnity provided herein, or the ability of Owner to request Contractor to perform warranty services in the future.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment, and shall furnish all certificates required by any municipality and/or VA and/or FHA. The foregoing is in addition to all other warranties obligations of Contractor provided by law or otherwise and is not in limitation of periods of applicable statutes of limitation.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS AGAINST OWNER OF ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the State where the Work is performed.

9.3 Lien Claim Indemnity. In the event that any liens are filed against Owner relating to the Work, Contractor agrees that Owner shall be entitled to withhold all payments to Contractor until Contractor causes such lien or affidavit to be removed and released of record. Contractor agrees to INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any liens, and further agrees at Owners' request to: (i) procure a bond to indemnify Owner and any home purchaser from Owner, in an amount equal to one hundred fifty percent of the lien amount, against such lien, or (ii) refund to Owner all monies including any additional amount necessary to cover all of Owner's or home purchaser's attorneys' fees and court costs paid in discharging the lien whichever remedy Owner elects in its sole and absolute discretion.

10. CONTRACTOR'S INDEMNITY AND WAIVER.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER, ITS PARENT CORPORATION, SUBSIDIARIES AND AFFILIATES, SUCCESSORS AND ASSIGNS, AND ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS, (HEREIN COLLECTIVELY REFERRED TO AS THE "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF AND ATTORNEYS' FEES), WHETHER ASSERTED BY A SUBSEQUENT PURCHASER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND PERMITTED SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, OBLIGATIONS, OR COVENANTS PROVIDED HEREIN BY CONTRACTOR; (2) THE WORK PERFORMED OR TO BE PERFORMED BY CONTRACTOR OR CONTRACTOR'S PERSONNEL, AGENTS, SUPPLIERS, OR PERMITTED SUBCONTRACTORS; OR (3) ANY NEGLIGENT OR INTENTIONAL ACT AND/OR OMISSION OF THE CONTRACTOR, ITS SUPPLIERS AND PERMITTED SUBCONTRACTORS OF ANY TIER; EXCEPT THAT, INDEMNITEE SHALL NOT BE INDEMNIFIED AND HELD HARMLESS FOR ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION ON THE PART OF INDEMNITEE.

10.2 INDEMNITY IS NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, AND PERMITTED SUBCONTRACTORS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS AND EQUIPMENT, AND HEREBY WAIVE ANY

INITIALS: Owner: Contractor:

RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO (1) ANY LOSS OF SUCH TOOLS OR EQUIPMENT OR (2) ANY DAMAGE TO SUCH TOOLS OR EQUIPMENT NOT CAUSED BY THE NEGLIGENT OR INTENTIONAL ACTS OF INDEMNITEE.

10.3 Subcontractors and Suppliers Indemnity Obligations. If Contractor subcontracts any of the Work to the extent permitted under this Agreement, Contractor guarantees that such third party shall indemnify Indemnatee to the same extent that Contractor is required to indemnify Indemnatee in this Agreement. Prior to the subcontractor's commencement of the Work, Contractor shall obtain a signed agreement from such third party indemnifying Indemnatee to the extent required in this paragraph 10 and provide said agreement and evidence of satisfactory insurance to Owner. In addition, Contractor shall require that each supplier or subcontractor indemnify Indemnatee from all losses arising from any materials or labor incorporated into the Work not caused solely by the negligence or intentional acts of Indemnatee. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth herein. Contractor understands and agrees that for all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for any and all of the actions of any subcontractor engaged by Contractor or who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed to be the obligation of such subcontractors or suppliers, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with completed operations coverage and containing a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit of no less than Two Million Dollars (\$2,000,000.00) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the per occurrence limit); (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type of, or nature of, the Work or the limit of the type of structure on which the Work is to be performed. The CGL policy shall not contain a deductible or self insured retention of more than \$25,000.00. The Contractor agrees to continuously maintain a commercial general liability policy covering completed operations for the applicable statute of repose for liability associated with the Work.

11.2 Other Insurance. Contractor agrees to carry (a) Worker's Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Worker's Compensation obligations imposed by law; (b) where applicable, Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment, and (c) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person (Bodily Injury) and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos".

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner as an Additional Insured on the CGL Policy or policies required above, it being understood that such insurance shall not apply to any liability of Owner as a result of any negligent or intentional act or omission on the part of Owner. Owner and Contractor (collectively, the Parties) intend and agree that the coverage obtained by Contractor naming Owner as an additional insured as set forth herein shall apply on a primary basis with any insurance of Owner being excess coverage. Such insurance coverage will be carried continuously during the term of this Agreement with insurance companies acceptable to Owner in its sole and absolute discretion. Such insurance shall provide for a waiver of subrogation.

11.4 Proof of Insured Status. Contractor shall provide evidence that such insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the above policies. Each Certificate of Insurance or policy shall contain an unqualified clause to the effect that the policy shall (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days' prior written notice to Owner, (ii) be carried continuously from the date of commencement of the Work until expiration of the period of the Contractor's warranty provided in this Agreement, (iii) specifically identify Owner as an Additional Insured, and (iv) indicate that coverage applies in the state where the Work is being performed. The amounts and types of insurance set forth herein are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and types of insurance which Contractor shall determine to be reasonably necessary to protect itself and the Work required to be performed under this Agreement.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IN THE EVENT THAT THE CONTRACTOR FAILS TO PROVIDE OWNER WITH EVIDENCE OF INSURANCE AS REQUIRED HEREUNDER, OWNER SHALL BE ENTITLED, BUT SHALL NOT BE OBLIGATED, TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER IN ITS SOLE AND ABSOLUTE DISCRETION) IN EFFECT AT THE TIME WORK IS PERFORMED TO COMPENSATE OWNER FOR ANY ADDITIONAL COSTS OF ITS WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. CONTRACTOR EXPRESSLY ACKNOWLEDGES THAT THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE, AND CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS CONTRACT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work to the extent permitted under this Agreement, Contractor guarantees that such third party shall carry the same insurance required to be carried by Contractor in Section 11, and that such third party shall name Owner as an additional insured on the required liability policy or policies, it being understood that Owner shall not be indemnified or held harmless for its own negligent acts. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

12. REMEDIES.

12.1 Owner's Remedies. In the event that the Work performed by Contractor pursuant to this Agreement is found by Owner to be defective or incomplete, or another contractor's work is damaged by an act for which Contractor, or its employees, agents or subcontractors, are responsible, Owner shall have the right to elect, at its sole discretion to: (1) notify Contractor, at which time Contractor shall promptly correct such Work, replace or repair any defective material, or repair any damage.

12.2 Contractor's Agreement to Repair. Contractor agrees to make all repairs and correct such defects under the applicable warranty within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty eight (48) hours notice on a non-emergency basis; (2) retain a third party to perform such duties, and retain any sums otherwise due Contractor under any Purchase Order or invoice and apply such sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess thereafter to be paid to Contractor. In the event the cost of such remedial work exceeds the funds withheld resulting in a deficiency, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and reasonable attorneys' fees, incurred by Owner, and shall pay to Owner this amount within thirty (30) days of demand.

INITIALS: Owner: SP Contractor: DR

12.3 Right to Withhold or Offset. In addition to the foregoing remedies, Contractor expressly agrees that payment otherwise due Contractor from Owner may be withheld and offset against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or permitted subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location as a result of Contractor's actions or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement or the specifications; (iv) Contractor fails to perform, or to pay the costs and expenses of, warranty service, any indemnity claim, taxes or legal order that is Contractor's obligation under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not accepted a waiver of such insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary tools, material, or equipment for, or cleaned up after, the Work; (viii) Contractor fails to comply with any other provision of this Agreement.

12.4 Remedies Not Exclusive. The duties and obligations imposed by this Agreement and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. Owner shall have a right to collect from Contractor its reasonable attorney's fees and expenses incurred in enforcing Contractor's obligations.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with Subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a dispute arises out of or relating to this Agreement or a breach thereof and if the dispute cannot be settled through negotiation the parties agree to first try in good faith to settle the dispute by mediation before resorting to arbitration, litigation, or another dispute resolution procedure. Cost of mediation shall be shared equally by the parties.

13.3 Arbitration. If mediation fails, any claim, controversy or dispute of any kind among the Parties, now existing or arising in the future whether relating to the interpretation of any provision of this Agreement, the rights and obligations of the Parties under this Agreement, any other agreement relating to, or arising from, the business of Owner or the Work, shall be submitted to binding arbitration under the Federal Arbitration Act, U.S.C. 1 et seq. regardless of any other choice of law provision in any underlying contract or this Agreement. The arbitrator(s) may allocate costs of the arbitration in proportion to the success of the party.

13.4 Choice of Mediator and Arbitrator. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator mutually agreeable to the parties. In the event that the parties cannot agree on the selection of a mediator or arbitrator, either party may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint a mediator or arbitrators.

13.5 Rules. To the extent not in conflict with the Federal Arbitration Act, any mediation shall be conducted in accordance with the Commercial Mediation Rules, and any arbitration conducted in accordance with the Construction Industry Arbitration Rules, of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision. However, any mediation or arbitration need not be conducted by, or through, the AAA.

13.6 General Provisions. The Parties agree that if multiple arbitrations should be commenced, all such proceedings shall be consolidated into one arbitration. Contractor agrees to participate in, and be bound by, any arbitration proceeding between Owner and any third party relating to the Work. Notwithstanding any provision in this section to the contrary, Owner shall be entitled to terminate this Agreement and/or any Purchase Order, in whole or in part, in the event any dispute arises between Contractor and Owner, whereupon Owner shall also be entitled to exercise any and all remedies, deductions, and offsets authorized pursuant to the terms and provisions of this Agreement. Notwithstanding any other provision of this section, in the event that a subcontractor or material supplier of Contractor, or any other necessary third party, cannot be forced to mediate or arbitrate, Owner shall be entitled in lieu of mediation or arbitration to settle any dispute relating to this Agreement by filing an action in a court with proper venue and jurisdiction.

14. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of the contents thereof. Contractor shall provide any and all samples and/or shop drawings requested by Owner.

15. ASSIGNMENT. Contractor's rights and obligations under this Agreement are nontransferable and not assignable, and Contractor shall not subcontract all or any part of the Work contemplated by this Agreement without obtaining the prior written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Owner may assign this Agreement without Contractor's consent.

16. NOTICES. All notices required pursuant to this Agreement or otherwise shall be in writing and shall be delivered to the respective business address of the Parties. Notices shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by overnight delivery service, and upon confirmation if sent by facsimile transmission.

17. ENTIRE AGREEMENT. This Agreement, and with respect to prices and quantities only, the Price Schedule and all written Purchase Orders shall constitute the entire agreement between the Parties, and there are no other agreements, oral or written, made by or relied upon by and between the Parties. Except as otherwise provided herein, no provision of this Agreement may be amended or added to except in writing signed by both Parties.

18. TERMINATION AND WAIVER.

18.1 Termination by Owner for Cause of Convenience. This Agreement shall remain in full force and effect until terminated in writing by mailing notice to the other Party. Owner may terminate this Agreement at any time, irrespective of whether Contractor is in default or breach hereunder, at will.

18.2 Termination by Contractor. Contractor shall provide One Hundred Twenty (120) Days' notice prior to the effective date of termination, and agrees to perform fully under this Agreement during such notice period. If the Agreement is terminated by Owner, the Parties agree that, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement. Anything herein contained to the contrary notwithstanding, the Work to be performed by Contractor shall only include such work as specifically authorized by an authorized representative of Owner. Any failure of Owner to enforce any of the terms and provisions of this Agreement shall not constitute a waiver of such required performance by Contractor or of any other performances in the future required by Contractor hereunder.

19. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement, (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken prior to the execution and delivery of this Agreement, (iii) this Agreement is or will be (when executed) valid and binding obligations of Contractor, enforceable in accordance with its terms, (iv) this Agreement and Contractor's performance thereof, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval

INITIALS: Owner: [Signature] Contractor: DTT

EXHIBIT A

SCOPE OF WORK

(Brick Mtg)

INITIALS: OWNER JP, CONTRACTOR DR

KDC 013060

of any governmental authority, (v) Contractor has, and each Contractor's employees, agents or permitted subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement, (vii) Contractor is in compliance with all governmental requirements to which it is subject, and (viii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

20. SURVIVAL. All terms of this Agreement survive its termination and shall remain in full force and effect and shall be binding upon the Parties and any successors and assigns.

21. GENERAL CONTRACT PROVISIONS.

21.1 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

21.2. Assignability. Contractors' rights and obligations are not assignable or transferable without express written consent of Owner, which consent can be withheld in Owner's sole and absolute discretion. Subject to the restrictions and prohibitions on assignment set forth in this section, the terms of the Agreement shall be binding on all Parties, their respective successors, representatives, heirs and assigns.

21.3 Conflicts with Purchase Orders or Other Agreements. In the event of a conflict between this Agreement and the terms of any Purchase Order or any other agreement or document pertaining to the subject matter hereof which cannot be reconciled by the Parties, the terms of this Agreement shall control.

21.4 Waiver. No delay or failure by Owner to exercise any right hereunder, and no partial or single exercise of such right, will constitute a waiver of that or any other right except by written agreement executed by Owner.

21.5 Choice of Law. This Agreement shall be governed by the law of the State in which the work is performed.

21.6 Miscellaneous. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections or articles hereof.

NORTH CAROLINA, REV. 6.3.2005

EXHIBIT A

SCOPE OF WORK

(Brick MFG.)

INITIALS: Owner:



Contractor:



D.B. HORTON
America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR IBP Asset, LLC dba: Blue Ridge Building Products
 Sole Proprietorship Partnership ☒ Corporation ☒ LLC Other (ATTACH W-9)
 Social Security No. or Tax ID No. 31-1795875
 Name of Owner(s)/Officer(s) SEC Attached List
 Division Name: _____ Area Name: _____ Assigned Vendor No. _____
 Address for All Notices: PO Box 587
 City Greer, SC State SC Zip Code 29652
 Telephone 864-895-9138; 864-877-7449 E-Mail Address info@blue-ridge.net

Insurance Carriers ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.

This agreement (the "Agreement") is entered into on this 12 day of January, 2010, between _____

D.B. Horton, Inc. its ("Owner") and Contractor
affiliates & subsidiaries

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of the Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement (the "Work") shall include all work performed and materials supplied by Contractor to Owner including but not limited to the labor, services and/or materials, equipment, transportation, or facilities necessary to complete the construction-related activities generally described in Exhibit A. The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing will not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to or in place of Contractor. Contractor will be awarded Work on a lot by lot basis. To the extent Exhibit A concerns more than one type of construction-related activity, Contractor must clarify with Owner before the Work commences as to which construction-related activity it has been awarded for the lot in question.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, method and performance of the Work. Contractor shall not be considered as agent or employee of Owner for any purpose, nor shall any employees or permitted subcontractors of Contractor. Contractor shall not represent itself as the agent of Owner unless owner has specifically permitted Contractor to do so in writing. The results achieved shall satisfy the requirements of this Agreement. Contractor shall be responsible for the performance of its employees and permitted subcontractors, and all personnel used by Contractor in the performance of Work shall be qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further agrees to provide written notification to all of its present and future employees of Contractor's provision for Worker's Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work herein covered or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall pay and shall be solely responsible for all tax withholding, Social Security, state unemployment and all other withholding as required by law Contractor's employees, agents or permitted subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNLESS CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule, the superseded Pricing Schedule shall remain in effect for Purchase Orders issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing of the house incorporating the Work from Owner to a purchaser. Contractor hereby agrees that timely invoicing is an important and material term to this agreement, and timely invoicing is a part of Contractor's performance of all material terms of this contract. Contractor hereby waives payment for any Work where Contractor fails to invoice Owner in a timely manner in conformity to this agreement. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR

Executed this 12 day of January, 2010

Owner:
By D.B. Horton, Inc.
Name ED JENNIFER JR.
Title PURCHASING
Division President

Contractor:
By IBP Asset, LLC dba: Blue Ridge Building Products
Name Don Albers
Title Regional Manager

INITIALS: OWNER [Signature] CONTRACTOR DA

ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO SUBCONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN AND THAT OWNER DOES NOT AGREE TO PAY TO SUBCONTRACTOR INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF DELAYED PAYMENTS.

4.2 Payment to Subcontractors. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed from Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work to be performed, and an affidavit that no person has a right to any lien for materials or labor. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties, and these joint payments shall satisfy amounts owed by Owner to Contractor, notwithstanding the fact that the third parties may not endorse the checks. In any instance where Owner receives written notice from one of Contractor's sub-contractors, whereby the subcontractor claims a failure to be paid for the Work, Owner reserves the right to pay the subcontractor directly or to make payment payable to both the Contractor and its subcontractor.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the Contract Price shall waive and release all claims against Owner and the property under this Agreement, but shall not waive any claims of Owner arising out of Work later found to be defective and shall not release Contractor from liability for warranties and warranty service and/or defective Work. Contractor shall remedy any defects and pay for any damage resulting from any defects in or caused by the Work or as required by any other contracts between Owner and Contractor or by law or customary practice. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or assigns is an acceptance of the Work or materials not in compliance with this Agreement.

5. SCHEDULE OF WORK.

5.1 Time Is of the Essence. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work.

5.2 Construction Schedule. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.3 Commencement of the Work. Owner shall issue an authorization (either pursuant to a written purchase order, payment schedule, or work invoice ("Purchase Order") or verbal instructions from an authorized Owner representative) to commence the Work and Contractor shall not commence the Work at a job location until Contractor has received instructions to begin Work at a specific job location. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.4 Changes in Construction Schedule. Contractor agrees that Owner shall have the right to make changes to the schedule of Work at Owner's discretion and agrees to comply with such changes.

6. PERFORMANCE STANDARDS.

6.1 Applicable Standards. Contractor shall perform all Work in a good and workmanlike manner, in accordance with the plans and specifications of Owner, according to industry standard practices, and warrants that the Work will meet or exceed FHA minimum property standards, VA requirements, all laws (statutory or common) and regulations, and any applicable building code requirements.

6.2 Contractors' Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized Owner's employee and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications as the plans and specifications affect the Work and materials incorporated in the Work, and that the plans and specifications are clear and unambiguous, and has accepted and agreed to be bound by all such requirements.

6.3 Government Requirements. Contractor will comply with all applicable federal, state, local, and county statutes, ordinances, regulations, codes, licensing requirements and standards, and the requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 as amended, as well as the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., or similar laws or regulations, and the rules, regulations, or orders of all public authorities relating to performance of the Work, including without limitation, the procurement and posting of all required permits and notices. In addition, Contractor will not discriminate in its hiring or employment and will follow all state and federal employment laws or regulations. Contractor shall perform background checks and use only appropriate employees to perform warranty or repair work after a house is occupied.

6.4 Indemnity. To the fullest extent allowed by law, Contractor will agree to indemnify, defend, and hold Owner harmless from all actions, claims, investigations or other acts to enforce such laws or regulations, and further agrees to indemnify Owner from the payment of any fine, penalty or damages imposed, levied, assessed, or found as a result of the Contractor's failure to comply with or adhere to the applicable laws and regulations, or from Contractor's failure to cause its employees or subcontractors to comply with such laws and regulations.

6.5 Observation and Testing by Owner and Repair by Contractor. Owner shall have the right to observe or test the Work at any time during or after construction, but that observation or testing is solely for the benefit of Owner's and is not for Contractor's benefit. Owner's failure to note defects in the Work during an inspection will not waive any of Contractor's obligations, representations or warranties related to the Work. Notwithstanding anything contained in this Agreement to the contrary, all Work shall be performed and any defects shall be corrected timely and in accordance with this Agreement to the satisfaction of Owner.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work, and shall report in writing to Owner any defects prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractor's work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses and approvals necessary for or applicable to the performance of the Work.

6.8 Change Orders. The Contractor shall furnish the materials for and to make all changes requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed.

INITIALS: OWNER EPH, CONTRACTOR OA.

(ii) governing storage of materials on the job location, (iii) regulating trash pick-up and waste collection at the job location, and (iv) work site safety requirements.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste materials or rubbish caused by its operations and shall remove all of Contractor's materials, and if materials are furnished by Owner, Contractor shall move all usable materials provided by Owner to a location designated by Owner. Contractor shall sweep out any waste material from inside the home under construction upon completion of its operation. All refuse shall be placed in receptacles provided or at locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up activities and collect a one hundred dollar (\$100.00) fine from Contractor for each incident. The cost of such clean-up and the aforementioned fine shall be deducted from any sums owed by Owner to Contractor, or shall be immediately payable by Contractor upon demand therefore by Owner.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from or in any way related to the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Owner reserves the right to set minimum standards or rules relating to Work on its site. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OWNERS MINIMUM REQUIREMENTS. THE OWNER ASSUMES NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner of any accidents or injuries on the Work Site. Contractor shall have an ongoing safety program and conduct inspections to determine that safe working conditions and equipment exist and safe practices are observed. Contractor shall prohibit and prevent the presence of children under age eighteen (18) from the Work Site.

7.1 Safety Laws and Indemnity Agreement. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards, statutes, and industry best practices concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations. Contractor shall provide Owner with written verification of its compliance with all applicable safety and health standards and regulations, including but not limited to OSHA's Hazard Communication Standard for the Construction Industry, 29 C.F.R. §1926.59 et seq., and provide written notice to Owner of the contact person responsible for Contractor's compliance with all safety and health standards and regulations. To the fullest extent allowed by law, Contractor agrees to indemnify, defend, and hold Owner harmless from all actions prosecuted to enforce and the payment of any fine or penalty imposed under such safety laws and regulations and shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work.

7.2 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, permitted subcontractors or suppliers at a job location or performance of the Work by any person under the influence of alcohol or drugs.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate corporations, and successors and assigns, that all labor performed and materials furnished by Contractor shall conform to the specifications of this Agreement, shall be free from any defects or deficiencies in workmanship or materials, and will comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, will meet or exceed the FHA/VA minimum property standards, and will comply with the Residential Warranty Corporation ("RWC") Program and the applicable limited warranty standards, which Contractor has read and understands and to which Contractor agrees to be bound. All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects for purposes of Contractor's obligations under this Contract. Contractor shall make good and promptly repair all Work not complying with the standards set forth in this section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Paragraph 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, the initial homeowner of the property on that is the subject of the Work: (i) for a period of ten (10) years all structural elements, including, but not limited to, roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; (d) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (i) any statutory warranty or (ii) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner (a "Homeowners Warranty"). Contractor expressly agrees to be bound by any such Homeowners Warranty and to the extension of warranty period hereunder. Furthermore, notwithstanding the foregoing, Contractor agrees that all express and implied warranties shall remain in full force and effect for so long as Owner is obligated to warrant the Work pursuant to applicable law. Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Homeowners Warranty that is longer than the Warranty Periods stated above; provided, however, failure to give that notice will not affect the extension of the Warranty Period to the applicable warranty period under the Homeowner's Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty obligations, Contractor's indemnity obligations, or the ability of Owner to request Contractor to perform warranty services in the future.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment, and shall furnish all certificates required by any municipality and/or VA and/or FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and are not in limitation of periods of applicable statutes of limitation.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Project is located.

9.3 Lien Claim Indemnity. If any liens are filed against Owner relating to portions of the Work for which Owner has paid Contractor, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such lien or affidavit to be removed.

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and released of record. Contractor agrees to INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any liens relating to portions of the Work for which Owner has paid Contractor, and further agrees at Owner's request to any or all of the following: (i) procure a bond to indemnify Owner and any home purchaser from Owner, in an amount sufficient to discharge that lien, or (ii) refund to Owner all monies, including any additional amount necessary to cover all of Owner's or home purchaser's attorneys' fees and court costs paid in discharging the lien, whichever remedy Owner elects in its sole and absolute discretion, or (iii) provide sworn testimony that payment has already been made to Contractor for the work for which the alleged lien applies.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY AGREES TO HOLD HARMLESS, INDEMNIFY, PROTECT AND DEFEND OWNER, ITS PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THE AFOREMENTIONED ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "INDEMNITEE"), FROM AND AGAINST ANY AND ALL DEMANDS, CLAIMS, ACTIONS, CAUSES OF ACTION, PROCEEDINGS, LAWSUITS, SETTLEMENTS, JUDGMENTS, FINES, PENALTIES, LOSSES, ATTORNEYS FEES, LITIGATION COSTS, INTEREST, AND EXPENSES OF ANY KIND (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "LOSSES") FOR DAMAGES FROM BODILY OR PERSONAL INJURY, DEATH, THE DESTRUCTION OR LOSS OF PROPERTY (INCLUDING LOSS OF USE), OR ANY OTHER KIND OF DAMAGES OR HARM, ARISING OUT OF, OR RESULTING FROM, OR RELATED IN ANY WAY TO THE WORK PERFORMED AND/OR THE MATERIALS SUPPLIED UNDER THIS CONTRACT, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY INDEMNITEE. SUCH LOSSES SPECIFICALLY INCLUDE, BUT ARE IN NO WAY LIMITED TO LOSSES ARISING OUT OF OR ATTRIBUTABLE TO: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR OBLIGATIONS OF CONTRACTOR SET FORTH HEREIN; (2) THE WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR, CONTRACTOR'S AGENTS OR EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, AND/OR ALL OTHER ENTITIES OVER WHOM THE CONTRACTOR MAY EXERCISE CONTROL (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "CONTRACTOR'S AGENTS"); (3) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF CONTRACTOR AND/OR CONTRACTOR'S AGENTS; OR (4) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE INDEMNITY FOR LOSSES CAUSED SOLELY BY FAULT OR NEGLIGENCE OF THE INDEMNITEE. THE LOSSES DESCRIBED HEREIN SHALL INCLUDE, BUT ARE NOT LIMITED TO, DEMANDS, CLAIMS, OR ACTIONS ASSERTED BY (1) ANY PRESENT OR FUTURE OWNER OF THE HOUSE INCORPORATING THE WORK; AND (2) ANY OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY CONTRACTOR AND/OR CONTRACTOR'S AGENTS). THE INDEMNIFICATION OBLIGATION UNDER THIS CONTRACT SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. THE INDEMNITY PROVISIONS CONTAINED HEREIN ARE INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY LAW.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. IT IS THE EXPRESS INTENTION OF THE PARTIES THAT CONTRACTOR'S INDEMNITY OBLIGATIONS HEREIN WILL SURVIVE THE TERMINATION OF CONTRACTOR OR THIS AGREEMENT. INDEMNITEE SHALL HAVE THE RIGHT, AT ITS DISCRETION AND CHOOSING, TO DEFEND ANY AND ALL CLAIMS WHICH MAY BE ASSERTED AGAINST IT, AND CONTRACTOR AGREES TO REIMBURSE INDEMNITEE FOR ANY AND ALL EXPENDITURES WHICH INDEMNITEE MAY MAKE OR INCUR ON ACCOUNT OF ANY SUCH CLAIM.

10.3 CONTRACTOR AND CONTRACTOR'S AGENTS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS OR EQUIPMENT.

10.4 Subcontractor's and Supplier's Indemnity Obligations. Contractor shall require each of its subcontractor to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required in this section and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms as Section 13. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the actions of any subcontractor engaged by Contractor, whether in written agreement or otherwise, or who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed to be the obligation of the subcontractors to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with completed operations coverage which contains a per occurrence limit of no less than one million dollars (\$1,000,000.00), and an aggregate limit of no less than two million dollars (\$2,000,000.00) protecting against liability for bodily injury, broad form property damage, and personal injury claims arising from the exposure of: (i) premises-operations; (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type of, or nature of, the Work or limit the type of structure on which the Work is to be performed. The CGL Policy shall not contain a deductible or self insured retention of more than \$25,000.00. Contractor shall continuously maintain a CGL Policy covering completed operations for any applicable statute of repose for commencing lawsuits associated with the Work.

11.2 Other Insurance. Contractor agrees to carry (i) Worker's Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Worker's Compensation obligations imposed by law; (ii) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than one million dollars (\$1,000,000.00) and an aggregate of no less than one million dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (iii) Commercial Automobile Liability Insurance coverage with limits of not less than \$300,000 per person (Bodily Injury) and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner as an Additional Insured on the CGL Policy or policies required above covering both on-going operations and completed operations (equivalent to form CG20101185 or form CG2037). Coverage obtained by Contractor naming Owner as an Additional Insured shall be primary with any insurance of Owner being excess coverage. That insurance coverage will be carried continuously during the term of this Agreement and thereafter as required by this Agreement with insurance companies acceptable to Owner in its sole and absolute discretion. That insurance shall provide for a waiver of subrogation. All insurance shall be with

INITIALS: OWNER ES, CONTRACTOR CA

a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the required policies. Each Certificate of Insurance or policy shall contain an unqualified clause to the effect that the policy shall (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days' prior written notice to Owner, (ii) be carried continuously from the date of commencement of the Work until expiration of the period of the Contractor's warranty provided in this Agreement, (iii) specifically identify Owner as an Additional Insured, and (iv) indicate that coverage applies in the state where the Work is being performed. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself and the Work required to be performed under this Agreement.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER IN ITS SOLE AND ABSOLUTE DISCRETION) IN EFFECT AT THE TIME WORK IS PERFORMED TO COMPENSATE OWNER FOR ANY ADDITIONAL COSTS OF ITS WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS, CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS CONTRACT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work to the extent permitted under this Agreement, Contractor guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Owner as an Additional Insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or another contractor's work is damaged by an act for which Contractor, or its employees, agents or subcontractors, are responsible, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct such Work, replace or repair any defective material, or repair any damage. Contractor shall make all repairs and correct such within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours notice on a non-emergency basis; or (ii) retain a third party or undertake to perform those duties, and retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any access to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld resulting in a deficiency, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and reasonable attorneys' fees, incurred by Owner, and shall pay to Owner this amount within thirty (30) days of demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Paragraph 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or permitted subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties, (ii) claims or liens are filed against the job location as a result of Contractor's actions or omissions, (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement, Exhibit A of this Agreement, or the specifications; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order that is Contractor's obligation under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary tools, material, or equipment for, or cleaned up after, the Work; (viii) Contractor fails to comply with any other provision of this Agreement.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement and rights and remedies available under this Agreement shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. Owner shall have a right to collect from Contractor its reasonable attorneys' fees and expenses incurred in enforcing Contractor's obligations.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These Disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking equitable relief from an arbitrator or a court of appropriate jurisdiction.

13.3 Arbitration. If mediation fails, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq., regardless of any other choice of law provision in any underlying contract or this Agreement. All demands for arbitration shall be made before the expiration of the applicable statutes of limitations and repose. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court of competent jurisdiction.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrators mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes, is over \$200,000, but only one arbitrator shall be appointed if the Dispute is \$200,000 or less. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of a mediator or arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint a mediator or arbitrator. The AAA's Code of Arbitrator Ethics (revised March 1, 2004) is applicable to all arbitrations.

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13.5 Rules. To the extent not in conflict with the Federal Arbitration Act, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner may join Contractor in any litigation, mediation, or arbitration initiated against Owner by a third person so that the rights of all parties (Owner, Contractor, Subcontractor, or any third person) shall be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner where necessary to facilitate resolution in a single forum. If multiple lawsuits or arbitrations are commenced, they shall all be consolidated into a single proceeding. Notwithstanding any other provision of this section, if a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect to unilaterally waive mediation or arbitration and litigate the Dispute with Contractor.

14. TERMINATION.

14.1 Termination by Owner for Cause or Convenience. This Agreement shall remain in full force and effect until terminated in writing by mailing notice to the other Party. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) Days' written notice before the effective date of termination, and shall perform fully under this Agreement during that notice period. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.3 Survival. All obligations, duties and warranties for Work performed under this Agreement shall survive termination.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement, (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement, (iii) this Agreement is or will be (when executed) a binding obligation of Contractor, enforceable in accordance with its terms, (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority, (v) Contractor has, and each Contractor's employees, agents or permitted subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement, (vi) Contractor is in compliance with all governmental requirements to which it is subject, and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement, and with respect to prices and quantities only, the Price Schedule and all written Purchase Orders shall be the entire agreement between Owner and Contractor related to the Work, and there are no other agreements, oral or written, made by or relied upon by Owner and Contractor. Except as otherwise provided in this Agreement, no provision of this Agreement may be amended or supplemented except in writing signed by both Owner and Contractor.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights and obligations are not assignable or transferable without the express written consent of Owner, who may consent can be withheld in Owner's sole and absolute discretion. Subject to the restrictions and prohibitions on assignment set forth in this section, the terms of the Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Contractor shall provide and transfer ownership to any and all samples and/or shop drawings requested by Owner.

18. NOTICES. All notices required pursuant to this Agreement or otherwise shall be in writing and shall be delivered to the respective business address of Owner and Contractor. However, Contractor's business address shall be as noted on page one (1) of this Agreement. Notices shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by overnight delivery service, and upon confirmation if sent by facsimile transmission.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or articles.

SOUTH CAROLINA REVISED 7/23/2007

INITIALS: OWNER ABF CONTRACTOR ON



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Kings Landscaping LLC ("Contractor")
 Sole Proprietorship ☐ Partnership ☐ Corporation ☐ LLC ☒ Other (ATTACH W-9)
 Social Security No. or Tax ID No.: 910 74 0311 016 30 3205
 Name of Owner(s)/Officer(s): Antonio Jimenez & Maria Jimenez
 Division Name: _____ Area Name: _____ Assigned Vendor No.: _____
 Address for All Notices: 903 S. Main St.
 City: Fountain Inn State: SC Zip Code: 29644
 Telephone: 814 304 0388 Fax: () _____ E-Mail Address: Kingslandscaping15@gmail.com
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 5 day of October, 2016, between
DR Horton Inc. ("Owner") and Contractor.

1. SCOPE OF WORK. This Agreement is entered on a blank basis. The terms of this Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement shall include all work performed and materials supplied by Contractor, directly or indirectly, in Owner, including but not limited to the labor, services and/or materials, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized by written purchase order, or similar document by Owner's authorized field personnel (the "Work"). The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, shall not modify any of the terms of this Agreement unless executed in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to, or in place of, Contractor.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, method and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further shall provide written notification to all of its present and future employees of Contractor's provision for Workers Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall be solely responsible for and will pay all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill) and labor, the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNTIL CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule implementing a price increase, the superseded Pricing Schedule shall remain in effect for Purchase Orders, as defined herein, issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing from Owner to a purchaser of the house incorporating the Work. To the extent permitted by law, Contractor waives its right to payment for any Work not invoiced in a timely manner. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order, as defined herein.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-30 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO CONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN. CONTRACTOR

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA, IF ANY.

Executed this 5th day of October, 2016

Owner:
By: [Signature]
Name: Antonio Jimenez
Title: Division President

Contractor:
By: [Signature]
Name: Antonio Jimenez & Maria Jimenez
Title: Owner

INITIALS: OWNER [Initials] CONTRACTOR AV & MU

AGREES THAT OWNER DOES, AND WILL, NOT OWE INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF ANY DELAYED PAYMENT.

4.2 Contractor Payments. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed by Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Unless otherwise agreed by Owner and Contractor, payment to Contractor shall be made by check. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties, and these joint payments shall satisfy amounts owed by Owner to Contractor, whether or not all parties endorse the checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the contract price shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of or resulting from the Work and shall not release Contractor from any obligations under this Agreement, including but not limited to liability for warranties, warranty service, or any other liability for alleged defects in the Work. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or customers or assigns shall constitute an acceptance of the Work or materials not in compliance with this Agreement, or be used in any way as evidence of acceptance by Owner.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.2 Authorization and Commencement of the Work. Authorization for any Work shall be in writing, either pursuant to a written purchase order, work invoice, or similar document ("Purchase Order"). Contractor shall have no authority to commence the Work at any specific job location until Owner has issued instructions to proceed. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.3 Changes in Construction Schedule. Owner shall have the right to make changes to the schedule of Work at Owner's sole discretion, and Contractor shall comply with such changes. Contractor shall not be entitled to any additional compensation for such schedule changes.

6. PERFORMANCE OF THE WORK.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FHA minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all laws (statutory and common law), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements). In the event of conflicting provisions, specifications will take precedence over the drawings; the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive; later modifications or changes will supersede or take precedence over earlier provisions. Contractor shall immediately notify Owner in writing of any allegedly conflicting provisions.

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall have absolute authority to act, in all respects, on behalf of and for Contractor.

6.3 Contractor's Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized employee of Owner and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, and that the plans and specifications are clear and unambiguous, and that Contractor has accepted and agreed to be bound by all such requirements.

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, rules, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "Requirements"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS** from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, regardless of any alleged fault of Owner. In addition, Contractor shall not discriminate illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform warranty or repair work after a house is occupied.

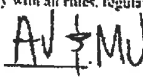
6.5 Observation, Inspection and Testing. Owner and any government agency inspector ("Inspector") shall have the right, but not the obligation, to observe, inspect or test the Work at any time during or after construction, but that observation, inspection or testing is solely for the benefit of Owner and is not for Contractor's benefit. Contractor shall cooperate with Owner and Inspector during any such inspection. The failure by Owner or Inspector to note defects in the Work during an inspection shall not waive or vary any of Contractor's obligations, representations or warranties related to the Work.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses, approvals, and as-built drawings necessary for, or applicable to, the performance of the Work. Contractor shall provide copies to Owner immediately upon request.

6.8 Change Orders. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes. Contractor shall comply with any Change Order requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which

INITIALS: OWNER  CONTRACTOR 

the Work is performed, including without limitation, rules, regulations and restrictions to establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location, (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not limited to trash, unused building materials, garbage, refuse or rubbish ("Waste"), caused by its operations and shall remove all of Contractor's materials at the conclusion of the Work. If materials are furnished by Owner, Contractor shall move all usable materials at the conclusion of the Work to a location designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon demand by Owner and may be deducted by Owner from any sums owed to Contractor.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe working conditions and equipment exist and safe practices are observed. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon demand by Owner and may be deducted by Owner from any sums owed to Contractor.

7.2 Safety Laws. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations ("Safety Law"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of, or noncompliance with, the Safety Law, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation or noncompliance by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, of the Safety Law, or safety citation, regardless of any alleged fault of Owner. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and, if required by law, provide written notice to Owner of the contact person responsible for Contractor's safety compliance.

7.3 Hazardous Materials. Contractor shall not permit any Hazardous Substances, defined below, to be brought onto or stored at any job site or used in the construction of the Work, except for commonly used construction materials, provided however, that all such material shall be handled in full compliance with all laws, ordinances and regulations. All notices required to be given with respect to such products shall be given by Contractor. Contractor shall not release or dispose, nor allow any other person to release or dispose, of Hazardous Substances or waste at any job site or into the soil, drains, surface or ground water, or air. "Hazardous Substance" means any substance or material which any state, federal or local governmental authority determines or designates as capable of posing a risk of injury to health, safety, property or the environment.

7.4 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, agents, subcontractors or suppliers at a job location, or performance of the Work by any person under the influence of alcohol or drugs. "Drugs" shall include any substance, whether or not illegal, which upon exposure, ingestion, inhalation, injection or by any other introduction, may impair one's ability to safely perform the Work.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. For the longer of ten years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work shall conform to the specifications of this Agreement (including but not limited to the standards referenced in Subsection 6.1), shall be free from any defects or deficiencies in workmanship or materials, shall comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, shall meet or exceed the FHAA minimum property standards, and shall comply with the Home Owners' Warranty, defined below and its applicable warranty standards (which Contractor has read and understands). All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects. Contractor shall be liable to make good or promptly repair all Work not complying with the standards set forth in this Section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Subsection 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, any initial home purchaser of property subject to the Work: (i) for a period of ten (10) years all structural elements, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; and (iii) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (a) any statutory warranty or (b) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner, including but not limited to the Residential Warranty Corporation Program (a "Home Owners' Warranty"). Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Home Owners Warranty that is longer than the warranty periods stated above; provided, however, failure to give that notice will not affect the extension of the warranty period in the applicable warranty period under the Home Owners Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform warranty services thereafter.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product information, and guarantees by manufacturers on components of the Work, including any appliances or equipment, and shall furnish all certificates required by any third parties such as any municipality, the VA, or the FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and shall not limit or reduce any applicable statutes of limitation.

INITIALS: OWNER

CONTRACTOR

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. TO THE EXTENT PERMITTED BY LAW, CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS OR SIMILAR CLAIMS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Work is located.

9.3 Lien Claims Indemnity. If any liens, affidavits of claim, stop payment notices, or lis pendens arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such liens, affidavits of claim, stop payment notices, or lis pendens to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such liens, affidavits of claim, stop payment notices, or lis pendens, and further agrees immediately upon Owners' request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge any and all liens, affidavits of claim, stop payment notices, or lis pendens, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any home purchaser in discharging the liens, affidavits of claim, stop payment notices, or lis pendens whichever remedy Owner elects in its sole and absolute discretion. The provisions of this paragraph shall be in addition to any rights Owner may have under applicable law with respect to such liens, affidavits of claim, stop payment notices, or lis pendens.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF, ATTORNEYS' FEES AND INTEREST), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (2) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO WORK PERFORMED OR TO BE PERFORMED OR SUBCONTRACTORS OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, OR BY ITS SUPPLIERS OR ACT OR OMISSION OF CONTRACTOR OR BY CONTRACTOR'S AGENTS OR EMPLOYEES; (3) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, SUPPLIERS OR SUBCONTRACTORS, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR (4) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF INDEMNITEE RELATED IN ANY WAY TO THE WORK. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY INDEMNITEE AGAINST LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR AGREES THAT ITS OBLIGATIONS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE, AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

10.3 NO BAILMENT. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, ALL SUBCONTRACTORS, AND SUPPLIERS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS, MATERIALS, OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS, MATERIALS OR EQUIPMENT.

10.4 Subcontractors and Suppliers Indemnity Obligations. Contractor shall require each of its subcontractors to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee in the extent required and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth in Section 13 of this Agreement. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the acts and omissions of any subcontractor or supplier who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed also to be the obligation of the subcontractors or suppliers to Owner, for which Contractor shall be fully responsible to Owner.

INITIALS: OWNER RD CONTRACTOR AU & MJ

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with products-completed operations coverage, which contains a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit of no less than Two Million Dollars (\$2,000,000.00) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products-completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk, covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type, nature, or volume of the Work or limit the type of structure or number of units on which the Work is to be performed. The CGL policy shall not contain a deductible or self-insured retention of more than \$25,000.00, and shall allow the satisfaction of any and all deductible or self-insured retention through payments made by any third party, including but not limited to Owner or any additional insured, co-insureds, co-insurers, or insureds other than the primary or first named insured. Contractor shall continuously maintain a CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work.

11.2 Other Insurance. Contractor agrees to carry (a) Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law; (b) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (c) Commercial Automobile Liability Insurance coverage with limits of not less than \$200,000 per person for bodily injury and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner, D.R. Horton, Inc., and all affiliates and subsidiaries of D.R. Horton, Inc. (collectively "Horton") as named, Additional Insureds, specifically identifying Horton, on the CGL Policy and policies required above covering both ongoing operations and completed operations equivalent in scope to form CG 2010 1185 or, if unavailable, both forms CG 2010 1001 and CG 2037 1001. Coverage obtained by Contractor with Horton as an additional insured shall be primary, with any insurance of Horton being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work; (iii) provide for a waiver of subrogation; (iv) indicate that coverage applies in the state where the Work is being performed; and (v) be with a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement. In the event that Contractor obtains insurance coverage that is broader than the minimums required by this Agreement, this Agreement shall be deemed to require the broader coverage, including but not limited to any greater limits.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, portions of policies (including but not limited to declarations pages and endorsements), or certified copies of the required policies, as requested by Owner.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT ESTABLISHED BY OWNER BY OWNER POLICY WITH RESPECT TO PARTICULAR TRADE CATEGORIES IN ITS SOLE AND ABSOLUTE DISCRETION IN EFFECT AT THE TIME WORK IS PERFORMED) TO COMPENSATE OWNER REASONABLY FOR ANY ADDITIONAL COSTS OF ITS WORKERS COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS AGREEMENT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Horton as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

11.7 Subrogation. Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including but not limited to claims relating to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Owner or any Indemnitee, and any of their consultants, subcontractors, agents, employees and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or if another contractor's work, or other property, is damaged by an act or omission of Contractor, its employees, agents, suppliers, or subcontractors, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs to complete, repair, or replace, plus any related costs or damage including re-inspection fees, with any excess to be paid to Contractor. If such costs exceed the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens

INITIALS: OWNER [Signature] CONTRACTOR [Signature]

are filed against the job location as a result of Contractor's acts or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement; and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or (viii) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may set off set from amounts owing to Contractor hereunder any amounts owing by Contractor to Owner's parent company, any subsidiary or affiliate, under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking other relief.

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("FAA"). All demands for arbitration shall be made before the expiration of the applicable statutes of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified or corrected only as permitted by the FAA.

13.4 Choice of Mediator and Arbitrator: Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator(s) mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes against Owner, is for \$1,000,000 or more, but only one arbitrator shall be appointed if the Dispute is for less than \$1,000,000. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

13.5 Rules. To the extent not in conflict with the FAA, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) can be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner. If multiple lawsuits or arbitrations are commenced, Owner in its sole discretion may consolidate them into a single proceeding. Notwithstanding any other provision of this Section 13, if Owner determines in its sole discretion that a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect unilaterally to waive mediation or arbitration and to litigate the Dispute in court with Contractor.

14. TERMINATION.

14.1 Termination by Owner. This Agreement shall remain in full force and effect until terminated in writing by Owner by mailing notice to Contractor. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) days written notice to Owner before the effective date of any termination by Contractor, and shall perform fully under this Agreement during that notice period.

14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement; (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement; (iii) this Agreement is or will be (when executed) a binding obligation of Contractor, enforceable in accordance with its terms; (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority; (v) Contractor has, and in compliance with this Agreement, agents or subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work; (vi) Contractor is in compliance with all governmental requirements to which it is subject, and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

INITIALS: OWNER

CONTRACTOR

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to amend and supersede all prior Independent Contractor Agreements (other than any Master National Independent Contractor Agreement) or other prior understandings or written or oral agreements, specifically including but not limited to all prior pre-printed standard contractor-subcontractor agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods or services or both by Contractor relating to the subject matter herein. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work and shall be deemed subject to the terms of this Agreement. Any future Pricing Schedules or Purchase Orders entered into hereafter shall also be deemed to be subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices and quantities of sale only. Nothing in any subsequent agreement or document, unless a new Independent Contractor Agreement, shall alter the terms set forth in this Agreement. To the extent possible, this Agreement shall be deemed to supplement the terms of any other agreement or document, unless a new Independent Contractor Agreement. In the event of any conflict between this Agreement and other such documents, this Agreement shall be deemed to control and prevail. Except as otherwise provided in this Agreement, no amendment or supplement to this Agreement shall be valid or binding unless in writing and signed by both Owner and Contractor. Notwithstanding anything in this Subsection to the contrary, this Agreement shall not amend or supersede any Master National Independent Contractor Agreement, but shall supplement its terms. In the event of a conflict, to the extent permitted by law, the Master National Independent Contractor Agreement shall control.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights, responsibilities, and obligations under this Agreement are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Any attempted assignment shall be null and void. This restriction includes, without limitation, the delegation or subcontracting of any Work or any amounts which may become due to Contractor as a result of the Work. Contractor shall remain fully liable under this Agreement regardless of any consent by Owner in any assignment or delegation of duties by Contractor, including but not limited to any work by a subcontractor. Contractor shall ensure that any subcontractor receives a copy of this Agreement and agrees in writing to be fully responsible for all obligations of Contractor under this Agreement, including but not limited to the insurance and indemnity provisions. Contractor shall also ensure that Owner is an intended third party beneficiary of any subcontractor agreement by including a specific provision to that effect. Contractor shall be responsible for enforcing any warranties given by its subcontractors, suppliers or manufacturers. Nothing contained herein, however, shall create any contractual relationship between Owner and any subcontractor, nor create any obligation on the part of Owner to make payment of any sums to any subcontractor. Subject to the restrictions and prohibitions on assignment set forth in this Subsection, the terms of this Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns. Owner may freely assign this Agreement, in whole or in part.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No act or conduct other than a specific, written waiver of a right shall be deemed a waiver by Owner. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

18. NOTICES. All notices required or permitted pursuant to this Agreement or otherwise shall be in writing and shall be delivered as follows: to Contractor at Contractor's business address as shown on page one (1) of this Agreement; to Owner through Owner's official Registered Agent for service of legal process in the state where the Work is performed at that Registered Agent's registered office. Notices may be given by personal delivery, facsimile, commercial overnight delivery service, personal delivery or ordinary mail and shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by commercial overnight delivery service, and upon confirmation if sent by facsimile transmission or by personal delivery. Rejection, refusal to accept or the inability to deliver because of changed address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or subsections.

Landscaping

SOUTH CAROLINA VERSION (REV. 22 JUNE 2015)

INITIALS: OWNER AW CONTRACTOR AW + MJ

America's Builder

D.R. Horton, Inc. Vendor Insurance Requirements

The Certificate must:

- Be mailed to Insurance Data Services – D.R. Horton, Inc. c/o Insurance Data Services – P.O. Box 12010-DR – Hemet, CA 92546-8010
- Be an original document.
- List all subsidiaries or DBA's covered by the certificate provided and included insured who signed the DRH contract.
- Provide at least 30 days notice of cancellation
- Show complete insurance carrier names as listed in the A.M. Best Property & Casualty Guide.

NO CONTRACTOR WILL BE ALLOWED TO START OR CONTINUE ANY WORK AT A D.R. HORTON, INC. AND ITS AFFILIATES AND SUBSIDIARIES JOB SITE UNTIL OUR INSURANCE REQUIREMENTS ARE FULLY SATISFIED. NO PAYMENTS WILL BE MADE UNTIL CONTRACTOR PROVIDES REQUIRED EVIDENCE OF COVERAGE TO D.R. HORTON, INC. AND ITS AFFILIATES AND SUBSIDIARIES ALL REQUIRED COVERAGES MUST BE CONTINUOUSLY MAINTAINED BY CONTRACTOR.

The Certificate of Insurance must be completed in its entirety, signed and dated.

Binder are not acceptable.

Commercial General Liability (CGL) (occurrence form) coverage not less than:

\$2,000,000	General Aggregate
\$1,000,000	Products and Completed Operations Aggregate
\$1,000,000	Each Occurrence

- *Coverage must be placed with a carrier rated not less than A, VII, by A.M. Best & Co.
- *The required Additional Insured wording is : D.R. Horton, Inc., its affiliates and subsidiaries.
- *All endorsements must be listed on the certificate.
- *Attached Additional insured Endorsements Required: ISO Form CG2010 11/85, or its equivalent, or CG 2026 11/85 or its equivalent.
- *Attached Waiver of Subrogation in favor of D.R. Horton, Inc., its affiliates and subsidiaries required.

Professional Liability:

\$1,000,000	Each Occurrence
\$1,000,000	Aggregate

- *Coverage must be placed with a carrier rated not less than A, VII by A.M. Best & Co.

Workers' Compensation:

State Statutory Limits	
Employers' Liability Coverage	
\$500,000	Each Accident
\$500,000	Disease – Policy limit
\$500,000	Disease – Each Employee

- *Coverage must be placed with a carrier rated not less than A, VII by A.M. Best & Co.

Note: The above requirements are for certificate tracking purposes only and do not alter your insurance obligations under your subcontractor agreement in any way.

D.R. Horton, Inc., anticipates requiring Commercial Automobile Liability coverage in the future.

Commercial Automobile Liability:

\$500,000	Combined Single Limit
OR	
\$500,000	Bodily Injury per Accident
\$500,000	Bodily Injury per Person
\$500,000	Property Damage

- *Coverage must be placed with a carrier rated not less than A, VII by A.M. Best & Co.
- *Automobile Liability Coverage shall apply to: 1)Any Auto or 2) All owned, hired and non-owned autos or 3) Scheduled hired and non-owned vehicles.

LadeDanlar00098



GEORGIA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Lade-Danlar (supplier) ("Contractor") = supplier (W)
Sole Proprietorship ☐ Partnership ☐ ☒ Corporation ☐ L.L.C. ☐ Other (ATTACH W-9)
Social Security No. or Tax ID No.: 06-0864003
Name of Owner(s)/Officer(s): _____
Division Name: _____ Area Name: _____ Assigned Vendor No.: _____
Address for All Notices: 2050 Mountain Industrial Blvd
City: Tucker State: GA Zip Code: 30084
Telephone: 470 939-6244 Fax: 470 939-7516 E-Mail Address: wboozer@ladedanlar.com
Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
This agreement (the "Agreement") is entered into on this _____ day of _____, between _____ ("Owner") and Contractor.

supplier is limited to supply of materials only. (W)
1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of this Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement shall include all ~~work performed~~ and materials supplied by Contractor, directly or indirectly, to Owner, including but not limited to ~~the labor, services and/or materials~~, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized by written purchase order, or similar document by Owner's authorized field personnel (the "Work"). The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing shall not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to, or in place of, Contractor.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, method and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further shall provide written notification to all of its present and future employees of Contractor's provision for Workers Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. ~~Contractor shall be solely responsible for and will pay all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate.~~ If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes. (W)

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNTIL CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule implementing a price increase, the superseded Pricing Schedule shall remain in effect for Purchase Orders, as defined herein, issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing from Owner to a purchaser of the house incorporating the Work. To the extent permitted by law, Contractor waives its right to payment for any Work not invoiced in a timely manner. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order, as defined herein.

4.2 Contractor Payments. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed by Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Unless otherwise agreed by Owner and Contractor, payment to Contractor shall be made by check. Owner may, at any time, in its discretion, make checks payable jointly to

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA, IF ANY.

Executed this _____ day of _____,

Owner:

By: _____

Name: _____

Title: Division President

Contractor:

By: Wayland Y. Boozar

Name: WAYLAND Y. BOOZER

Title: DIRECTOR OF OPERATIONS

INITIALS: OWNER _____, CONTRACTOR (W)

supplier

Contractor and one or more third parties; and these joint payments shall satisfy amounts owed by Owner to Contractor, whether or not all parties endorse the checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the contract price shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of or resulting from the Work and shall not release Contractor from any obligations under this Agreement, including but not limited to liability for warranties, warranty service, or any other liability for alleged defects in the Work. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or customers or assigns shall constitute an acceptance of the Work or materials not in compliance with this Agreement, or be used in any way as evidence of acceptance by Owner.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.2 Authorization and Commencement of the Work. Authorization for any Work shall be in writing, either pursuant to a written purchase order, work invoice, or similar document ("Purchase Order"). Contractor shall have no authority to commence the Work at any specific job location until Owner has issued instructions to proceed. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.3 Changes in Construction Schedule. Owner shall have the right to make changes to the schedule of Work at Owner's sole discretion, and Contractor shall comply with such changes. Contractor shall not be entitled to any additional compensation for such schedule changes.

6. PERFORMANCE OF THE WORK.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FHA minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all laws (statutory and common law), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements). In the event of conflicting provisions, specifications will take precedence over the drawings; the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive; later modifications or changes will supersede or take precedence over earlier provisions. Subcontractor shall immediately notify Contractor in writing of any allegedly conflicting provisions.

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall have absolute authority to act, in all respects, on behalf of and for Contractor.

6.3 Contractors' Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized employee of Owner and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, and that the plans and specifications are clear and unambiguous, and that Contractor has accepted and agreed to be bound by all such requirements.

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, rules, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "Requirements"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS** from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, regardless of any alleged fault of Owner. In addition, Contractor shall not discriminate illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform warranty or repair work after a house is occupied.

6.5 Observation, Inspection and Testing. Owner and any government agency inspector ("Inspector") shall have the right, but not the obligation, to observe, inspect or test the Work at any time during or after construction, but that observation, inspection or testing is solely for the benefit of Owner and is not for Contractor's benefit. Contractor shall cooperate with Owner and Inspector during any such inspection. The failure by Owner or Inspector to note defects in the Work during an inspection shall not waive or vary any of Contractor's obligations, representations or warranties related to the Work.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses, approvals, and as-built drawings necessary for, or applicable to, the performance of the Work. Contractor shall provide copies to Owner immediately upon request.

6.8 Change Orders. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes. Contractor shall comply with any Change Order requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not limited to trash, unused building materials, garbage, refuse or rubbish ("Waste"), caused by its operations and shall remove all of Contractor's materials at the conclusion of the Work. If materials are furnished by Owner, Contractor shall move all usable materials at the conclusion of the Work to a location

INITIALS: OWNER _____, CONTRACTOR WV

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designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon demand by Owner and may be deducted by Owner from any sums owed to Contractor.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

7.2 Safety Laws. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations ("Safety Law"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of, or noncompliance with, the Safety Law, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation or noncompliance by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, of the Safety Law, or safety citation, regardless of any alleged fault of Owner. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and, if required by law, provide written notice to Owner of the contact person responsible for Contractor's safety compliance.

7.3 Hazardous Materials. Contractor shall not permit any Hazardous Substances, defined below, to be brought onto or stored at any job site or used in the construction of the Work, except for commonly used construction materials, provided however, that all such material shall be handled in full compliance with all laws, ordinances and regulations. All notices required to be given with respect to such products shall be given by Contractor. Contractor shall not release or dispose, nor allow any other person to release or dispose, of Hazardous Substances or waste at any job site or into the soil, drains, surface or ground water, or air. "Hazardous Substance" means any substance or material which any state, federal or local governmental authority determines or designates as capable of posing a risk of injury to health, safety, property or the environment.

7.4 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, agents, subcontractors or suppliers at a job location, or performance of the Work by any person under the influence of alcohol or drugs. "Drugs" shall include any substance, whether or not illegal, which upon exposure, ingestion, inhalation, injection or by any other introduction, may impair one's ability to safely perform the Work.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. For the longer of ten years or the period or any applicable statute of limitation or repose, Contractor ~~unconditionally warrants~~ to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work shall conform to the specifications of this Agreement (including but not limited to the standards referenced in Subsection 6.1), shall be free from any defects or deficiencies in workmanship or materials, shall comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, shall meet or exceed the FHA/VA minimum property standards, and shall comply with the Home Owners' Warranty, defined below and its applicable warranty standards (which Contractor has read and understands). All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects. Contractor shall be liable to make good or ~~promptly repair~~ all Work not complying with the standards set forth in this Section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Subsection 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, any initial home purchaser of property subject to the Work: (i) for a period of ten (10) years all structural elements, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; and (iii) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (a) any statutory warranty or (b) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner, including but not limited to the Residential Warranty Corporation Program (a "Home Owners' Warranty"). Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Home Owners Warranty that is longer than the warranty periods stated above; provided, however, failure to give that notice will not affect the extension of the warranty period to the applicable warranty period under the Home Owners Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform warranty services thereafter.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product information, and guarantees by manufacturers on components of the Work, including any appliances or equipment, and shall furnish all certificates required by any third parties such as any municipality, the VA, or the FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and shall not limit or reduce any applicable statutes of limitation.

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

INITIALS: OWNER _____, CONTRACTOR (MD)

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9. LIENS AND RETAINAGE.

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 9.1 ~~Contractor's Lien Waiver.~~ TO THE EXTENT PERMITTED BY LAW, CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS OR SIMILAR CLAIMS AGAINST OWNER OR ITS PROPERTY. *4/4*

~~9.2 Retainage.~~ At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the work is located. *Not a pro*

~~9.3 Lien Claim Indemnity.~~ If any liens, affidavits of claim, stop payment notices, or lis pendens arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor cures such liens, affidavits of claim, stop payment notices, or lis pendens to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such liens, affidavits of claim, stop payment notices, or lis pendens, and further agrees immediately upon Owners' request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge any and all liens, affidavits of claim, stop payment notices, or lis pendens, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any home purchaser in discharging the liens, affidavits of claim, stop payment notices, or lis pendens whichever remedy Owner elects in its sole and absolute discretion. The provisions of this paragraph shall be in addition to any rights Owner may have under applicable law with respect to such liens, affidavits of claim, stop payment notices, or lis pendens. *nh*

10. CONTRACTOR'S INDEMNITY. *N/A we are Supplier*

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF AND ATTORNEYS' FEES), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (2) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR OR BY CONTRACTOR'S AGENTS OR EMPLOYEES, OR BY SUPPLIERS OR SUBCONTRACTORS OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES; (3) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, OR SUBCONTRACTORS, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR (4) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF INDEMNITEE RELATED IN ANY WAY TO THE WORK, EXCEPTING ONLY LIABILITY OR CLAIMS ARISING OUT OF BODILY INJURY TO PERSONS, DEATH, OR DAMAGE TO PROPERTY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO DEFEND, INSURE, INDEMNIFY OR HOLD INDEMNITEE HARMLESS FOR LIABILITY OR CLAIMS ARISING OUT OF BODILY INJURY TO PERSONS, DEATH, OR DAMAGE TO PROPERTY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

10.3 NO BAILMENT. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, ALL SUBCONTRACTORS, AND SUPPLIERS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS, MATERIALS, OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS, MATERIALS OR EQUIPMENT.

10.4 Subcontractors and Suppliers Indemnity Obligations. Contractor shall require each of its subcontractors to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth in Section 13 of this Agreement. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the acts and omissions of any subcontractor or supplier who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed also to be the obligation of the subcontractors or suppliers to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with products-completed operations coverage, which contains a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit of no less than Two Million Dollars (\$2,000,000.00) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products-completed operations including materials designed, furnished, and/or

INITIALS: OWNER _____, CONTRACTOR W

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modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type of, or nature of, the Work or limit the type of structure on which the Work is to be performed. The CGL policy shall not contain a deductible or self insured retention of more than \$25,000.00. Contractor shall continuously maintain a CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work.

11.2 Other Insurance. Contractor agrees to carry (a) Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law; (b) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (c) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person for bodily injury and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner as a named, Additional Insured, specifically identifying Owner, on the CGL Policy and policies required above covering both ongoing operations and completed operations (equivalent in scope to form CG 2010 0704 and CG 2037 0704). Coverage obtained by Contractor with Owner as an additional insured shall be primary, with any insurance of Owner being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work; (iii) provide for a waiver of subrogation; (iv) indicate that coverage applies in the state where the Work is being performed; and (v) be with a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the required policies, as requested by Owner.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER BY OWNER POLICY WITH RESPECT TO PARTICULAR TRADE CATEGORIES IN ITS SOLE AND ABSOLUTE DISCRETION IN EFFECT AT THE TIME WORK IS PERFORMED) TO COMPENSATE OWNER REASONABLY FOR ANY ADDITIONAL COSTS OF ITS WORKERS COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS AGREEMENT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Owner as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

11.7 Subrogation. Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including but not limited to claims relating to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Owner or any Indemnitee, and any of their consultants, subcontractors, agents, employees and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or if another contractor's work, or other property, is damaged by an act or omission of Contractor, its employees, agents, suppliers, or subcontractors, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location as a result of Contractor's acts or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or (viii) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may set off from amounts owing to Contractor hereunder any amounts owing by Contractor to Owner's parent company, any subsidiary or affiliate, under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this

INITIALS: OWNER _____, CONTRACTOR WM

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Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking other relief.

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("FAA"). All demands for arbitration shall be made before the expiration of the applicable statutes of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified or corrected only as permitted by the FAA.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator(s) mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes against Owner, is for \$1,000,000 or more, but only one arbitrator shall be appointed if the Dispute is for less than \$1,000,000. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

13.5 Rules. To the extent not in conflict with the FAA, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) can be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner. If multiple lawsuits or arbitrations are commenced, Owner in its sole discretion may consolidate them into a single proceeding. Notwithstanding any other provision of this Section 13, if Owner determines in its sole discretion that a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect unilaterally to waive mediation or arbitration and to litigate the Dispute in court with Contractor.

14. TERMINATION.

14.1 Termination by Owner. This Agreement shall remain in full force and effect until terminated in writing by Owner by mailing notice to Contractor. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) days written notice to Owner before the effective date of any termination by Contractor, and shall perform fully under this Agreement during that notice period.

14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement; (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement; (iii) this Agreement is or will be (when executed) a binding obligations of Contractor, enforceable in accordance with its terms; (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority; (v) Contractor has, and each Contractor's employees, agents or subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement; (vi) Contractor is in compliance with all governmental requirements to which it is subject; and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to amend and supersede all prior Independent Contractor Agreements (other than any Master National Independent Contractor Agreement) or other prior understandings or written or oral agreements, specifically including but not limited to all prior pre-printed standard contractor/subcontractor agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods or services or both by Contractor relating to the subject matter herein. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work and shall be deemed subject to the terms of this Agreement. Any future Pricing Schedules or Purchase Orders entered into hereafter shall also be deemed to be subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices and quantities of sale only. Nothing in any subsequent agreement or document, unless a new Independent Contractor Agreement, shall alter the terms set forth in this Agreement. To the extent possible, this Agreement shall be deemed to supplement the terms of any other agreement or document, unless a new Independent Contractor Agreement. In the event of any conflict between this Agreement and other such documents, this Agreement shall be deemed to

INITIALS: OWNER _____, CONTRACTOR MD

supplier

control and prevail. Except as otherwise provided in this Agreement, no amendment or supplement to this Agreement shall be valid or binding unless in writing and signed by both Owner and Contractor. Notwithstanding anything in this Subsection to the contrary, this Agreement shall not amend or supersede any Master National Independent Contractor Agreement, but shall supplement its terms. In the event of a conflict, to the extent permitted by law, the Master National Independent Contractor Agreement shall control.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights, responsibilities, and obligations under this Agreement are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Any attempted assignment shall be null and void. This restriction includes, without limitation, the delegation or subcontracting of any Work or any amounts which may become due to Contractor as a result of the Work. Contractor shall remain fully liable under this Agreement regardless of any consent by Owner to any assignment or delegation of duties by Contractor, including but not limited to any work by a subcontractor. Contractor shall ensure that any subcontractor receives a copy of this Agreement and agrees in writing to be fully responsible for all obligations of Contractor under this Agreement, including but not limited to the insurance and indemnity provisions. Contractor shall also ensure that Owner is an intended third party beneficiary of any subcontractor agreement by including a specific provision to that effect. Contractor shall be responsible for enforcing any warranties given by its subcontractors, suppliers or manufacturers. Nothing contained herein, however, shall create any contractual relationship between Owner and any subcontractor, nor create any obligation on the part of Owner to make payment of any sums to any subcontractor. Subject to the restrictions and prohibitions on assignment set forth in this Subsection, the terms of this Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns. Owner may freely assign this Agreement, in whole or in part.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No act or conduct other than a specific, written waiver of a right shall be deemed a waiver by Owner. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of Georgia.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

18. NOTICES. All notices required or permitted pursuant to this Agreement or otherwise shall be in writing and shall be delivered as follows: to Contractor at Contractor's business address as shown on page one (1) of this Agreement; to Owner through Owner's official Registered Agent for service of legal process in the state where the Work is performed at that Registered Agent's registered office. Notices may be given by personal delivery, facsimile, commercial overnight delivery service, personal delivery or ordinary mail and shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by commercial overnight delivery service, and upon confirmation if sent by facsimile transmission or by personal delivery. Rejection, refusal to accept or the inability to deliver because of changed address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or subsections.

GEORGIA VERSION (REV. 21 DECEMBER 2012)

INITIALS: OWNER _____, CONTRACTOR AA

Supplier

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LadeDanlar00105



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Landshapers, LLC ("Contractor")
 Sole Proprietorship ☐ Partnership ☐ Corporation ☒ L.L.C. ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No.: 57-1199996
 Name of Owner(s)/Officer(s): Mark C. Walker
 Division Name: _____ Area Name: _____ Assigned Vendor No.: _____
 Address for All Notices: 17 Horse Shoe Circle
 City: Greenville State: SC Zip Code: 29605
 Telephone: () 864-444-0536 Fax: () _____ E-Mail Address: Landshapers SC@gmail.com
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 1st day of December, 2015, between
DR Horton Inc. and DR Horton - Regent LLC ("Owner") and Contractor.

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of this Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement shall include all work performed and materials supplied by Contractor, directly or indirectly, to Owner, including but not limited to the labor, services and/or materials, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized by written purchase order, or similar document by Owner's authorized field personnel (the "Work"). The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing shall not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to, or in place of, Contractor.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, method and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further shall provide written notification to all of its present and future employees of Contractor's provision for Workers Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall be solely responsible for and will pay all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNTIL CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule implementing a price increase, the superseded Pricing Schedule shall remain in effect for Purchase Orders, as defined herein, issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing from Owner to a purchaser of the house incorporating the Work. To the extent permitted by law, Contractor waives its right to payment for any Work not invoiced in a timely manner. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order, as defined herein.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-39 AND 29-6-50, CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO CONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN. CONTRACTOR

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA, IF ANY.

Executed this 1st day of December, 2015

Owner: _____ Contractor: Landshapers, LLC
 By: _____ By: Mark C. Walker
 Name: Shawn Varghese Name: Mark C. Walker
 Title: Division President Title: Owner

INITIALS: OWNER SC CONTRACTOR MLW

AGREES THAT OWNER DOES, AND WILL, NOT OWE INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF ANY DELAYED PAYMENT.

4.2 Contractor Payments. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed by Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Unless otherwise agreed by Owner and Contractor, payment to Contractor shall be made by check. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties; and these joint payments shall satisfy amounts owed by Owner to Contractor, whether or not all parties endorse the checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the contract price shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of or resulting from the Work and shall not release Contractor from any obligations under this Agreement, including but not limited to liability for warranties, warranty service, or any other liability for alleged defects in the Work. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or customers or assigns shall constitute an acceptance of the Work or materials not in compliance with this Agreement, or be used in any way as evidence of acceptance by Owner.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.2 Authorization and Commencement of the Work. Authorization for any Work shall be in writing, either pursuant to a written purchase order, work invoice, or similar document ("Purchase Order"). Contractor shall have no authority to commence the Work at any specific job location until Owner has issued instructions to proceed. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.3 Changes in Construction Schedule. Owner shall have the right to make changes to the schedule of Work at Owner's sole discretion, and Contractor shall comply with such changes. Contractor shall not be entitled to any additional compensation for such schedule changes.

6. PERFORMANCE OF THE WORK.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FHA minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all laws (statutory and common law), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements). In the event of conflicting provisions, specifications will take precedence over the drawings; the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive; later modifications or changes will supersede or take precedence over earlier provisions. Contractor shall immediately notify Owner in writing of any allegedly conflicting provisions.

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall have absolute authority to act, in all respects, on behalf of and for Contractor.

6.3 Contractor's Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized employee of Owner and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, and that the plans and specifications are clear and unambiguous, and that Contractor has accepted and agreed to be bound by all such requirements.

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, rules, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "Requirements"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, regardless of any alleged fault of Owner. In addition, Contractor shall not discriminate illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform warranty or repair work after a house is occupied.

6.5 Observation, Inspection and Testing. Owner and any government agency inspector ("Inspector") shall have the right, but not the obligation, to observe, inspect or test the Work at any time during or after construction, but that observation, inspection or testing is solely for the benefit of Owner and is not for Contractor's benefit. Contractor shall cooperate with Owner and Inspector during any such inspection. The failure by Owner or Inspector to note defects in the Work during an inspection shall not waive or vary any of Contractor's obligations, representations or warranties related to the Work.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses, approvals, and as-built drawings necessary for, or applicable to, the performance of the Work. Contractor shall provide copies to Owner immediately upon request.

6.8 Change Orders. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes. Contractor shall comply with any Change Order requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which

INITIALS: OWNER *AW* , CONTRACTOR *MCW*

the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not limited to trash, unused building materials, garbage, refuse or rubbish ("Waste"), caused by its operations and shall remove all of Contractor's materials at the conclusion of the Work. If materials are furnished by Owner, Contractor shall move all usable materials at the conclusion of the Work to a location designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon demand by Owner and may be deducted by Owner from any sums owed to Contractor.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

7.2 Safety Laws. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations ("Safety Law"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of, or noncompliance with, the Safety Law, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation or noncompliance by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, of the Safety Law, or safety citation, regardless of any alleged fault of Owner. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and, if required by law, provide written notice to Owner of the contact person responsible for Contractor's safety compliance.

7.3 Hazardous Materials. Contractor shall not permit any Hazardous Substances, defined below, to be brought onto or stored at any job site or used in the construction of the Work, except for commonly used construction materials, provided however, that all such material shall be handled in full compliance with all laws, ordinances and regulations. All notices required to be given with respect to such products shall be given by Contractor. Contractor shall not release or dispose, nor allow any other person to release or dispose, of Hazardous Substances or waste at any job site or into the soil, drains, surface or ground water, or air. "Hazardous Substance" means any substance or material which any state, federal or local governmental authority determines or designates as capable of posing a risk of injury to health, safety, property or the environment.

7.4 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, agents, subcontractors or suppliers at a job location, or performance of the Work by any person under the influence of alcohol or drugs. "Drugs" shall include any substance, whether or not illegal, which upon exposure, ingestion, inhalation, injection or by any other introduction, may impair one's ability to safely perform the Work.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. For the longer of ten years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work shall conform to the specifications of this Agreement (including but not limited to the standards referenced in Subsection 8.1), shall be free from any defects or deficiencies in workmanship or materials, shall comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, shall meet or exceed the FHA/VA minimum property standards, and shall comply with the Home Owners' Warranty, defined below and its applicable warranty standards (which Contractor has read and understands). All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects. Contractor shall be liable to make good or promptly repair all Work not complying with the standards set forth in this Section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Subsection 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, any initial home purchaser of property subject to the Work: (i) for a period of ten (10) years all structural elements, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; and (iii) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (a) any statutory warranty or (b) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner, including but not limited to the Residential Warranty Corporation Program (a "Home Owners' Warranty"). Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Home Owners Warranty that is longer than the warranty periods stated above; provided, however, failure to give that notice will not affect the extension of the warranty period to the applicable warranty period under the Home Owners Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform warranty services thereafter.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product information, and guarantees by manufacturers on components of the Work, including any appliances or equipment, and shall furnish all certificates required by any third parties such as any municipality, the VA, or the FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and shall not limit or reduce any applicable statutes of limitation.

INITIALS: OWNER CONTRACTOR

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. TO THE EXTENT PERMITTED BY LAW, CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS OR SIMILAR CLAIMS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Work is located.

9.3 Lien Claim Indemnity. If any liens, affidavits of claim, stop payment notices, or lis pendens arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such liens, affidavits of claim, stop payment notices, or lis pendens to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such liens, affidavits of claim, stop payment notices, or lis pendens, and further agrees immediately upon Owners' request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge any and all liens, affidavits of claim, stop payment notices, or lis pendens, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any home purchaser in discharging the liens, affidavits of claim, stop payment notices, or lis pendens whichever remedy Owner elects in its sole and absolute discretion. The provisions of this paragraph shall be in addition to any rights Owner may have under applicable law with respect to such liens, affidavits of claim, stop payment notices, or lis pendens.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF, ATTORNEYS' FEES AND INTEREST), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (2) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR OR BY CONTRACTOR'S AGENTS OR EMPLOYEES, OR BY ITS SUPPLIERS OR SUBCONTRACTORS OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES; (3) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, SUPPLIERS OR SUBCONTRACTORS, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR (4) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF INDEMNITEE RELATED IN ANY WAY TO THE WORK. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY INDEMNITEE AGAINST LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR AGREES THAT ITS OBLIGATIONS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

10.3 NO BAILMENT. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, ALL SUBCONTRACTORS, AND SUPPLIERS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS, MATERIALS, OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS, MATERIALS OR EQUIPMENT.

10.4 Subcontractors and Suppliers Indemnity Obligations. Contractor shall require each of its subcontractors to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth in Section 13 of this Agreement. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the acts and omissions of any subcontractor or supplier who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed also to be the obligation of the subcontractors or suppliers to Owner, for which Contractor shall be fully responsible to Owner.

INITIALS: OWNER CONTRACTOR

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with products-completed operations coverage, which contains a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit of no less than Two Million Dollars (\$2,000,000.00) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products-completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type, nature, or volume of the Work or limit the type of structure or number of units on which the Work is to be performed. The CGL policy shall not contain a deductible or self-insured retention of more than \$25,000.00, and shall allow the satisfaction of any and all deductible or self-insured retention through payments made by any third party, including but not limited to Owner or any additional insured, co-insureds, co-insurers, or insureds other than the primary or first named insured. Contractor shall continuously maintain a CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work.

11.2 Other Insurance. Contractor agrees to carry (a) Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law; (b) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (c) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person for bodily injury and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner, D.R. Horton, Inc., and all affiliates and subsidiaries of D.R. Horton, Inc., (collectively "Horton") as named, Additional Insureds, specifically identifying Horton, on the CGL Policy and policies required above covering both ongoing operations and completed operations (equivalent in scope to form CG 2010 1185 or, if unavailable, both forms CG 2010 1001 and CG 2037 1001). Coverage obtained by Contractor with Horton as an additional insured shall be primary, with any insurance of Horton being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work; (iii) provide for a waiver of subrogation; (iv) indicate that coverage applies in the state where the Work is being performed; and (v) be with a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement. In the event that Contractor obtains insurance coverage that is broader than the minimums required by this Agreement, this Agreement shall be deemed to require the broader coverage, including but not limited to any greater limits.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, portions of policies (including but not limited to declarations pages and endorsements), or certified copies of the required policies, as requested by Owner.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER BY OWNER POLICY WITH RESPECT TO PARTICULAR TRADE CATEGORIES IN ITS SOLE AND ABSOLUTE DISCRETION IN EFFECT AT THE TIME WORK IS PERFORMED) TO COMPENSATE OWNER REASONABLY FOR ANY ADDITIONAL COSTS OF ITS WORKERS COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS AGREEMENT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Horton as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

11.7 Subrogation. Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including but not limited to claims relating to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Owner or any indemnitee, and any of their consultants, subcontractors, agents, employees and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or if another contractor's work, or other property, is damaged by an act or omission of Contractor, its employees, agents, suppliers, or subcontractors, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs to complete, repair, or replace, plus any related costs or damage including re-inspection fees, with any excess to be paid to Contractor. If such costs exceed the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens

INITIALS: OWNER  CONTRACTOR 

are filed against the job location as a result of Contractor's acts or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or (viii) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may set off from amounts owing to Contractor hereunder any amounts owing by Contractor to Owner's parent company, any subsidiary or affiliate, under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking other relief.

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("FAA"). All demands for arbitration shall be made before the expiration of the applicable statutes of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified or corrected only as permitted by the FAA.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator(s) mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes against Owner, is for \$1,000,000 or more, but only one arbitrator shall be appointed if the Dispute is for less than \$1,000,000. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

13.5 Rules. To the extent not in conflict with the FAA, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) can be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner. If multiple lawsuits or arbitrations are commenced, Owner in its sole discretion may consolidate them into a single proceeding. Notwithstanding any other provision of this Section 13, if Owner determines in its sole discretion that a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect unilaterally to waive mediation or arbitration and to litigate the Dispute in court with Contractor.

14. TERMINATION.

14.1 Termination by Owner. This Agreement shall remain in full force and effect until terminated in writing by Owner by making notice to Contractor. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) days written notice to Owner before the effective date of any termination by Contractor, and shall perform fully under this Agreement during that notice period.

14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement; (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement; (iii) this Agreement is or will be (when executed) a binding obligations of Contractor, enforceable in accordance with its terms; (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority; (v) Contractor has, and each Contractor's employees, agents or subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement; (vi) Contractor is in compliance with all governmental requirements to which it is subject; and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

INITIALS: OWNER aw CONTRACTOR mea

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to amend and supersede all prior Independent Contractor Agreements (other than any Master National Independent Contractor Agreement) or other prior understandings or written or oral agreements, specifically including but not limited to all prior pre-printed standard contractor/subcontractor agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods or services or both by Contractor relating to the subject matter herein. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work and shall be deemed subject to the terms of this Agreement. Any future Pricing Schedules or Purchase Orders entered into hereafter shall also be deemed to be subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices and quantities of sale only. Nothing in any subsequent agreement or document, unless a new Independent Contractor Agreement, shall alter the terms set forth in this Agreement. To the extent possible, this Agreement shall be deemed to supplement the terms of any other agreement or document, unless a new Independent Contractor Agreement. In the event of any conflict between this Agreement and other such documents, this Agreement shall be deemed to control and prevail. Except as otherwise provided in this Agreement, no amendment or supplement to this Agreement shall be valid or binding unless in writing and signed by both Owner and Contractor. Notwithstanding anything in this Subsection to the contrary, this Agreement shall not amend or supersede any Master National Independent Contractor Agreement, but shall supplement its terms. In the event of a conflict, to the extent permitted by law, the Master National Independent Contractor Agreement shall control.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights, responsibilities, and obligations under this Agreement are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Any attempted assignment shall be null and void. This restriction includes, without limitation, the delegation or subcontracting of any Work or any amounts which may become due to Contractor as a result of the Work. Contractor shall remain fully liable under this Agreement regardless of any consent by Owner to any assignment or delegation of duties by Contractor, including but not limited to any work by a subcontractor. Contractor shall ensure that any subcontractor receives a copy of this Agreement and agrees in writing to be fully responsible for all obligations of Contractor under this Agreement, including but not limited to the insurance and indemnity provisions. Contractor shall also ensure that Owner is an intended third party beneficiary of any subcontractor agreement by including a specific provision to that effect. Contractor shall be responsible for enforcing any warranties given by its subcontractors, suppliers or manufacturers. Nothing contained herein, however, shall create any contractual relationship between Owner and any subcontractor, nor create any obligation on the part of Owner to make payment of any sums to any subcontractor. Subject to the restrictions and prohibitions on assignment set forth in this Subsection, the terms of this Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns. Owner may freely assign this Agreement, in whole or in part.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No act or conduct other than a specific, written waiver of a right shall be deemed a waiver by Owner. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

18. NOTICES. All notices required or permitted pursuant to this Agreement or otherwise shall be in writing and shall be delivered as follows: to Contractor at Contractor's business address as shown on page one (1) of this Agreement; to Owner through Owner's official Registered Agent for service of legal process in the state where the Work is performed at that Registered Agent's registered office. Notices may be given by personal delivery, facsimile, commercial overnight delivery service, personal delivery or ordinary mail and shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by commercial overnight delivery service, and upon confirmation if sent by facsimile transmission or by personal delivery. Rejection, refusal to accept or the inability to deliver because of changed address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or subsections.

Grading

SOUTH CAROLINA VERSION (REV. 22 JUNE 2015)

INITIALS: OWNER *EO* CONTRACTOR *MEW*



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR LONG HEATING & AIR CONDITIONING, INC "Contractor"
Sole Proprietorship ☐ Partnership ☒ Corporation ☐ L.L.C ☐ Other (ATTACH W-9)
Social Security No. or Tax ID No. 20-2104741
Name of Owner(s)/Officer(s) ANDY LONG
Division Name: COASTAL CAROLINA Area Name ALL SL5 Assigned Vendor No. 1343948-CL
Addresses for All Notices: 1200 WOODRUFF ROAD, SUITE C-25
City: GREENVILLE State: S.C Zip Code: 29607
Telephone: (864) 213-9899 Fax: (864) 987-0195 E-Mail Address: longheatingandair@yahoo.com
Insurance Carriers ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
This agreement (the "Agreement") is entered into on this 12 day of JUNE, 2009 between DR HORTON INC ("Owner") and Contractor

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of the Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement (the "Work") shall include all work performed and materials supplied by Contractor to Owner including but not limited to the labor, services and/or materials, equipment, transportation, or facilities necessary to complete the construction-related activities generally described in Exhibit A. The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing will not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to or in place of Contractor. Contractor will be awarded Work on a lot by lot basis. To the extent Exhibit A contains more than one type of construction-related activity, Contractor must clarify with Owner before the Work commences as to which construction-related activity it has been awarded for the lot in question.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, method and performance of the Work. Contractor shall not be considered an agent or employee of Owner for any purpose, nor shall any employees or permitted subcontractors of Contractor. Contractor shall not represent itself as the agent of Owner unless owner has specifically permitted Contractor to do so in writing. The results achieved shall satisfy the requirements of this Agreement. Contractor shall be responsible for the performance of its employees and permitted subcontractors, and all personnel used by Contractor in the performance of Work shall be qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further agrees to provide written notification to all of its present and future employees of Contractor's provision for Worker's Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work herein covered or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall pay and shall be solely responsible for all tax withholding, Social Security, state unemployment and all other withholding as required by law Contractor's employees, agents or permitted subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNLESS CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule, the superseded Pricing Schedule shall remain in effect for Purchase Orders issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing of the house incorporating the Work from Owner to a purchaser. Contractor hereby agrees that timely invoicing is an important and material term to this agreement, and timely invoicing is a part of Contractor's performance of all material terms of this contract. Contractor hereby waives payment for any Work where Contractor fails to invoice Owner in a timely manner in conformity to this agreement. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR

Executed this 12 day of JUNE, 2009

Owner:
By: Brian F. Sarnes
Name: Brian F. Sarnes
Title: Division President

Contractor:
By: Long Heating & Air Conditioning, Inc.
Name: Andy Long
Title: PRESIDENT

INITIALS: OWNER BS CONTRACTOR AL

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ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO SUBCONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN AND THAT OWNER DOES NOT AGREE TO PAY TO SUBCONTRACTOR INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF DELAYED PAYMENTS.

4.2 Payment to Subcontractors. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed from Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties; and these joint payments shall satisfy amounts owed by Owner to Contractor, notwithstanding the fact that the third parties may not endorse the checks. In any instance where Owner receives written notice from one of Contractor's sub-contractors, whereby the subcontractor claims a failure to be paid for the Work, Owner reserves the right to pay the subcontractor directly or to make payment payable to both the Contractor and its subcontractor.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the Contract Price shall waive and release all claims against Owner and the property under this Agreement, but shall not waive any claims of Owner arising out of Work later found to be defective and shall not release Contractor from liability for warranties and warranty service and/or defective Work. Contractor shall remedy any defects and pay for any damage resulting from any defects in or caused by the Work or as required by any other contracts between Owner and Contractor or by law or customary practice. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or assigns is an acceptance of the Work or materials not in compliance with this Agreement.

5. SCHEDULE OF WORK.

5.1 Time is of the Essence. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work.

5.2 Construction Schedule. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.3 Commencement of the Work. Owner shall issue an authorization (either pursuant to a written purchase order, payment schedule, or work invoice ("Purchase Order") or verbal instructions from an authorized Owner representative) to commence the Work and Contractor shall not commence the Work at a job location until Contractor has received instructions to begin Work at a specific job location. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.4 Changes in Construction Schedule. Contractor agrees that Owner shall have the right to make changes to the schedule of Work at Owner's discretion and agrees to comply with such changes.

6. PERFORMANCE STANDARDS.

6.1 Applicable Standards. Contractor shall perform all Work in a good and workmanlike manner, in accordance with the plans and specifications of Owner, according to industry standard practices, and warrants that the Work will meet or exceed FHA minimum property standards, VA requirements, all laws (statutory or common) and regulations, and any applicable building code requirements.

6.2 Contractors' Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized Owner's employee and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications as the plans and specifications affect the Work and materials incorporated in the Work, and that the plans and specifications are clear and unambiguous, and has accepted and agreed to be bound by all such requirements.

6.3 Government Requirements. Contractor will comply with all applicable federal, state, local, and county statutes, ordinances, regulations, codes, licensing requirements and standards, and the requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 as amended, as well as the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., or similar laws or regulations, and the rules, regulations, or orders of all public authorities relating to performance of the Work, including without limitation, the procurement and posting of all required permits and notices. In addition, Contractor will not discriminate in its hiring or employment and will follow all state and federal employment laws or regulations. Contractor shall perform background checks and use only appropriate employees to perform warranty or repair work after a house is occupied.

6.4 Indemnity. To the fullest extent allowed by law, Contractor will agree to indemnify, defend, and hold Owner harmless from all actions, claims, investigations or other acts to enforce such laws or regulations, and further agrees to indemnify Owner from the payment of any fine, penalty or damages imposed, levied, assessed, or found as a result of the Contractor's failure to comply with or adhere to the applicable laws and regulations, or from Contractor's failure to cause its employees or subcontractors to comply with such laws and regulations.

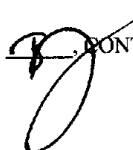
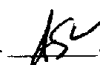
6.5 Observation and Testing by Owner and Repair by Contractor. Owner shall have the right to observe or test the Work at any time during or after construction, but that observation or testing is solely for the benefit of Owner's and is not for Contractor's benefit. Owner's failure to note defects in the Work during an inspection will not waive any of Contractor's obligations, representations or warranties related to the Work. Notwithstanding anything contained in this Agreement to the contrary, all Work shall be performed and any defects shall be corrected timely and in accordance with this Agreement to the satisfaction of Owner.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work, and shall report in writing to Owner any defects prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractor's work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses and approvals necessary for or applicable to the performance of the Work.

6.8 Change Orders. The Contractor shall furnish the materials for and to make all changes requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed,

INITIALS: OWNER  CONTRACTOR 

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(ii) governing storage of materials on the job location, (iii) regulating trash pick-up and waste collection at the job location; and (iv) work site safety requirements

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste materials or rubbish caused by its operations and shall remove all of Contractor's materials, and if materials are furnished by Owner, Contractor shall move all usable materials provided by Owner to a location designated by Owner. Contractor shall sweep out any waste material from inside the home under construction upon completion of its operation. All refuse shall be placed in receptacles provided or at locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up activities and collect a one hundred dollar (\$100.00) fine from Contractor for each incident. The cost of such clean-up and the aforementioned fine shall be deducted from any sums owed by Owner to Contractor, or shall be immediately payable by Contractor upon demand therefore by Owner.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from or in any way related to the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Owner reserves the right to set minimum standards or rules relating to Work on its site. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OWNERS MINIMUM REQUIREMENTS. THE OWNER ASSUMES NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe condition or practice observed on the Work Site. Further, Contractor shall immediately notify Owner of any accidents or injuries on the Work Site. Contractor shall have an ongoing safety program and conduct inspections to determine that safe working conditions and equipment exist and safe practices are observed. Contractor shall prohibit and prevent the presence of children under age eighteen (18) from the Work Site.

7.1 Safety Laws and Indemnity Agreement. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards, statutes, and industry best practices concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations. Contractor shall provide Owner with written verification of its compliance with all applicable safety and health standards and regulations, including but not limited to OSHA's Hazard Communication Standard for the Construction Industry, 29 C.F.R. §1926.59 et seq., and provide written notice to Owner of the contact person responsible for Contractor's compliance with all safety and health standards and regulations. To the fullest extent allowed by law, Contractor agrees to indemnify, defend, and hold Owner harmless from all actions prosecuted to enforce and the payment of any fine or penalty imposed under such safety laws and regulations and shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work.

7.2 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, permitted subcontractors or suppliers at a job location or performance of the Work by any person under the influence of alcohol or drugs.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate corporations, and successors and assigns, that all labor performed and materials furnished by Contractor shall conform to the specifications of this Agreement, shall be free from any defects or deficiencies in workmanship or materials, and will comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, will meet or exceed the FHA/VA minimum property standards, and will comply with the Residential Warranty Corporation ("RWC") Program and the applicable limited warranty standards, which Contractor has read and understands and to which Contractor agrees to be bound. All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects for purposes of Contractor's obligations under this Contract. Contractor shall make good and promptly repair all Work not complying with the standards set forth in this section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Paragraph 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, the initial homeowner of the property on that is the subject of the Work: (i) for a period of ten (10) years all structural elements, including, but not limited to, roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; (d) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (i) any statutory warranty or (ii) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner (a "Homeowners Warranty"). Contractor expressly agrees to be bound by any such Homeowners Warranty and to the extension of warranty period hereunder. Furthermore, notwithstanding the foregoing, Contractor agrees that all express and implied warranties shall remain in full force and effect for so long as Owner is obligated to warrant the Work pursuant to applicable law. Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Homeowners Warranty that is longer than the Warranty Periods stated above, provided, however, failure to give that notice will not affect the extension of the Warranty Period to the applicable warranty period under the Homeowner's Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty obligations, Contractor's indemnity obligations, or the ability of Owner to request Contractor to perform warranty services in the future.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment, and shall furnish all certificates required by any municipality and/or VA and/or FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and are not in limitation of periods of applicable statutes of limitation.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Project is located.

9.3 Lien Claim Indemnity. If any liens are filed against Owner relating to portions of the Work for which Owner has paid Contractor, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such lien or affidavit to be removed.

INITIALS: OWNER  CONTRACTOR 

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and released of record Contractor agrees to INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any liens relating to portions of the Work for which Owner has paid Contractor, and further agrees at Owners' request to any or all of the following: (i) procure a bond to indemnify Owner and any home purchaser from Owner, in an amount sufficient to discharge that lien, or (ii) refund to Owner all monies, including any additional amount necessary to cover all of Owner's or home purchaser's attorneys' fees and court costs paid in discharging the lien, whichever remedy Owner elects in its sole and absolute discretion, or (iii) provide sworn testimony that payment has already been made to Contractor for the work for which the alleged lien applies.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY AGREES TO HOLD HARMLESS, INDEMNIFY, PROTECT AND DEFEND OWNER, ITS PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THE AFOREMENTIONED ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "INDEMNITEE"), FROM AND AGAINST ANY AND ALL DEMANDS, CLAIMS, ACTIONS, CAUSES OF ACTION, PROCEEDINGS, LAWSUITS, SETTLEMENTS, JUDGMENTS, FINES, PENALTIES, LOSSES, ATTORNEYS FEES, LITIGATION COSTS, INTEREST, AND EXPENSES OF ANY KIND (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "LOSSES") FOR DAMAGES FROM BODILY OR PERSONAL INJURY, DEATH, THE DESTRUCTION OR LOSS OF PROPERTY (INCLUDING LOSS OF USE), OR ANY OTHER KIND OF DAMAGES OR HARM, ARISING OUT OF, OR RESULTING FROM, OR RELATED IN ANY WAY TO THE WORK PERFORMED AND/OR THE MATERIALS SUPPLIED UNDER THIS CONTRACT, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY INDEMNITEE. SUCH LOSSES SPECIFICALLY INCLUDE, BUT ARE IN NO WAY LIMITED TO LOSSES ARISING OUT OF OR ATTRIBUTABLE TO: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR OBLIGATIONS OF CONTRACTOR SET FORTH HEREIN; (2) THE WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR, CONTRACTOR'S AGENTS OR EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, AND/OR ALL OTHER ENTITIES OVER WHOM THE CONTRACTOR MAY EXERCISE CONTROL (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "CONTRACTOR'S AGENTS"); (3) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF CONTRACTOR AND/OR CONTRACTOR'S AGENTS; OR (4) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE INDEMNITY FOR LOSSES CAUSED SOLELY BY FAULT OR NEGLIGENCE OF THE INDEMNITEE. THE LOSSES DESCRIBED HEREIN SHALL INCLUDE, BUT ARE NOT LIMITED TO, DEMANDS, CLAIMS, OR ACTIONS ASSERTED BY (1) ANY PRESENT OR FUTURE OWNER OF THE HOUSE INCORPORATING THE WORK; AND (2) ANY OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY CONTRACTOR AND/OR CONTRACTOR'S AGENTS). THE INDEMNIFICATION OBLIGATION UNDER THIS CONTRACT SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. THE INDEMNITY PROVISIONS CONTAINED HEREIN ARE INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY LAW.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. IT IS THE EXPRESS INTENTION OF THE PARTIES THAT CONTRACTOR'S INDEMNITY OBLIGATIONS HEREIN WILL SURVIVE THE TERMINATION OF CONTRACTOR OR THIS AGREEMENT. INDEMNITEE SHALL HAVE THE RIGHT, AT ITS DISCRETION AND CHOOSING, TO DEFEND ANY AND ALL CLAIMS WHICH MAY BE ASSERTED AGAINST IT, AND CONTRACTOR AGREES TO REIMBURSE INDEMNITEE FOR ANY AND ALL EXPENDITURES WHICH INDEMNITEE MAY MAKE OR INCUR ON ACCOUNT OF ANY SUCH CLAIM.

10.3 CONTRACTOR AND CONTRACTOR'S AGENTS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS OR EQUIPMENT.

10.4 Subcontractor's and Supplier's Indemnity Obligations. Contractor shall require each of its subcontractor to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required in this section and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms as Section 13. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the actions of any subcontractor engaged by Contractor, whether in written agreement or otherwise, or who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed to be the obligation of the subcontractors to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with completed operations coverage which contains a per occurrence limit of no less than one million dollars (\$1,000,000.00), and an aggregate limit of no less than two million dollars (\$2,000,000.00) protecting against liability for bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations, (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit), (iii) independent subcontractors, (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type of, or nature of, the Work or limit the type of structure on which the Work is to be performed. The CGL Policy shall not contain a deductible or self insured retention of more than \$25,000.00. Contractor shall continuously maintain a CGL Policy covering completed operations for any applicable statute of repose for commencing lawsuits associated with the Work.

11.2 Other Insurance. Contractor agrees to carry (i) Worker's Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Worker's Compensation obligations imposed by law; (ii) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than one million dollars (\$1,000,000.00) and an aggregate of no less than one million dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (iii) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person (Bodily Injury) and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner as an Additional Insured on the CGL Policy or policies required above covering both on-going operations and completed operations (equivalent to form CG20101185 or form CG2037). Coverage obtained by Contractor naming Owner as an Additional Insured shall be primary with any insurance of Owner being excess coverage. That insurance coverage will be carried continuously during the term of this Agreement and thereafter as required by this Agreement with insurance companies acceptable to Owner in its sole and absolute discretion. That insurance shall provide for a waiver of subrogation. All insurance shall be with

INITIALS: OWNER

CONTRACTOR

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a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the required policies. Each Certificate of Insurance or policy shall contain an unqualified clause to the effect that the policy shall (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days' prior written notice to Owner, (ii) be carried continuously from the date of commencement of the Work until expiration of the period of the Contractor's warranty provided in this Agreement, (iii) specifically identify Owner as an Additional Insured, and (iv) indicate that coverage applies in the state where the Work is being performed. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself and the Work required to be performed under this Agreement.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER IN ITS SOLE AND ABSOLUTE DISCRETION) IN EFFECT AT THE TIME WORK IS PERFORMED TO COMPENSATE OWNER FOR ANY ADDITIONAL COSTS OF ITS WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS, CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS CONTRACT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work to the extent permitted under this Agreement, Contractor guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Owner as an Additional Insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or another contractor's work is damaged by an act for which Contractor, or its employees, agents or subcontractors, are responsible, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct such Work, replace or repair any defective material, or repair any damage. Contractor shall make all repairs and correct such within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours notice on a non-emergency basis, or (ii) retain a third party or undertake to perform those duties, and retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld resulting in a deficiency, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and reasonable attorneys' fees, incurred by Owner, and shall pay to Owner this amount within thirty (30) days of demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Paragraph 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or permitted subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties, (ii) claims or liens are filed against the job location as a result of Contractor's actions or omissions, (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement, Exhibit A of this Agreement, or the specifications, (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order that is Contractor's obligation under this Agreement, (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work, (vii) Contractor has not provided necessary tools, material, or equipment for, or cleaned up after, the Work, (viii) Contractor fails to comply with any other provision of this Agreement.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement and rights and remedies available under this Agreement shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. Owner shall have a right to collect from Contractor its reasonable attorneys' fees and expenses incurred in enforcing Contractor's obligations.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These Disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking equitable relief from and arbitrator or a court of appropriate jurisdiction.

13.3 Arbitration. If mediation fails, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq., regardless of any other choice of law provision in any underlying contract or this Agreement. All demands for arbitration shall be made before the expiration of the applicable statutes of limitations and repose. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court of competent jurisdiction.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrators mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes, is over \$200,000, but only one arbitrator shall be appointed if the Dispute is 200,000 or less. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of a mediator or arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint a mediator or arbitrator. The AAA's Code of Arbitrator Ethics (revised March 1, 2004) is applicable to all arbitrations.

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13.5 Rules. To the extent not in conflict with the Federal Arbitration Act, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner may join Contractor in any litigation, mediation, or arbitration initiated against Owner by a third person so that the rights of all parties (Owner, Contractor, Subcontractor, or any third person) shall be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner where necessary to facilitate resolution in a single forum. If multiple lawsuits or arbitrations are commenced, they shall all be consolidated into a single proceeding. Notwithstanding any other provision of this section, if a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect to unilaterally waive mediation or arbitration and litigate the Dispute with Contractor.

14. TERMINATION.

14.1 Termination by Owner for Cause of Convenience. This Agreement shall remain in full force and effect until terminated in writing by mailing notice to the other Party. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) Days' written notice before the effective date of termination, and shall perform fully under this Agreement during that notice period. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.3 Survival. All obligations, duties and warranties for Work performed under this Agreement shall survive termination.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement, (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement, (iii) this Agreement is or will be (when executed) a binding obligations of Contractor, enforceable in accordance with its terms, (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority, (v) Contractor has, and each Contractor's employees, agents or permitted subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement, (vi) Contractor is in compliance with all governmental requirements to which it is subject, and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement, and with respect to prices and quantities only, the Price Schedule and all written Purchase Orders shall be the entire agreement between Owner and Contractor related to the Work, and there are no other agreements, oral or written, made by or relied upon by Owner and Contractor. Except as otherwise provided in this Agreement, no provision of this Agreement may be amended or supplemented except in writing signed by both Owner and Contractor.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights and obligations are not assignable or transferable without the express written consent of Owner, who may consent can be withheld in Owner's sole and absolute discretion. Subject to the restrictions and prohibitions on assignment set forth in this section, the terms of the Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Contractor shall provide and transfer ownership to any and all samples and/or shop drawings requested by Owner.

18. NOTICES. All notices required pursuant to this Agreement or otherwise shall be in writing and shall be delivered to the respective business address of Owner and Contractor. However, Contractor's business address shall be as noted on page one (1) of this Agreement. Notices shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by overnight delivery service, and upon confirmation if sent by facsimile transmission.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or articles.

SOUTH CAROLINA REVISED 7/23/2007

INITIALS: OWNER

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DR HORTON
Norman, Boulder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Manale Landscaping, LLC ("Contractor")
 Sole Proprietorship Partnership Corporation ☒ L.L.C. Other (ATTACH W-9)
 Social Security No. or Tax ID No. 56-2227876
 Name of Owner(s)/Officer(s) Damon Manale
 Division Name _____ Area Name _____ Assigned Vendor No. _____
 Address for All Notices PO Box 62951
 City North Charleston State SC Zip Code 29419
 Telephone () 704 361 9682 Fax () 704 596 5353 E-Mail Address eric@manalelandscaping.com
 Insurance Carriers ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS
 This agreement (the "Agreement") is entered into on this 28 day of January 2010, between DR Horton Inc.
 (Owner) and Contractor

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of the Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement (the "Work") shall include all work performed and materials supplied by Contractor to Owner including but not limited to the labor services and/or materials, equipment transportation or facilities necessary to complete the construction-related activities generally described in Exhibit A. The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing will not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to or in place of Contractor. Contractor will be awarded Work on a lot by lot basis. To the extent Exhibit A contains more than one type of construction-related activity, Contractor must clarify with Owner before the Work commences as to which construction-related activity it has been awarded for the lot in question.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, method and performance of the Work. Contractor shall not be considered an agent or employee of Owner for any purpose, nor shall any employees or permitted subcontractors of Contractor. Contractor shall not represent itself as the agent of Owner unless owner has specifically permitted Contractor to do so in writing. The results achieved shall satisfy the requirements of this Agreement. Contractor shall be responsible for the performance of its employees and permitted subcontractors, and all personnel used by Contractor in the performance of Work shall be qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further agrees to provide written notification to all of its present and future employees of Contractor's provision for Worker's Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work herein covered or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall pay and shall be solely responsible for all tax withholding: Social Security, state unemployment and all other withholding as required by law. Contractor's employees, agents or permitted subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNLESS CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule, the superseded Pricing Schedule shall remain in effect for Purchase Orders issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing of the house incorporating the Work from Owner to a purchaser. Contractor hereby agrees that timely invoicing is an important and material term to this agreement, and timely invoicing is a part of Contractor's performance of all material terms of this contract. Contractor hereby waives payment for any Work where Contractor fails to invoice Owner in a timely manner in conformity to this agreement. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR

Executed this 28 day of January, 2010

Owner:
 By DR Horton Contractor:
 By Damon Manale
 Name Damon P. Manale Name Damon Manale
 Title President Title Owner
 Division President

INITIALS, OWNER DRH, CONTRACTOR DM

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ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO SUBCONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN AND THAT OWNER DOES NOT AGREE TO PAY TO SUBCONTRACTOR INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF DELAYED PAYMENTS.

4.2 Payment to Subcontractors. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed from Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties, and these joint payments shall satisfy amounts owed by Owner to Contractor notwithstanding the fact that the third parties may not endorse the checks. In any instance where Owner receives written notice from one of Contractor's sub-contractors, whereby the subcontractor claims a failure to be paid for the Work, Owner reserves the right to pay the subcontractor directly or to make payment payable to both the Contractor and its subcontractor.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the Contract Price shall waive and release all claims against Owner and the property under this Agreement, but shall not waive any claims of Owner arising out of Work later found to be defective and shall not release Contractor from liability for warranties and warranty service and/or defective Work. Contractor shall remedy any defects and pay for any damage resulting from any defects in or caused by the Work or as required by any other contracts between Owner and Contractor or by law or customary practice. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or assigns is an acceptance of the Work or materials not in compliance with this Agreement.

5. SCHEDULE OF WORK.

5.1 Time is of the Essence. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work.

5.2 Construction Schedule. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.3 Commencement of the Work. Owner shall issue an authorization (either pursuant to a written purchase order, payment schedule, or work invoice ("Purchase Order") or verbal instructions from an authorized Owner representative) to commence the Work and Contractor shall not commence the Work at a job location until Contractor has received instructions to begin Work at a specific job location. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.4 Changes in Construction Schedule. Contractor agrees that Owner shall have the right to make changes to the schedule of Work at Owner's discretion and agrees to comply with such changes.

6. PERFORMANCE STANDARDS.

6.1 Applicable Standards. Contractor shall perform all Work in a good and workmanlike manner in accordance with the plans and specifications of Owner, according to industry standard practices, and warrants that the Work will meet or exceed FHA minimum property standards. VA requirements, all laws (statutory or common) and regulations, and any applicable building code requirements.

6.2 Contractors' Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized Owner's employee and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications and the plans and specifications affect the Work and materials incorporated in the Work, and that the plans and specifications are clear and unambiguous, and has accepted and agreed to be bound by all such requirements.

6.3 Government Requirements. Contractor will comply with all applicable federal, state, local, and county statutes, ordinances, regulations, codes, licensing requirements and standards, and the requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 as amended, as well as the training and record-keeping requirements of the Hazard Communication Standard 29 C.F.R. §1926.59 et seq. or similar laws or regulations, and the rules, regulations, or orders of all public authorities relating to performance of the Work, including without limitation, the procurement and posting of all required permits and notices. In addition, Contractor will not discriminate in its hiring or employment and will follow all state and federal employment laws or regulations. Contractor shall perform background checks and use only appropriate employees to perform warranty or repair work after a house is occupied.

6.4 Indemnity. To the fullest extent allowed by law, Contractor will agree to indemnify, defend, and hold Owner harmless from all actions, claims, investigations or other acts to enforce such laws or regulations, and further agrees to indemnify Owner from the payment of any fine, penalty or damages imposed, levied, assessed, or found as a result of the Contractor's failure to comply with or adhere to the applicable laws and regulations, or from Contractor's failure to cause its employees or subcontractors to comply with such laws and regulations.

6.5 Observation and Testing by Owner and Repair by Contractor. Owner shall have the right to observe or test the Work at any time during or after construction, but that observation or testing is solely for the benefit of Owner's and is not for Contractor's benefit. Owner's failure to note defects in the Work during an inspection will not waive any of Contractor's obligations, representations or warranties related to the Work. Notwithstanding anything contained in this Agreement to the contrary, all Work shall be performed and any defects shall be corrected timely and in accordance with this Agreement to the satisfaction of Owner.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work, and shall report in writing to Owner any defects prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractor's work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses and approvals necessary for or applicable to the performance of the Work.

6.8 Change Orders. The Contractor shall furnish the materials for and to make all changes requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed,

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(ii) governing storage of materials on the job location, (iii) regulating trash pick-up and waste collection at the job location, and (iv) work site safety requirements

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste materials or rubbish caused by its operations and shall remove all of Contractor's materials, and if materials are furnished by Owner, Contractor shall move all usable materials provided by Owner to a location designated by Owner. Contractor shall sweep out any waste material from inside the home under construction upon completion of its operation. All refuse shall be placed in receptacles provided or at locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up activities and collect a one hundred dollar (\$100.00) fine from Contractor for each incident. The cost of such clean-up and the aforementioned fine shall be deducted from any sums owed by Owner to Contractor, or shall be immediately payable by Contractor upon demand therefore by Owner.

7. SAFETY

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from or in any way related to the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Owner reserves the right to set minimum standards or rules relating to Work on its site. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OWNER'S MINIMUM REQUIREMENTS. THE OWNER ASSUMES NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe condition or practice observed on the Work Site. Further, Contractor shall immediately notify Owner of any accidents or injuries on the Work Site. Contractor shall have an ongoing safety program and conduct inspections to determine that safe working conditions and equipment exist and safe practices are observed. Contractor shall prohibit and prevent the presence of children under age eighteen (18) from the Work Site.

7.1 Safety Laws and Indemnity Agreement. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards, statutes, and industry best practices concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations. Contractor shall provide Owner with written verification of its compliance with all applicable safety and health standards and regulations, including but not limited to OSHA's Hazard Communication Standard for the Construction Industry, 29 C.F.R. §1926.59 et seq. and provide written notice to Owner of the contact person responsible for Contractor's compliance with all safety and health standards and regulations. To the fullest extent allowed by law, Contractor agrees to indemnify, defend and hold Owner harmless from all actions prosecuted to enforce and the payment of any fine or penalty imposed under such safety laws and regulations and shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work.

7.2 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, permitted subcontractors or suppliers at a job location or performance of the Work by any person under the influence of alcohol or drugs.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate corporations, and successors and assigns, that all labor performed and materials furnished by Contractor shall conform to the specifications of this Agreement, shall be free from any defects or deficiencies in workmanship or materials, and will comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, will meet or exceed the FHA/VA minimum property standards and will comply with the Residential Warranty Corporation ("RWC") Program and the applicable limited warranty standards, which Contractor has read and understands and to which Contractor agrees to be bound. All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects for purposes of Contractor's obligations under this Contract. Contractor shall make good and promptly repair all Work not complying with the standards set forth in this section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Paragraph 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, the initial homeowner of the property on that is the subject of the Work: (i) for a period of ten (10) years all structural elements, including, but not limited to: roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home; and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; (d) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element or other portion of the Work under (i) any statutory warranty or (ii) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner (a "Homeowners Warranty"). Contractor expressly agrees to be bound by any such Homeowners Warranty and to the extension of warranty period hereunder. Furthermore, notwithstanding the foregoing, Contractor agrees that all express and implied warranties shall remain in full force and effect for so long as Owner is obligated to warrant the Work pursuant to applicable law. Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Homeowners Warranty that is longer than the Warranty Periods stated above; provided, however, failure to give that notice will not affect the extension of the Warranty Period to the applicable warranty period under the Homeowner's Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty obligations, Contractor's indemnity obligations, or the ability of Owner to request Contractor to perform warranty services in the future.

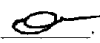
8.4 Transfer of Manufacturers Warranties. Contractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment, and shall furnish all certificates required by any municipality and/or VA and/or FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and are not in limitation of periods of applicable statutes of limitation.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Project is located.

9.3 Lien Claim Indemnity. If any liens are filed against Owner relating to portions of the Work for which Owner has paid Contractor, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such lien or affidavit to be removed.

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and released of record. Contractor agrees to INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any liens relating to portions of the Work for which Owner has paid Contractor, and further agrees at Owner's request to any or all of the following: (i) procure a bond to indemnify Owner and any home purchaser from Owner in an amount sufficient to discharge that lien or (ii) refund to Owner all monies, including any additional amount necessary to cover all of Owner's or home purchaser's attorneys' fees and court costs paid in discharging the lien, whichever remedy Owner elects in its sole and absolute discretion, or (iii) provide sworn testimony that payment has already been made to Contractor for the work for which the alleged lien applies.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY AGREES TO HOLD HARMLESS, INDEMNIFY, PROTECT AND DEFEND OWNER, ITS PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THE AFOREMENTIONED ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "INDEMNITEE"), FROM AND AGAINST ANY AND ALL DEMANDS, CLAIMS, ACTIONS, CAUSES OF ACTION, PROCEEDINGS, LAWSUITS, SETTLEMENTS, JUDGMENTS, FINES, PENALTIES, LOSSES, ATTORNEYS FEES, LITIGATION COSTS, INTEREST, AND EXPENSES OF ANY KIND (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "LOSSES") FOR DAMAGES FROM BODILY OR PERSONAL INJURY, DEATH, THE DESTRUCTION OR LOSS OF PROPERTY (INCLUDING LOSS OF USE), OR ANY OTHER KIND OF DAMAGES OR HARM, ARISING OUT OF, OR RESULTING FROM, OR RELATED IN ANY WAY TO THE WORK PERFORMED AND/OR THE MATERIALS SUPPLIED UNDER THIS CONTRACT, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY INDEMNITEE. SUCH LOSSES SPECIFICALLY INCLUDE, BUT ARE IN NO WAY LIMITED TO LOSSES ARISING OUT OF OR ATTRIBUTABLE TO: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR OBLIGATIONS OF CONTRACTOR SET FORTH HEREIN; (2) THE WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR, CONTRACTOR'S AGENTS OR EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, AND/OR ALL OTHER ENTITIES OVER WHOM THE CONTRACTOR MAY EXERCISE CONTROL (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "CONTRACTOR'S AGENTS"); (3) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF CONTRACTOR AND/OR CONTRACTOR'S AGENTS; OR (4) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE INDEMNITY FOR LOSSES CAUSED SOLELY BY FAULT OR NEGLIGENCE OF THE INDEMNITEE. THE LOSSES DESCRIBED HEREIN SHALL INCLUDE, BUT ARE NOT LIMITED TO, DEMANDS, CLAIMS, OR ACTIONS ASSERTED BY (1) ANY PRESENT OR FUTURE OWNER OF THE HOUSE INCORPORATING THE WORK, AND (2) ANY OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY CONTRACTOR AND/OR CONTRACTOR'S AGENTS). THE INDEMNIFICATION OBLIGATION UNDER THIS CONTRACT SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. THE INDEMNITY PROVISIONS CONTAINED HEREIN ARE INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY LAW.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. IT IS THE EXPRESS INTENTION OF THE PARTIES THAT CONTRACTOR'S INDEMNITY OBLIGATIONS HEREIN WILL SURVIVE THE TERMINATION OF CONTRACTOR OR THIS AGREEMENT. INDEMNITEE SHALL HAVE THE RIGHT, AT ITS DISCRETION AND CHOOSING, TO DEFEND ANY AND ALL CLAIMS WHICH MAY BE ASSERTED AGAINST IT, AND CONTRACTOR AGREES TO REIMBURSE INDEMNITEE FOR ANY AND ALL EXPENDITURES WHICH INDEMNITEE MAY MAKE OR INCUR ON ACCOUNT OF ANY SUCH CLAIM.

10.3 CONTRACTOR AND CONTRACTOR'S AGENTS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS OR EQUIPMENT.

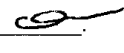
10.4 Subcontractor's and Supplier's Indemnity Obligations. Contractor shall require each of its subcontractor to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required in this section and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms as Section 13. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the actions of any subcontractor engaged by Contractor, whether in written agreement or otherwise, or who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed to be the obligation of the subcontractors to Owner for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with completed operations coverage which contains a per occurrence limit of no less than one million dollars (\$1,000,000.00) and an aggregate limit of no less than two million dollars (\$2,000,000.00) protecting against liability for bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations, (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit), (iii) independent subcontractors, (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement, and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type of, or nature of the Work or limit the type of structure on which the Work is to be performed. The CGL Policy shall not contain a deductible or self insured retention of more than \$25,000.00. Contractor shall continuously maintain a CGL Policy covering completed operations for any applicable statute of repose for commencing lawsuits associated with the Work.

11.2 Other Insurance. Contractor agrees to carry (i) Worker's Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel employees or agents and Contractor shall satisfy all Worker's Compensation obligations imposed by law, (ii) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than one million dollars (\$1,000,000.00) and an aggregate of no less than one million dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment, and (iii) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person (Bodily Injury) and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner as an Additional Insured on the CGL Policy or policies required above covering both on-going operations and completed operations (equivalent to form CG20101185 or form CG2037). Coverage obtained by Contractor naming Owner as an Additional Insured shall be primary with any insurance of Owner being excess coverage. That insurance coverage will be carried continuously during the term of this Agreement and thereafter as required by this Agreement with insurance companies acceptable to Owner in its sole and absolute discretion. That insurance shall provide for a waiver of subrogation. All insurance shall be with

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a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A M Best

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance or certified copies of the required policies. Each Certificate of Insurance or policy shall contain an unqualified clause to the effect that the policy shall (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days' prior written notice to Owner, (ii) be carried continuously from the date of commencement of the Work until expiration of the period of the Contractor's warranty provided in this Agreement, (iii) specifically identify Owner as an Additional Insured and (iv) indicate that coverage applies in the state where the Work is being performed. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself and the Work required to be performed under this Agreement.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER IN ITS SOLE AND ABSOLUTE DISCRETION) IN EFFECT AT THE TIME WORK IS PERFORMED TO COMPENSATE OWNER FOR ANY ADDITIONAL COSTS OF ITS WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS, CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS CONTRACT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work to the extent permitted under this Agreement, Contractor guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Owner as an Additional Insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

12. REMEDIES

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or another contractor's work is damaged by an act for which Contractor, or its employees, agents or subcontractors, are responsible, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct such Work, replace or repair any defective material, or repair any damage. Contractor shall make all repairs and correct such within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours notice on a non-emergency basis, or (ii) retain a third party or undertake to perform those duties, and retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld resulting in a deficiency, Contractor shall be fully responsible for the deficiency together with any damages and costs, including costs of court and reasonable attorneys' fees, incurred by Owner, and shall pay to Owner this amount within thirty (30) days of demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Paragraph 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or permitted subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties, (ii) claims or liens are filed against the job location as a result of Contractor's actions or omissions, (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily, or that the Work cannot or may not be completed in accordance with the terms of this Agreement, Exhibit A of this Agreement or the specifications, (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order that is Contractor's obligation under this Agreement, (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance, (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work, (vii) Contractor has not provided necessary tools, material or equipment for, or cleaned up after the Work, (viii) Contractor fails to comply with any other provision of this Agreement.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement and rights and remedies available under this Agreement shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. Owner shall have a right to collect from Contractor its reasonable attorneys' fees and expenses incurred in enforcing Contractor's obligations.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These Disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking equitable relief from an arbitrator or a court of appropriate jurisdiction.

13.3 Arbitration. If mediation fails, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq., regardless of any other choice of law provision in any underlying contract or this Agreement. All demands for arbitration shall be made before the expiration of the applicable statutes of limitations and repose. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court of competent jurisdiction.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrators mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes, is over \$200,000, but only one arbitrator shall be appointed if the Dispute is 200,000 or less. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of a mediator or arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint a mediator or arbitrator. The AAA's Code of Arbitration Ethics (revised March 1, 2004) is applicable to all arbitrations.

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13.5 Rules. To the extent not in conflict with the Federal Arbitration Act, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner may join Contractor in any litigation, mediation, or arbitration initiated against Owner by a third person so that the rights of all parties (Owner, Contractor, Subcontractor, or any third person) shall be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner where necessary to facilitate resolution in a single forum. If multiple lawsuits or arbitrations are commenced, they shall all be consolidated into a single proceeding. Notwithstanding any other provision of this section, if a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect to unilaterally waive mediation or arbitration and litigate the Dispute with Contractor.

14. TERMINATION.

14.1 Termination by Owner for Cause of Convenience. This Agreement shall remain in full force and effect until terminated in writing by mailing notice to the other Party. Owner may terminate this Agreement at any time whether or not Contractor is in default or breach of the Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) Days' written notice before the effective date of termination, and shall perform fully under this Agreement during that notice period. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.3 Survival. All obligations, duties and warranties for Work performed under this Agreement shall survive termination.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement, (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement, (iii) this Agreement is or will be (when executed) a binding obligations of Contractor enforceable in accordance with its terms, (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority, (v) Contractor has, and each Contractor's employees, agents or permitted subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement, (vi) Contractor is in compliance with all governmental requirements to which it is subject, and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement, and with respect to prices and quantities only the Price Schedule and all written Purchase Orders shall be the entire agreement between Owner and Contractor related to the Work, and there are no other agreements, oral or written, made by or relied upon by Owner and Contractor. Except as otherwise provided in this Agreement, no provision of this Agreement may be amended or supplemented except in writing signed by both Owner and Contractor.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights and obligations are not assignable or transferable without the express written consent of Owner, who may consent can be withheld in Owner's sole and absolute discretion. Subject to the restrictions and prohibitions on assignment set forth in this section, the terms of the Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Contractor shall provide and transfer ownership to any and all samples and/or shop drawings requested by Owner.

18. NOTICES. All notices required pursuant to this Agreement or otherwise shall be in writing and shall be delivered to the respective business address of Owner and Contractor. However, Contractor's business address shall be as noted on page one (1) of this Agreement. Notices shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested the following day if sent timely by overnight delivery service, and upon confirmation if sent by facsimile transmission.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or articles.

SOUTH CAROLINA REVISED 7/23/2007

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D.R. Horton Scope of Work for Landscape Companies

New Subdivision Assignments

- Landscape company must submit a complete and comprehensive bid for each subdivision. The bid shall be inclusive of all materials, labor and equipment to insure there are no incidental extras. The landscape company shall not install any landscaping in the subdivision prior to Horton's acceptance of the bid.
- Horton will notify the landscape company of new subdivision assignments.

Requirements of Landscape Company

General Requirements:

- Landscape company must return telephone calls from Horton employees within twenty four hours.
- A manager or owner of the landscape company must walk the subdivision twice a month to evaluate the performance and service of its employees.
- A crew chief for the landscape company must check in with the on site builder whenever on site. Crew chief must be able to communicate effectively with the builder.
- Landscape company must park in designated areas only, and never in front of models.
- Landscape company must be professionally dressed and groomed, including uniforms identifying employees, at all times when in subdivision (shirts and shoes required).
- Landscape company must comply with subdivision design guidelines.
- Landscape company must comply with Independent Contractor Agreement and insurance requirements.
- Landscape company must comply with all subdivision rules and regulations (music playing from trucks or boom boxes is prohibited, Port a Potties must be utilized, trash must be properly disposed of, no eating in spec houses or utilizing appliances in the spec houses, use of the amenities is prohibited)
- Landscape company is responsible for removal from the subdivision, disposal and clean up of all materials, including install spoils, skids, buckets, string, scrap sods and soils. Landscape company shall remove from the subdivision all rocks and excess dirt.

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Install Requirements:

- Horton will deliver a copy of the final plat identifying areas to be maintained prior to the commencement of the work.
- Landscape company is responsible for identifying all property lines, natural and undisturbed areas, and easements. Landscape company is further responsible for inspection of proper drainage patterns and swale locations. Landscape company shall locate and inspect the grade height of all concrete flat work, foundation drains, sewer clean outs, water meters, underground utilities, catch basins, headwalls and drop inlets. The landscape company shall notify the builder of any damage to the aforementioned items. If the builder is not notified of the damage prior to the landscape company's start of work, the landscape company will be responsible.
- Landscape company is responsible for insuring that the drainage comports with the master drainage plan. Each lot shall be designed to control the run off on the individual lot. Run off shall not cross any property line without a recorded drainage easement. The landscape company shall be responsible for any maintenance or corrective cost incurred due to failure to comply with drainage requirements.
- Landscape company shall grade all lots for optimum function and aesthetic appeal and comply with all applicable codes. All water must not stand more than 24 hours in any location or 48 hours in a swale.
- Landscape company must check the final grade of swales for proper drainage and insure six to ten foot fall from the house prior to the installation of materials. If landscaper accepts the grade and the property later holds water or fails to pass inspection, the landscaper is responsible for repairing the drainage at its cost. Landscape company shall repair one time at its cost any area that settles such as trenches, back fill at foundations and retaining walls, wash outs and seeded areas that fail to germinate.
- Landscape company shall adhere to Horton landscape and plant specifications. Landscape company shall not substitute any plant materials or make plant changes without the prior written consent of Horton. Landscape company shall be responsible for all cost incurred in removal and replacement of any materials installed without prior approval.
- All trees, shrubs, flowers and grasses shall be planted in compliance with accepted horticultural standards. All plants shall be placed in the location most suitable for their natural environment and growth potential. The landscape company shall be responsible for the replacement of any plant planted in an environment that it will not thrive.
- All plants, shrubs, trees and sod shall be healthy, free of defects, disease and inspect infestation and well developed. All plants shall be potted or balled and be correct size for container, not root bound. All trees shall be planted in a hole 3 times the diameter of the root ball. The soil shall be gently but firmly packed around the root ball. The tree shall be vertical, with the root ball 3" about the finished grade, supported on 3 sides with coated wire, taunt and staked to the ground. The staking should be loosened and removed as necessary to prevent choking.
- The subcontractor shall supply sod pieces per specifications. Sod species shall not be mixed. The sod shall be green, with damp soils, cut in a smooth consistent depth free of holes, voids and weeds. The sod shall be laid out parallel to the street tucked tight with no over lapped edges. Each successive row shall be off set. The sod shall be rolled smooth at the completion of the landscape installation. The sod shall be laid within 24 to 36 hours after cutting during the summer and no more than 48 hours in the winter. The use of over seeded sod is strictly forbidden.

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- The landscape company shall furnish all grass seed, fertilizer and wheat and pine straw. The landscape company shall re-seed and straw in the spring or fall areas that failed to germinate during the summer or dormant season. All plant beds shall have a minimum of 6" deep ground cover as specified.
- The landscape company shall replace all splash blocks, broom sweep all surrounding concrete surfaces, and shall supply each home with 2 50' garden hoses and 2 sprinklers.
- Landscape company must water new installs twice daily for two weeks.
- Installs must be warranted for one year from date of install.
- Installs must occur within Horton's stated time frame.
- Install must include wiring for low voltage landscaping lights.
- Install must include all necessary irrigation.
- Install plantings shall:
 - Maximize the impact for the dollar
 - Be appropriately sized to the bed and fill the bed
 - Be varied in height, color and texture and tiered (minimum of two different heights, textures and colors in every planting)
 - Be deer and animal resistant to the extent possible

Maintenance Requirements (revised 2/11/09):

- Common areas, model homes, spec homes and entrances must be mown, edged and blown a minimum of **sixteen** times a year (as follows):
 - January – **0 visits**
 - February - **1 visit**
 - March – **1 visit**
 - April – **2 visits**
 - May – **2 visits**
 - June – **2 visits**
 - July – **2 visits**
 - August – **2 visits**
 - September – **2 visits**
 - October – **1 visit**
 - November – **1 visit**
 - December -**0 visits**
- Landscaper agrees to include a minimum of six additional visits (mow, edge, blow) for the model homes, spec homes and entrances – to be used in the discretion of Horton builder or manager.
- Landscaper agrees to mow, edge and blow properties belonging to homeowners at Horton's request for the sum of \$30.00. It is not anticipated that this will be a common occurrence, but landscaper agrees to assist Horton with exercising self help on homes as needed.

Common areas, entrances, model homes and spec homes must be fertilized four times a year as follows:

- Bermuda Sod:

February – March	5-5-20 with pre-emergent with .375 (rate: 5lbs/1000 square feet)
April – May	32-4-8 with .375 (rate: 4lbs/1000 square feet)
June – July	32-4-8 with .375 (rate: 4lbs/1000 square feet)
Sept – Oct	32-4-8 with .375 (rate: 4lbs/1000 square feet)
Oct – Nov	5-5-20 with pre-emergent with .375 (rate: 5lbs/1000 square feet)
- Centipede:

February – March	12-4-8 (rate: 5lbs/1000 square feet)
June – July	12-4-8 (rate: 5lbs/1000 square feet)
- Fescue:

February – March	15-0-5 with pre-emergent (rate: 4lbs/1000 square feet)
April – May	Preventive treatment with fungicide
June – July	5-10-30 with 10% iron (rate: 3-5lbs/1000 square feet)
Sept – Oct	18-24-12 with 2% iron Overseed with turf type tall fescue (rate: 4lbs/1000 square feet)
Oct – Nov	32-4-8 (rate: 6lbs/1000 square feet)

- Weeds shall be treated and hand picked a minimum of once a month.
- Common areas must receive pine straw twice a year (November, April).
- Entrances, model homes and spec homes must receive pine straw four times a year (November, February, May, August)
- Model homes, spec homes and entrance shrubs and trees must be pruned and shaped twice a year (cut back in the winter and shaped during the growing season).

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- In addition, the shape of all shrubs and trees must be maintained during the growing season. However, pruning shall not interfere with new growth.
- Landscape company is responsible for replacing all dead or missing materials on spec homes, model homes and entrances immediately. Authorization is required to replace dead and missing materials in common areas.
- Entrances, model homes and spec homes must receive fall and spring color
 - Plantings shall maximize the impact for the dollar
 - Plantings shall be appropriately sized to the bed and fill the bed
 - Plantings shall be varied in height, color and texture and tiered (minimum of two different heights, textures and colors in every planting)
 - Plantings shall be season appropriate
 - Plantings shall be deer and animal resistant to the extent possible
- Irrigation systems must be winterized (bled out) after the November pre-emergent treatment. The irrigation systems must be turned on, tested for leaks and checked for proper alignment in February before the pre-emergent treatment. The landscape company is responsible for replacing or repairing any sprinkler heads, drainage structures or other items damaged by landscape equipment.

Horton expects its partners to act professionally and to provide excellent service at all times. Customers should be contacting the Association management company with landscaping concerns, not the landscaping company.

Landscape Company Name and Address:

Marale Landscaping, LLC
P.O. Box 62951 North Charleston, SC 29419

Agreed and Accepted by:


 Its: Owner
 Date: 9-28-2010

KDC 00174416



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR D & T Construction Inc. ("Contractor")
 Sole Proprietorship ☐ Partnership ☒ Corporation ☐ L.L.C. ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No. # 56-2166242
 Name of Owner(s)/Officer(s) Kyung N. Lee
 Division Name: _____ Area Name _____ Assigned Vendor No. _____
 Address for All Notices: 5835 Heartwood Court
 City Harrisburg State NC Zip Code 28075
 Telephone 804 455-1422 Fax 804 455-1423 E-Mail Address prk-jh@yahoo.com
 Insurance Carriers ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 12th day of March, 2010, between
D. R. NORBON INC. ("Owner") and Contractor

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of the Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement (the "Work") shall include all work performed and materials supplied by Contractor to Owner including but not limited to the labor, services and/or materials, equipment, transportation, or facilities necessary to complete the construction-related activities generally described in Exhibit A. The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing will not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to or in place of Contractor. Contractor will be awarded Work on a lot by lot basis. To the extent Exhibit A contains more than one type of construction-related activity, Contractor must clarify with Owner before the Work commences as to which construction-related activity it has been awarded for the lot in question.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, method and performance of the Work. Contractor shall not be considered an agent or employee of Owner for any purpose, nor shall any employees or permitted subcontractors of Contractor. Contractor shall not represent itself as the agent of Owner unless owner has specifically permitted Contractor to do so in writing. The results achieved shall satisfy the requirements of this Agreement. Contractor shall be responsible for the performance of its employees and permitted subcontractors, and all personnel used by Contractor in the performance of Work shall be qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further agrees to provide written notification to all of its present and future employees of Contractor's provision for Worker's Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work herein covered or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall pay and shall be solely responsible for all tax withholding, Social Security, state unemployment and all other withholding as required by law. Contractor's employees, agents or permitted subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNLESS CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule, the superseded Pricing Schedule shall remain in effect for Purchase Orders issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing of the house incorporating the Work from Owner to a purchaser. Contractor hereby agrees that timely invoicing is an important and material term to this agreement, and timely invoicing is a part of Contractor's performance of all material terms of this contract. Contractor hereby waives payment for any Work where Contractor fails to invoice Owner in a timely manner in conformity to this agreement. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR

Executed this 12th day of March, 2010

Owner:	Contractor:
By <u>DHI</u>	By <u>Kyung N. Lee</u>
Name <u>EDMOND G. JEANFREAU, JR.</u>	Name <u>Kyung N. Lee</u>
Title <u>PURCHASING</u>	Title <u>Owner</u>
Division President	

INITIALS: OWNER EdJ, CONTRACTOR KL

KDC 013335

ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO SUBCONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN AND THAT OWNER DOES NOT AGREE TO PAY TO SUBCONTRACTOR INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF DELAYED PAYMENTS.

4.2 Payment to Subcontractors. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed from Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties, and these joint payments shall satisfy amounts owed by Owner to Contractor, notwithstanding the fact that the third parties may not endorse the checks. In any instance where Owner receives written notice from one of Contractor's sub-contractors, whereby the subcontractor claims a failure to be paid for the Work, Owner reserves the right to pay the subcontractor directly or to make payment payable to both the Contractor and its subcontractor.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the Contract Price shall waive and release all claims against Owner and the property under this Agreement, but shall not waive any claims of Owner arising out of Work later found to be defective and shall not release Contractor from liability for warranties and warranty service and/or defective Work. Contractor shall remedy any defects and pay for any damage resulting from any defects in or caused by the Work or as required by any other contracts between Owner and Contractor or by law or customary practice. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or assigns is an acceptance of the Work or materials not in compliance with this Agreement.

5. SCHEDULE OF WORK.

5.1 Time is of the Essence. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work.

5.2 Construction Schedule. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.3 Commencement of the Work. Owner shall issue an authorization (either pursuant to a written purchase order, payment schedule, or work invoice ("Purchase Order") or verbal instructions from an authorized Owner representative) to commence the Work and Contractor shall not commence the Work at a job location until Contractor has received instructions to begin Work at a specific job location. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.4 Changes in Construction Schedule. Contractor agrees that Owner shall have the right to make changes to the schedule of Work at Owner's discretion and agrees to comply with such changes.

6. PERFORMANCE STANDARDS.

6.1 Applicable Standards. Contractor shall perform all Work in a good and workmanlike manner, in accordance with the plans and specifications of Owner, according to industry standard practices, and warrants that the Work will meet or exceed FHA minimum property standards, VA requirements, all laws (statutory or common) and regulations, and any applicable building code requirements.

6.2 Contractors' Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized Owner's employee and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications as the plans and specifications affect the Work and materials incorporated in the Work, and that the plans and specifications are clear and unambiguous, and has accepted and agreed to be bound by all such requirements.

6.3 Government Requirements. Contractor will comply with all applicable federal, state, local, and county statutes, ordinances, regulations, codes, licensing requirements and standards, and the requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 as amended, as well as the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., or similar laws or regulations, and the rules, regulations, or orders of all public authorities relating to performance of the Work, including without limitation, the procurement and posting of all required permits and notices. In addition, Contractor will not discriminate in its hiring or employment and will follow all state and federal employment laws or regulations. Contractor shall perform background checks and use only appropriate employees to perform warranty or repair work after a house is occupied.

6.4 Indemnity. To the fullest extent allowed by law, Contractor will agree to indemnify, defend, and hold Owner harmless from all actions, claims, investigations or other acts to enforce such laws or regulations, and further agrees to indemnify Owner from the payment of any fine, penalty or damages imposed, levied, assessed, or found as a result of the Contractor's failure to comply with or adhere to the applicable laws and regulations, or from Contractor's failure to cause its employees or subcontractors to comply with such laws and regulations.

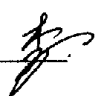
6.5 Observation and Testing by Owner and Repair by Contractor. Owner shall have the right to observe or test the Work at any time during or after construction, but that observation or testing is solely for the benefit of Owner's and is not for Contractor's benefit. Owner's failure to note defects in the Work during an inspection will not waive any of Contractor's obligations, representations or warranties related to the Work. Notwithstanding anything contained in this Agreement to the contrary, all Work shall be performed and any defects shall be corrected timely and in accordance with this Agreement to the satisfaction of Owner.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work, and shall report in writing to Owner any defects prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractor's work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses and approvals necessary for or applicable to the performance of the Work.

6.8 Change Orders. The Contractor shall furnish the materials for and to make all changes requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed;

INITIALS: OWNER  CONTRACTOR 

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(ii) governing storage of materials on the job location, (iii) regulating trash pick-up and waste collection at the job location, and (iv) work site safety requirements.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste materials or rubbish caused by its operations and shall remove all of Contractor's materials, and if materials are furnished by Owner, Contractor shall move all usable materials provided by Owner to a location designated by Owner. Contractor shall sweep out any waste material from inside the home under construction upon completion of its operation. All refuse shall be placed in receptacles provided or at locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up activities and collect a one hundred dollar (\$100.00) fine from Contractor for each incident. The cost of such clean-up and the aforementioned fine shall be deducted from any sums owed by Owner to Contractor, or shall be immediately payable by Contractor upon demand therefore by Owner.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from or in any way related to the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Owner reserves the right to set minimum standards or rules relating to Work on its site. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OWNERS MINIMUM REQUIREMENTS. THE OWNER ASSUMES NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe condition or practice observed on the Work Site. Further, Contractor shall immediately notify Owner of any accidents or injuries on the Work Site. Contractor shall have an ongoing safety program and conduct inspections to determine that safe working conditions and equipment exist and safe practices are observed. Contractor shall prohibit and prevent the presence of children under age eighteen (18) from the Work Site.

7.1 Safety Laws and Indemnity Agreement. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards, statutes, and industry best practices concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations. Contractor shall provide Owner with written verification of its compliance with all applicable safety and health standards and regulations, including but not limited to OSHA's Hazard Communication Standard for the Construction Industry, 29 C.F.R. §1926.59 et seq., and provide written notice to Owner of the contact person responsible for Contractor's compliance with all safety and health standards and regulations. To the fullest extent allowed by law, Contractor agrees to indemnify, defend, and hold Owner harmless from all actions prosecuted to enforce and the payment of any fine or penalty imposed under such safety laws and regulations and shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work.

7.2 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, permitted subcontractors or suppliers at a job location or performance of the Work by any person under the influence of alcohol or drugs.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate corporations, and successors and assigns, that all labor performed and materials furnished by Contractor shall conform to the specifications of this Agreement, shall be free from any defects or deficiencies in workmanship or materials, and will comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, will meet or exceed the FHA/VA minimum property standards, and will comply with the Residential Warranty Corporation ("RWC") Program and the applicable limited warranty standards, which Contractor has read and understands and to which Contractor agrees to be bound. All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects for purposes of Contractor's obligations under this Contract. Contractor shall make good and promptly repair all Work not complying with the standards set forth in this section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Paragraph 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, the initial homeowner of the property on that is the subject of the Work: (i) for a period of ten (10) years all structural elements, including, but not limited to, roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems, (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor, (d) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (i) any statutory warranty or (ii) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner (a "Homeowners Warranty"). Contractor expressly agrees to be bound by any such Homeowners Warranty and to the extension of warranty period hereunder. Furthermore, notwithstanding the foregoing, Contractor agrees that all express and implied warranties shall remain in full force and effect for so long as Owner is obligated to warrant the Work pursuant to applicable law. Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Homeowners Warranty that is longer than the Warranty Periods stated above, provided, however, failure to give that notice will not affect the extension of the Warranty Period to the applicable warranty period under the Homeowner's Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty obligations, Contractor's indemnity obligations, or the ability of Owner to request Contractor to perform warranty services in the future.

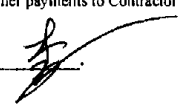
8.4 Transfer of Manufacturers Warranties. Contractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment, and shall furnish all certificates required by any municipality and/or VA and/or FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and are not in limitation of periods of applicable statutes of limitation.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Project is located.

9.3 Lien Claim Indemnity. If any liens are filed against Owner relating to portions of the Work for which Owner has paid Contractor, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such lien or affidavit to be removed.

INITIALS: OWNER  CONTRACTOR 

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and released of record. Contractor agrees to INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any liens relating to portions of the Work for which Owner has paid Contractor, and further agrees at Owners' request to any or all of the following: (i) procure a bond to indemnify Owner and any home purchaser from Owner, in an amount sufficient to discharge that lien, or (ii) refund to Owner all monies, including any additional amount necessary to cover all of Owner's or home purchaser's attorneys' fees and court costs paid in discharging the lien, whichever remedy Owner elects in its sole and absolute discretion, or (iii) provide sworn testimony that payment has already been made to Contractor for the work for which the alleged lien applies.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY AGREES TO HOLD HARMLESS, INDEMNIFY, PROTECT AND DEFEND OWNER, ITS PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THE AFOREMENTIONED ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "INDEMNITEE"), FROM AND AGAINST ANY AND ALL DEMANDS, CLAIMS, ACTIONS, CAUSES OF ACTION, PROCEEDINGS, LAWSUITS, SETTLEMENTS, JUDGMENTS, FINES, PENALTIES, LOSSES, ATTORNEYS FEES, LITIGATION COSTS, INTEREST, AND EXPENSES OF ANY KIND (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "LOSSES") FOR DAMAGES FROM BODILY OR PERSONAL INJURY, DEATH, THE DESTRUCTION OR LOSS OF PROPERTY (INCLUDING LOSS OF USE), OR ANY OTHER KIND OF DAMAGES OR HARM, ARISING OUT OF, OR RESULTING FROM, OR RELATED IN ANY WAY TO THE WORK PERFORMED AND/OR THE MATERIALS SUPPLIED UNDER THIS CONTRACT, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY INDEMNITEE. SUCH LOSSES SPECIFICALLY INCLUDE, BUT ARE IN NO WAY LIMITED TO LOSSES ARISING OUT OF OR ATTRIBUTABLE TO: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR OBLIGATIONS OF CONTRACTOR SET FORTH HEREIN; (2) THE WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR, CONTRACTOR'S AGENTS OR EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, AND/OR ALL OTHER ENTITIES OVER WHOM THE CONTRACTOR MAY EXERCISE CONTROL (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "CONTRACTOR'S AGENTS"); (3) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF CONTRACTOR AND/OR CONTRACTOR'S AGENTS; OR (4) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE INDEMNITY FOR LOSSES CAUSED SOLELY BY FAULT OR NEGLIGENCE OF THE INDEMNITEE. THE LOSSES DESCRIBED HEREIN SHALL INCLUDE, BUT ARE NOT LIMITED TO, DEMANDS, CLAIMS, OR ACTIONS ASSERTED BY (1) ANY PRESENT OR FUTURE OWNER OF THE HOUSE INCORPORATING THE WORK; AND (2) ANY OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY CONTRACTOR AND/OR CONTRACTOR'S AGENTS). THE INDEMNIFICATION OBLIGATION UNDER THIS CONTRACT SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. THE INDEMNITY PROVISIONS CONTAINED HEREIN ARE INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY LAW.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. IT IS THE EXPRESS INTENTION OF THE PARTIES THAT CONTRACTOR'S INDEMNITY OBLIGATIONS HEREIN WILL SURVIVE THE TERMINATION OF CONTRACTOR OR THIS AGREEMENT. INDEMNITEE SHALL HAVE THE RIGHT, AT ITS DISCRETION AND CHOOSING, TO DEFEND ANY AND ALL CLAIMS WHICH MAY BE ASSERTED AGAINST IT, AND CONTRACTOR AGREES TO REIMBURSE INDEMNITEE FOR ANY AND ALL EXPENDITURES WHICH INDEMNITEE MAY MAKE OR INCUR ON ACCOUNT OF ANY SUCH CLAIM.

10.3 CONTRACTOR AND CONTRACTOR'S AGENTS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS OR EQUIPMENT.

10.4 Subcontractor's and Supplier's Indemnity Obligations. Contractor shall require each of its subcontractor to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required in this section and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms as Section 13. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the actions of any subcontractor engaged by Contractor, whether in written agreement or otherwise, or who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed to be the obligation of the subcontractors to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with completed operations coverage which contains a per occurrence limit of no less than one million dollars (\$1,000,000.00), and an aggregate limit of no less than two million dollars (\$2,000,000.00) protecting against liability for bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations, (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit), (iii) independent subcontractors, (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement, and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type of, or nature of, the Work or limit the type of structure on which the Work is to be performed. The CGL Policy shall not contain a deductible or self insured retention of more than \$25,000.00. Contractor shall continuously maintain a CGL Policy covering completed operations for any applicable statute of repose for commencing lawsuits associated with the Work.

11.2 Other Insurance. Contractor agrees to carry (i) Worker's Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Worker's Compensation obligations imposed by law, (ii) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than one million dollars (\$1,000,000.00) and an aggregate of no less than one million dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment, and (iii) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person (Bodily Injury) and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner as an Additional Insured on the CGL Policy or policies required above covering both on-going operations and completed operations (equivalent to form CG20101185 or form CG2037). Coverage obtained by Contractor naming Owner as an Additional Insured shall be primary with any insurance of Owner being excess coverage. That insurance coverage will be carried continuously during the term of this Agreement and thereafter as required by this Agreement with insurance companies acceptable to Owner in its sole and absolute discretion. That insurance shall provide for a waiver of subrogation. All insurance shall be with

INITIALS: OWNER , CONTRACTOR 

KDC 013338

a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the required policies. Each Certificate of Insurance or policy shall contain an unqualified clause to the effect that the policy shall (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days' prior written notice to Owner, (ii) be carried continuously from the date of commencement of the Work until expiration of the period of the Contractor's warranty provided in this Agreement, (iii) specifically identify Owner as an Additional Insured, and (iv) indicate that coverage applies in the state where the Work is being performed. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself and the Work required to be performed under this Agreement.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER IN ITS SOLE AND ABSOLUTE DISCRETION) IN EFFECT AT THE TIME WORK IS PERFORMED TO COMPENSATE OWNER FOR ANY ADDITIONAL COSTS OF ITS WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS, CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS CONTRACT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work to the extent permitted under this Agreement, Contractor guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Owner as an Additional Insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or another contractor's work is damaged by an act for which Contractor, or its employees, agents or subcontractors, are responsible, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct such Work, replace or repair any defective material, or repair any damage. Contractor shall make all repairs and correct such within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours notice on a non-emergency basis, or (ii) retain a third party or undertake to perform those duties, and retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld resulting in a deficiency, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and reasonable attorneys' fees, incurred by Owner, and shall pay to Owner this amount within thirty (30) days of demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Paragraph 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or permitted subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location as a result of Contractor's actions or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement, Exhibit A of this Agreement, or the specifications; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order that is Contractor's obligation under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary tools, material, or equipment for, or cleaned up after, the Work; (viii) Contractor fails to comply with any other provision of this Agreement.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement and rights and remedies available under this Agreement shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. Owner shall have a right to collect from Contractor its reasonable attorneys' fees and expenses incurred in enforcing Contractor's obligations.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These Disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking equitable relief from and arbitrator or a court of appropriate jurisdiction.

13.3 Arbitration. If mediation fails, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq., regardless of any other choice of law provision in any underlying contract or this Agreement. All demands for arbitration shall be made before the expiration of the applicable statutes of limitations and repose. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court of competent jurisdiction.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrators mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes, is over \$200,000, but only one arbitrator shall be appointed if the Dispute is 200,000 or less. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of a mediator or arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint a mediator or arbitrator. The AAA's Code of Arbitrator Ethics (revised March 1, 2004) is applicable to all arbitrations.

INITIALS: OWNER  CONTRACTOR 

KDC 013339

13.5 Rules. To the extent not in conflict with the Federal Arbitration Act, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner may join Contractor in any litigation, mediation, or arbitration initiated against Owner by a third person so that the rights of all parties (Owner, Contractor, Subcontractor, or any third person) shall be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner where necessary to facilitate resolution in a single forum. If multiple lawsuits or arbitrations are commenced, they shall all be consolidated into a single proceeding. Notwithstanding any other provision of this section, if a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect to unilaterally waive mediation or arbitration and litigate the Dispute with Contractor.

14. TERMINATION.

14.1 Termination by Owner for Cause of Convenience. This Agreement shall remain in full force and effect until terminated in writing by mailing notice to the other Party. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) Days' written notice before the effective date of termination, and shall perform fully under this Agreement during that notice period. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.3 Survival. All obligations, duties and warranties for Work performed under this Agreement shall survive termination.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement, (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement, (iii) this Agreement is or will be (when executed) a binding obligations of Contractor, enforceable in accordance with its terms, (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority, (v) Contractor has, and each Contractor's employees, agents or permitted subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement, (vi) Contractor is in compliance with all governmental requirements to which it is subject, and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement, and with respect to prices and quantities only, the Price Schedule and all written Purchase Orders shall be the entire agreement between Owner and Contractor related to the Work, and there are no other agreements, oral or written, made by or relied upon by Owner and Contractor. Except as otherwise provided in this Agreement, no provision of this Agreement may be amended or supplemented except in writing signed by both Owner and Contractor.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights and obligations are not assignable or transferable without the express written consent of Owner, who may consent can be withheld in Owner's sole and absolute discretion. Subject to the restrictions and prohibitions on assignment set forth in this section, the terms of the Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Contractor shall provide and transfer ownership to any and all samples and/or shop drawings requested by Owner.

18. NOTICES. All notices required pursuant to this Agreement or otherwise shall be in writing and shall be delivered to the respective business address of Owner and Contractor. However, Contractor's business address shall be as noted on page one (1) of this Agreement. Notices shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by overnight delivery service, and upon confirmation if sent by facsimile transmission.

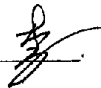
19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or articles.

SOUTH CAROLINA REVISED 7/23/2007

INITIALS: OWNER



CONTRACTOR



KDC 013340

PERFORMANCE REQUIREMENTS & SPECIFICATIONS

DESCRIPTION: VINYL SIDING AND TURNKEY INSTALLATION

PERFORMANCE REQUIREMENTS

Material shall remain in place without undue shrinkage or movement for a period of two (2) years. Finish surface will be free of checks, gars, knots cracks, raised grains or splits.

Hard hats and appropriate safety equipment are to be worn at all times while on D.R. Horton's property. The contractor shall ensure that each crew leader has attended the appropriate OSHA approved "Competent Person" training course

NON- PERFORMANCE REMEDY

The contractor will repair and/or replace any material that does not meet the performance requirement. Final determination on any remedial action will be made by D.R. Horton.

SPECIFICATIONS & SCOPE OF WORK

1. House package to be per D.R. Horton take off and approved vendor quotation.
2. Deliveries will be to the house/lot designated by the Builder. Access to the lot is at graveled drive only. Supplemental orders will be placed in the garage and/or open area of silt fence.
3. Damage to house, lot, street (including erosion controls) and dirt transferred to the streets is the supplier's responsibility to correct. Failure to correct will result in contractor correcting at supplier's expense.
4. Damage material noted at time of delivery or after, will be removed within 24 hours at supplier's expense.
5. No product substitutions or product revisions are to take place. Any proposed substitutions or revisions are to be presented and approved by D.R. Horton management prior to implementation.
6. Supplier's representative to attend all subdivision trade meetings as scheduled by Builder.
7. Supplier's representative to receive Builders weekly schedule by field visiting subdivisions on Friday.
8. Supplier's representative to confirm shipping date prior to shipping.
9. Sufficient manpower will be allocated to assist driver in proper and safe delivery of product to house.
10. All labor and equipment must conform to OSHA SAFETY REQUIREMENTS including SAFETY SHOES AND HARD HATS.
11. Material will be selected and shipped per D.R. Horton designated grades. Non-conformance to quality standards is at the sole discretion of D.R. Horton representative. Cornice carpenters will reject material with crowns, bellies, knots, gars, splits, mildew, delaminating, or any other apparent defect affecting the actual quality of the home as well as appearance of the frame. Supplier will without delay, replace material within 24 hours at no charge. Supplier will pick up and/or dispose of defective material at no charge.
12. Short length material impacting carpentry efficiency and quality of the product as defined by the Builder will be rejected and replaced at no charge.

Contractor agrees to comply with all applicable building codes, ordinances and OSHA regulations.

ACKNOWLEDGMENT

Performance Requirements and Specifications is hereby made a part of and incorporated into the Contractor Agreement.

Contractor.

Builder.

P&T Construction Inc

D.R. Horton, Inc.

By: [Signature]By: EDMOND G. JEANFREAU, JRDate: 3/12/10Date: 3/13/10

Revised 7/27/2004

Page 1 of 1

Initial [Signature]

KDC 013341

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; AllPro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J Framing,
Inc.; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor
Designs Center; A Grade Above Others,
LLC; Brand-Vaughan Lumber Co, Inc.; BKF
Builders, Inc.; Builders Designhouse, LLC;
BMC East LLC d/b/a Coleman Floor, LLC;
Builders Firstsource Southeast Group, LLC,
a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Cortes Painting, LLC;
CBU Enterprises, Inc.; CPI Security Systems,
Inc.; DOM Group, LLC; Ferguson
Enterprises, Inc.; Five Star Construction Inc.;
Five Star Foundations, LLC; Galloway-Bell,
Inc., a/k/a Galloway-Bell, Inc. II; Get
Floored, LLC; GBS Building Supply – US
LBM, LLC, f/k/a GBS Building Supply, Inc.;
General Shale Brick Inc.; Greener Pastures,
Inc., a/k/a Green Pastures of Aiken, LLC;
IBS Asset, LLC d/b/a Blue Ridge Building
Products; Installed Building Products, LLC,

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**GALLOWAY-BELL, INC. A/K/A
GALLOWAY-BELL, INC II'S MOTION
FOR SUMMARY JUDGMENT AS TO
ALL CLAIMS ASSERTED BY THIRD-
PARTY PLAINTIFF D.R. HOTON, INC.**

a/k/a Installed Building Products II LLC; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danlar, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC, a/k/a M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, Inc., a/k/a P & T Construction, Inc.; P & L Enterprises, LLC; Probuild Company, LLC a/k/a Probuild Holdings, Inc.; Rite Rug Company, Inc., a/k/a, Rite Rug Co.; Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractors Service; Tucker Materials, Inc, a/k/a Gypsum; Silver Line Building Products Corp.; Dupree Plumbing Co., Inc.; UTM Enterprises, Inc; and Willow Tree Landscaping, Inc., and Silver Line Building Products Corporation

Third-Party Defendants.

PLEASE TAKE NOTICE that Galloway- Bell, Inc. a/k/a Galloway-Bell, Inc. II (“Galloway-Bell”), by and through counsel, hereby moves before this Court, as soon as Counsel may be heard, at such place and time and in such manner as the Court may appoint, for an Order granting Summary Judgment to Galloway-Bell as to all claims asserted by Third-Party Plaintiff D.R. Horton, Inc. (“D.R. Horton”). Galloway-Bell will show there is no genuine issue of material fact and Galloway-Bell is entitled to judgement as a matter of law. Alternatively, Galloway-Bell moves for partial summary judgement on the claims of negligence, breach of contract, breach of express warranties, breach of implied warranties, and contractual indemnity on the basis that these claims are disguised indemnity claims.

The grounds for this Motion are:

1. D.R. Horton's claims for indemnity fail as a matter of law because Galloway-Bell's work is not the basis of Plaintiffs claims against D.R. Horton;
2. D.R. Horton's claims are barred by the statute of repose. S.C. Code Ann. § 15-3-640;
3. D.R. Horton's claims are barred by the statute of limitations. S.C. Code Ann. § 15-3-530;
4. D.R. Horton's claims fail as a matter of law because Galloway-Bell is not responsible for the consequences of defects in the plans and specifications. *United States v. Spearin*, 248 U.S. 132 (1918);
5. D.R. Horton's claims for contractual indemnity against Galloway-Bell are against public policy and unenforceable pursuant to the Anti-Indemnity Statute, S.C. Code Ann. § 32-2-10 (2007);
6. D.R. Horton's contractual indemnity provision fails to clearly and unequivocally show the parties intended Galloway-Bell to indemnify D.R. Horton for its own and concurrent negligence. *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018), reh'g denied (Oct. 19, 2018);
7. D.R. Horton's claims for Negligence, Breach of Express and Implied Warranty, and Breach of Contract against Galloway-Bell are solely conditioned on its potential liability for damages to Plaintiffs, Natalie Zitek et al., making them disguised claims for indemnity and, these claims should be dismissed pursuant to *Stoneledge at Lake Keowee Owners' Ass'n. Inc. v. Clear View Construction, Inc.*, 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015) and *Stoneledge at Lake Keowee Owners' Ass'n. Inc. v. Builders First Source-Se. Grp.*, 413 S.C. 630, 776 S.E.2d 434 (Ct. App. 2015);
8. D.R. Horton has unclean hands, and therefore cannot recover in equity. *Inglese v. Beal*, 403 S.C. 290, 742 S.E.2d 687 (Ct. App. 2013);
9. The negligence cause of action should be dismissed because the economic loss rule applies to some or all of D.R. Horton's damages. *Beachwalk Villas Condominium Ass'n. v. Martin*, 305 S.C. 144, 406 S.E.2d 730 (1989); and,
10. No evidence exists that the claims filed against Galloway-Bell by D.R. Horton in any way relate to the work performed by Galloway-Bell or the claims filed on behalf of the class. Therefore, Galloway-Bell is an improper member of the class and should therefore be removed.

Therefore, Galloway-Bell respectfully requests this Honorable Court issue an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure dismissing D.R. Horton's claims against Galloway-Bell. This motion is to be supported by a memorandum of law, appendices, exhibits, discovery responses, deposition transcripts, and all applicable law.

Respectfully submitted,

Galloway's MSJ
Case No: 2019-CP-04-1942

ROSS & CRISTALDI, LLC

s/ Emily C. Sheets

Jeffrey A. Ross, Bar No.: 74254
Philip P. Cristaldi, III, Bar No.: 102219
Emily C. Sheets, Bar No.: 78768
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Mt. Pleasant, South Carolina 29464
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esheets@rclawsc.com

Attorneys for Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II

Mt. Pleasant, South Carolina

May 1, 2023

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

Natalie Zitek, individually, and on behalf)
of all others similarly situated,)

Plaintiff)

vs)

D.R. Horton, Inc., Jane Doe #1-10; and,)
John Doe #1-50,)

Defendant)

D.R. HORTON, INC.)

Third-Party Plaintiff)

vs)

AJ LANDSCAPING & GRADING,)
LLC, A/K/A AJ LANDSCAPING &)
GRADING, LLC; ALLPRO)
TEXTURES, LLC; ALPHA OMEGA)
CONSTRUCTION GROUP, INC.;)
AMERICAN CONCRETE AND)
PRECAST, INC.; A/K/A ACP)
CONCRETE, INC.; A&J FRAMING,)
INC; ALPHA E.M.C.; A-Z, INC.;)
ATLANTA FLOOR DESIGNS)
CENTER; A GRADE ABOVE)
OTHERS, LLC; BRAND-VAUGHAN)
LUMBER CO, INC.; BKF BUILDERS,)
INC.;BUILDERS DESIGNHOUSE,)
LLC; BMC EAST LLC D/B/A)
COLEMAN FLOOR, LLC; BUILDERS)
FIRSTSOURCE SOUTHEAST GROUP,)
LLC, A/K/A BUILDERS)
FIRSTSOURCE, INC; BRAVO)
CARPENTERS, INC.; CARYL)
MECHANICS II, INC., A/K/A CARYL)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No. 2019-CP-04-1942

**DEFENDANT D.R. HORTON, INC.'S
MEMORANDUM IN OPPOSITION TO ALL
THIRD-PARTY DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT**

MECHANICALS, INC.; CANNADAY)
 SIDING & GUTTER, INC.; CORTES)
 PAINTING, LLC; CBU ENTERPRISES,)
 INC.; CPI SECURITY SYSTEMS, INC.;)
 DOM GROUP, LLC; FERGUSON)
 ENTERPRISES, INC.; FIVE STAR)
 CONSTRUCTION INC.; FIVE STAR)
 FOUNDATIONS, LLC; GALLOWAY-)
 BELL, INC. A/K/A GALLOWAY-)
 BELL, INC. II; GET FLOORED, LLC;)
 GBS BUILDING SUPPLY – US LBM,)
 LLC, F/K/A GBS BUILDING SUPPLY,)
 INC.; GENERAL SHALE BRICK INC.;)
 GREENER PASTURES, INC. A/K/A)
 GREENER PASTURES OF AIKEN,)
 LLC; IBP ASSET, LLC D/B/A BLUE)
 RIDGE BUILDING PRODUCTS; JLS)
 MASONRY, INC.; KINGS)
 LANDSCAPING, LLC;)
 LANDSHAPERS, LLC; LADE-)
 DANLAR, INC.; LANSING BUILDING)
 PRODUCTS, INC.; LONG HEATING &)
 AIR CONDITIONING, INC.; L&M)
 ELECTRIC, INC; MANALE)
 LANDSCAPING, LLC; MJ COWBOYS,)
 LLC; M&L GENERAL)
 CONSTRUCTION, LLC, A/K/A M&L)
 GENERAL CONSTRUCTION, INC.;)
 M&L REYNA CONSTRUCTION, LLC;)
 M&M FOUNDATIONS, LLC;)
 NAZARETH BUILDERS, LLC; NB)
 CONTRACTORS, LLC; POINSETT)
 DEVELOPMENT, LLC; POINSETT)
 HOMES, LLC; P&T CONSTRUCTION,)
 INC., A/K/A P&T CONSTRUCTION,)
 INC.; P&L ENTERPRISES, LLC;)
 PROBUILD COMPANY, LLC A/K/A)
 PROBUILD HOLDINGS, INC.; RITE)
 RUG CO.; RODNEY HOWARD)
 GRADING, INC. A/K/A RODNEY)
 HOWARD GRADING CO.;)
 SANDLAPPER CONCRETE, LLC;)
 SODFATHER INC., LANDSCAPE)
 CONTRACTORS; STOCK BUILDING)
 SUPPLY, LLC; TOPBUILD HOME)
 SERVICES, INC., A/K/A GALE)

CONTRACTORS SERVICE; TUCKER)
 MATERIALS, INC., A/K/A GYPSUM;)
 UTM ENTERPRISES, INC; DUPREE)
 PLUMBING COMPANY, INC. AND)
 WILLOW TREE LANDSCAPING, INC;)
 AND SILVER LINE BUILDING)
 PRODUCTS CORPORATION)
)

Third-Party

Defendants

TO: ALL COUNSEL OF RECORD:

COMES NOW, Defendant D.R. Horton, Inc. (“DRH”) and hereby responds to Third-Party Defendants Motions for Summary Judgment, showing this honorable Court as follows:

I. PROCEDURAL HISTORY

Various Third-Party Defendants are moving (some for the second time) for summary judgment based on the assertion that DRH’s claims for breach of contract, breach of warranties, and negligence/gross negligence/recklessness are merely disguised claims for indemnity and DRH’s claims for contractual indemnity are barred and unenforceable. These are the same grounds for summary judgment that Third-Party Defendants previously moved for in the fall of 2022, and that the Court denied by Order dated November 3, 2022. The Court previously determined that “there are genuine issues of material fact in the claims between the Defendant and Third-Party Defendants,” precluding summary judgment. As a practical matter, these issues have been decided by this Court and should not be revisited.

The Third-Party Defendants’ indemnity obligations and requirement to defend DRH were triggered the moment Plaintiff made her claim and continue until this action is concluded. Where third-party defendants are seeking summary judgment on the merits of Plaintiff’s underlying claims, even if such motions are granted, it would not end DRH’s indemnity claims against these

third-party defendants because DRH's indemnity claims seek recovery of its costs of litigating these claims to this point.

Accordingly, Third-Party Defendant's motions for summary judgment on DRH's third-party claims should be denied.

Because the Third-Party Defendants have not yet filed memoranda in support of their motions, DRH specifically reserves the right to supplemental briefing on these motions.

II. STATEMENT OF FACTS

Plaintiff initiated this class action lawsuit on September 25, 2019, against DRH and Jane Doe #1-10 and John Doe #1-50 as Defendants. (See Plaintiff's Complaint). The lawsuit concerns the construction of approximately 234 homes (the "Subject Properties"). As noted in the Complaint, "Defendants Jane Doe #1-10, whose true names are unknown ("Jane Doe Defendants"), are other entities or individuals who are actual or de facto joint venturers and/or partners, control persons, and/or agents of DRH and/or each other in connection with the design, construction, and repair of the [Subject Properties]." (*Id.* at ¶8). Plaintiff further alleged "Defendants John Doe #1-50 ("John Doe Defendants") are persons or entities who participated in the design, development, marketing, construction, repair, and/or sale of the [Subject Properties] as contractors, subcontractors, manufacturers, material supplier, consultants, architects, engineers, real estate agents, managers, marketers, laborers, or otherwise." (*Id.* at ¶16). Plaintiff brought the following claims against Defendants: negligence and gross negligence, breach of implied warranties, and unfair trade practices. However, DRH did not self-perform any of the work in the construction of the Subject Properties.

After filing the subject lawsuit, Plaintiff provided a Notice and Opportunity to Cure to D.R. Horton listing thirteen (13) categories of issues that were alleged to have been experienced by

Plaintiff and similarly situated individuals. Only those subcontractors whose work was implicated by that notice have been named in the lawsuit. DRH brought claims against the entities and individuals with whom it contracted with to provide labor and/or supply materials for the construction of the Subject Properties including the Third-Party Defendants. DRH brought the following claims against the Third-Party Defendants: contractual indemnification, equitable indemnification, breach of contract, breach of express warranties, breach of implied warranties, and negligence/gross negligence/recklessness.

DRH entered into agreements with subcontractors, including the Third-Party Defendants, to perform the work (collectively hereinafter referred to as the “ICAs”).¹ Each of the ICAs included indemnity provisions (collectively hereinafter referred to as the “Indemnity Provisions”). Throughout the years DRH constructed homes in Rose Hill with various subcontractors, it had six slight variations of the ICA. (ICA’s attached as **Exhibits 1-6; Exhibit 7** (listing of ICA’s for each subcontractor)). Generally, these all incorporate the following applicable provisions:

Subcontractor Standards:

2. Independent Contractor Status. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, methods and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform the assigned tasks and have all necessary licenses.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FHA minimum property standards, VA requirements, all manufacturers’ or

¹ D.R. Horton fully incorporates its Memorandum in Opposition to Third-Party Motions for Summary Judgments (Sep. 7, 2022) and all exhibits of representative ICAs attached thereto as Exhibit A.

suppliers' standards or specifications for use and installation, and all laws (statutory and common), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements).

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any work, or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

Subcontractor Indemnity and Insurance Requirements:

10.1 GENERALLY. To the fullest extent permitted by law, contractor hereby agrees to hold harmless, indemnify, protect and defend owner, its parent corporation, subsidiaries, affiliates, successors and assigns, and each of the aforementioned entities' respective officers, directors, partners, employees, agents and insurers (individually or collectively hereinafter, "indemnatee") from and against any and all demands, claims, actions, causes of action, proceedings, lawsuits, settlements, judgments, fines, penalties, losses, attorneys fees, litigation costs, interest, and expenses of any kind (individually or collectively hereinafter, "losses") for damages from bodily or personal injury, death, the destruction or loss of property (including loss of use), or any other kind of damages or harm, arising out of, or resulting from, or related in any way to the work performed and/ or the materials supplied under this contract, regardless of whether or not caused in part by indemnatee. Such losses specifically include, but are in no way limited to losses arising out of or attributable to: (1) a breach of any warranties, representations, covenants or obligations of contractor set forth herein; (2) the work performed or to be performed or materially supplied by contractor, contractor's agents or employees, suppliers or subcontractors and their respective agents and employees, and/or all other entities over whom the contractor may exercise control (individually or collectively hereinafter, "contractor's agents"); (3) any negligent, grossly negligent, and/or intentional act and/or omission of contractor and/ or contractor's agents; or (4) any negligent, grossly negligent, and/or intentional act and/or omission of the indemnatee related in any way to the work. Notwithstanding the foregoing, nothing herein shall require indemnity for losses caused solely by fault or negligence of the indemnatee. The losses described herein shall include, but are not limited to, demands, claims, or actions asserted by (1) any present or future owner of the house incorporating the work; and (2) any

owner, contractor or any third party (including, but not limited to, personnel furnished by contractor and/or contractor's agents). The indemnification obligation under this contract shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for contractor under workers' compensation acts, disability benefit acts or other employee benefit acts. The indemnity provisions contained herein are intended to be as broad and inclusive as permitted by law.

10.4 Subcontractor's and Supplier's Indemnity Obligations.

....For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the actions of any subcontractor engaged by Contractor whether in written agreement or otherwise or who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed to be the obligation of the subcontractors to Owner, for which Contractor shall be fully responsible to Owner.

11.3 General Requirements Applicable to All Required Insurance.

Contractor shall add Owner as an Additional Insured on the CGL Policy or policies required above covering both on-going operations and completed operations (equivalent to form CG20101185 or form CG2037). Coverage obtained by Contractor naming Owner as an Additional Insured shall be primary with any insurance of Owner being excess coverage. The insurance coverage will be carried continuously during the term of this Agreement and thereafter is requested by this Agreement with insurance companies acceptable to Owner in its sole and absolute discretion.

The Third-Party Defendants contend that they are entitled to summary judgment because DRH's claims for breach of contract, breach of warranties, and negligence/gross negligence/recklessness are merely disguised claims for indemnity and DRH's claims for contractual indemnity are barred and unenforceable. Various defendants also contend that they are entitled to summary judgment against DRH's contractual indemnity claims due to lack of a written contract or because DRH has unclean hands.

For the reasons set forth below, the Third-Party Defendants' motions must be denied.

III. ARGUMENT & CITATION OF AUTHORITY

A. Applicable Standard

Summary judgment is only appropriate where the evidence shows that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law on that claim. Rule 56(c), SCRPC. In considering a motion for summary judgment, the trial court “must view the facts in the light most favorable to the non-moving party.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Moreover, “[a]ll ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party.” *Murray v. Holnam, Inc.*, 344 S.C. 129, 137, 542 S.E.2d 743, 747 (Ct. App. 2001).

B. The Indemnity Provisions are not Illegal and Unenforceable

The Third-Party Defendants relying heavily on *DRH, Inc. v. Builders FirstSource-Se. Grp., LLC*, 422 S.C. 144, 148, 810 S.E.2d 41, 45 (Ct. App. 2018) contend that the Indemnity Provisions included in the ICAs are illegal and unenforceable because they are barred by S.C. Code § 32-2-10, *et. seq.* (the “Anti-Indemnity Statute”).

This perfunctory analysis is insufficient, as the South Carolina Court of Appeal’s decision in *Builders* made specific reference to the concealment and unreasonable award of damages, which impacted D.R. Horton’s ability to recover under the indemnification agreement.² In *Builders*, Patricia Clark (hereinafter “Clark”) filed a suit against D.R. Horton for negligence, breach of contract, multiple breaches of warranty and a violation of the South Carolina Unfair Trade Practice Act. *Id.* at 148. The lawsuit alleged various defects in the Clark home, including but not limited to, the work performed by Builders FirstSource. Clark and D.R. Horton participated in arbitration, where Clark was awarded \$150,000. *Id.* However, the arbitration award did not indicate what

² *Id.* at 153. “D.R. Horton cannot ask the arbitrator to conceal its reasons for an award, which may have included damages caused by its own negligence, then ask the circuit court to award it damages that would be barred by the statute.”

damages the arbitrator found compensable. *Id.* Further, the arbitrator noted that “(c)ounsel for the parties have requested an order containing a monetary award only.” *Id.*

Following the arbitration award, D.R. Horton filed a complaint seeking contractual indemnification and contribution from Builders FirstSource for recovery of the arbitration award and attorney’s fees that D.R. Horton incurred as a result of the Clark suit. *Id.* Subsequently, Builders FirstSource filed a motion for summary judgement alleging D.R. Horton’s claim for contractual indemnification failed as the agreement required D.R. Horton to be indemnified from its own negligence. *Id.* at 148-49. Upon the request via multiple motions, the trial court granted Builders FirstSource’s motion for Summary Judgment. *Id.* at 149. D.R. Horton then appealed the trial court’s decision, asserting that the trial court erred by reading additional terms into the agreement and failed to require Builders FirstSource to pay the entire arbitration award and attorney’s fees. *Id.* at 150.

1. General Differences Between Zitek and Builders

The development of the Zitek Class Action is distinguishable as D.R. Horton has brought claims against all relevant subcontractors in this suit. First, Zitek is a class action involving potentially hundreds of homes and dozens of subcontractors. As a result of this complex litigation, D.R. Horton has filed third party claims against all subcontractors whose scope of work has been implicated in the Zitek Class Action. Additionally, D.R. Horton has requested indemnification from all relevant subcontractors during the process of litigation with the Plaintiff. Overall, *Builders* is distinguishable based on the essential formation and development of the Zitek Class Action and therefore cannot be blindly applied to this case and requires further analysis.

Notwithstanding the clear differences between Builders and the current matter, the Third-party Defendants' position is further flawed because the Indemnity Provisions in this matter specifically exclude losses caused by the sole negligence of DRH.

The Anti-Indemnity Statute provides, in pertinent part, as follows:

Notwithstanding any other provision of law, a promise or agreement in connection with the design, planning, construction, alteration, repair or maintenance of a building ... purporting to indemnify the promisee, its independent contractors, agents, employees, or indemnitees against liability for damages arising out of bodily injury or property damage proximately caused by or resulting ***from the sole negligence of the promisee***, its independent contractors, agents, employees, or indemnitees is against public policy and unenforceable. Nothing contained in this section shall affect a promise or agreement whereby the promisor shall indemnify or hold harmless the promisee or the promisee's independent contractors, agents, employees or indemnitees against liability for damages resulting from the negligence, in whole or in part, of the promisor, its agents or employees.

(*Emphasis added*).

In *D.R. Horton, Inc. v. Builders FirstSource-Se. Grp., LLC*, the South Carolina Court of Appeals found that a prior version of DRH's ICA violated S.C. Code § 32-2-10. The former ICA required the indemnitee to indemnify DRH for claims "related in any way to the work, even when the loss is caused by the fault or negligence of the indemnitee." 422 S.C. 144, 148, 810 S.E.2d 41, 45 (Ct. App. 2018). As explained by the court,

[The Anti-Indemnity Statute] allows D.R. Horton and [the Third-Party Defendants] to agree that [the Third-Party Defendants] will indemnify D.R. Horton for damages caused by [Third-Party Defendants] or its subcontractors. To the extent the trial court found that aspect of the agreement to be against public policy, we disagree. However, we agree that the indemnification clause is void as against public policy to the extent it purports to require [Third-Party Defendants] to indemnify D.R. Horton for damage caused by [D.R. Horton's] negligence or the negligence of its subcontractors.

Id. The court held that the contract at issue “purport[ed] to require [subcontractor] to indemnify D.R. Horton for its own negligence in violation of section 32-3-10.” *Id.*

In the present case, the Indemnity Provisions specifically exclude claims arising out of the sole negligence of DRH by providing:

- “**10.1 GENERALLY.** ...nothing herein shall require indemnity for losses caused solely by fault or negligence of the indemnitee [DRH]” (See Exhibit 1);
- “**10.1 GENERALLY.** ...nothing herein shall require contractor to indemnify indemnitee against liability for damages arising out of bodily injury or property damage proximately caused by or resulting from the sole negligence or sole intentional act or omission of indemnitee [DRH]” (See Exhibits 2, 3, 4, 5);
- “**10.1 GENERALLY.** ...It is the express intent of the parties in agreeing to this Section 10 that Contractor shall indemnify Indemnitee for the negligence of Contractor, its subcontractors, employees and anyone over whom Contractor exercises control as well as for Owner’s and/or indemnitee’s concurrent or joint negligence arising from a failure to properly supervise Contractor.” (See Exhibit 6)

Because the ICAs with the Third-Party Defendants exclude claims arising out of DRH’s sole negligence, the Indemnity Provisions do not violate Section 32-3-10 and are distinguishable from the agreement in *D.R. Horton, Inc. v. Builders FirstSource-Se. Grp., LLC*. (See Exhibits 1-6, the ICAs and Exhibit 7, listing of ICA’s for each subcontractor).

C. **The Indemnity Provisions Comply With The Requirements Set Forth In Concord & Cumberland Horizontal Prop. Regime V. Concord & Cumberland, LLC**

The Third-Party Defendants contend that the Indemnity Provisions do not comply with the requirements laid out in *Concord & Cumberland Horizontal Prop. Regime v. Concord &*

Cumberland, LLC, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018) and are therefore unenforceable. The court in Concord held that when a party seeks indemnification for its own concurrent negligence, the clear and unequivocal standard applies. *Id.* at 649, 172. Additionally, “when an indemnity clause purports ‘to relieve an indemnitee from the consequences of its own negligence,’ [South Carolina] case law requires strict construction of the clause.” *Id.* at 650, 172 (quoting Laurens Emergency Med. Specialists, PA v. M.S. Bailey & Sons Bankers, 355 S.C. 104, 111 584 S.E.2d 375, 378-379 (2003)).

There were two indemnity agreements entered at issue in Concord. For the first agreement, the court found that the phrase “to the extent caused or alleged to be caused in whole or in part by any negligent act or omission of the [Muhler]” specifically limited Muhler’s obligation to indemnify to damages and losses caused by the negligence of the Muhler and its subcontractors.³ *Id.* at 654, 174. Additionally, the phrase “regardless of whether it is caused in part by a party indemnified hereunder” did not alter the limiting language. *Id.* Therefore, the general contractor was not entitled to indemnification from the subcontractor, Muhler, for the general contractor’s concurrent negligence pursuant to the first agreement.

With regard to the second agreement, the court found that although the language was broader and excluded the limiting “to the extent caused” language from the first agreement, it still

³ The first indemnity agreement in Concord stated, in relevant part, as follows:

the Subcontractor shall indemnify and hold harmless the Owner, the Architect, the Contractor ... and other contractors and subcontractors ... from and against all claims, damages, loss and expenses, including but not limited to attorney’s fees, arising out of or resulting from the performance of the Subcontractor’s Work ...

- (a) ... to the extent cause or alleged to be caused in whole or in part by any negligent act or omission of the Subcontractor ... regardless of whether it is caused in part by a party indemnified hereunder.

Id. at 643, 168-169.

failed to include any reference to indemnification for the general contractor's concurrent negligence.⁴ *Id.* at 656-657, 176. While “there is no verbatim phrase that must be used to meet the clear and unequivocal standard, there must be some language in an indemnity clause that clearly shows the parties’ intent to absolve the indemnitee of the consequences of its own concurrent negligence.” *Id.* at 657, 176 (citation omitted). Further, the court indicated that the following language may be sufficient to meet the clear and unequivocal standard: “[subcontractor] agrees to indemnify for all damages, regardless of whether the damages are caused in part by a party indemnified hereunder[.]” *Id.* at 656-657, 176.

The indemnity provision in Version 1 of the ICA provides in relevant part (See Exhibit 1):

10.1 GENERALLY. ...[Subcontractor] hereby agrees to hold harmless, indemnify, protect and defend [DRH]...from and against any and all demands, claims, actions, causes of action, proceedings, lawsuits...and expenses of any kind... for damages from bodily or personal injury, death, the destruction or loss of property (including loss of use), or any other kind of damages or harm, arising out of, or resulting from, or related in any way to the work performed and/ or the materials supplied under this contract, **regardless of whether or not caused in part by indemnitee** [DRH].” (*Emphasis added*).

The indemnity provision in Versions 2, 3, and 4 of the ICA provides in relevant part (See Exhibits 2, 3, and 4):

“10.1 Generally. ... [Subcontractor] shall protect, defend, indemnify, and hold [DRH].... harmless from and against any and all claims, demands, lawsuits or other litigation...including all costs thereof, attorneys’ fees and interest... on account of bodily or personal injury, death, or damage to or loss of tangible or intangible property... arising out of, or in connection with: (1) a breach of any

⁴ The second indemnity provision provided, in pertinent part,

In the event either Superior or Concord and Cumberland, LLC are sued hereafter ... alleging that one or more of the windows and/or doors do not comply with the original or amended contract documents, or are defectively installed, Muhler agrees to unconditionally indemnify both Superior and Concord and Cumberland, LLC ... and will pay all damages ... incurred by either or both[.]

Id. at 644, 169.

warranties, representations, covenants, or other obligations of [subcontractor] set forth in this Agreement; (2) the work...performed or material supplied by [subcontractor]...(3) any negligent or intentional act or omission...of [subcontractor]...**regardless of whether caused in part by [DRH]; or (4) any negligent or intentional act or omission... of [DRH] related in any way to the work.**" (Emphasis added).

The indemnity provision in Version 5 of the ICA provides in relevant part (See Exhibit 5):

10.1 GENERALLY...[Subcontractor] shall protect, defend, indemnify, and hold [DRH]...harmless from and against any and all claims, demands, lawsuits or other litigation... including all costs thereof, reasonable settlement amounts, attorneys' fees and interest... on account of bodily or personal injury, death, or damage to or loss of tangible or intangible property...arising out of, or in connection with: (a) a breach of any warranties, representations, covenants, or other obligations of [subcontractor] set forth in this agreement; (b) the work...performed or material supplied by [subcontractor]... (c) any negligent or intentional act or omission of [subcontractor] **regardless of whether caused in part by [DRH]; or (d) any negligent or intentional act or omission... of [DRH] related in any way to the work...**" (Emphasis added).

The indemnity provision in Version 6 of the ICA provides in relevant part (See Exhibit 6):

"10.1 GENERALLY. ...[Subcontractor] shall hold harmless, indemnify [DRH].... against all demands, claims, actions, causes of action, proceedings, lawsuits...or expenses (including attorneys' fees and interest), for damages from bodily or personal injury, death, the destruction or loss of property (including loss of use), or any other kind of damages or harm.... arising out of, or resulting from, or related to the work performed and/ or the materials supplied under this Agreement, **including losses founded partially upon the negligent acts or omissions of [DRH] in failing to supervise contractor, attributable in whole or in part to:** (1) a breach of any warranties, representations, covenants or other obligations of contractor set forth in this Agreement; (2) the work performed.... or materials supplied by [subcontractor]...; or (3) any negligent or intentional act and/or omission of [Subcontractor] related in any way to the work..." (Emphasis added).

The Indemnity Provisions between DRH and the Third-Party Defendants closely track the language suggested by the court in *Concord* and provide that third-party defendants will indemnify DRH for certain losses regardless of whether or not the losses caused in part by DRH. The

Indemnity Provisions clearly and unequivocally show that the parties intended to absolve DRH of the consequences of its own concurrent negligence. Therefore, the Indemnity Provisions meet the standard set forth in Concord and are enforceable. See Exhibit A, the ICAs.

D. DRH Claims for the Third-Party Defendants' contractual duty to defend is not applicable under S.C. Ann. Code § 32-2-10.

The Third-Party Defendants contend that the Indemnity Provisions do not comply with the requirements laid out in the ICAs as they are contrary to each other and in violation of S.C. Ann. Code § 32-2-10. Specifically, Third Party Defendants reference Section 10.1, which addresses the Third-Party Defendants indemnification obligations under the ICA, and Section 10.2 in ICA versions one through five and Section 10.3 in ICA version 6 which establishes the duty of the Third-Party Defendants and their insurers to defend DRH, including but not limited to attorneys' fees and costs. Section 10.2 provides in relevant part (See Exhibit 1 and Exhibits 2-5 which provide similar language):

"Indemnity Not Exclusive Remedy. Any payments by Contractor under Section 10 to or on behalf of the indemnitee shall be in addition to all other legal remedies available to the indemnitee and shall not be considered the indemnitees exclusive remedy... Indemnitee shall have the right, at its discretion... to defend... all claims which may be asserted...and contractor agrees to reimburse indemnitee for any and all expenditures which indemnitee may incur on account of any such claim."

Section 10.3 provides in relevant part (See Exhibit 6):

"Any payments by Contractor under Section 10 to or on behalf of the indemnitee shall be in addition to all other legal remedies available to the indemnitee and shall not be considered the indemnitees exclusive remedy..."

Third-Party Defendants have attempted to conflate section 10.1 and 10.2 or 10.3 of the ICAs by stating that the provisions are contrary to each other and in violation of S.C. Ann. Code § 32-2-10. As a preliminary matter, the Anti-Indemnity Statute does not address the duty to defend

obligation but rather specifically addresses obligations to indemnify a party. Accordingly, Third-Party Defendants reliance on this statute is misplaced.

Further, these interpretations are contrary to the actual language of the indemnity clause. The section of the indemnity clause that excludes indemnity for sole acts of the indemnitee's negligence also applies to the duty to defend. The ICA specifically state that nothing "shall require the contractor **to defend**, insure, indemnify or hold indemnitee harmless for liability or claims arising out of bodily injury to person, death, or damage to property caused by or resulting from the sole negligence or sole intentional act or omission of indemnitee." Additionally, the first sentence in 10.1 indicates that the indemnity obligations are being provided to as permitted by law, "To the fullest extent permitted by Law, Contractor shall protect, defend indemnify..." These cited references clearly qualify the obligations of the contractor to D.R. Horton.

Finally, 16.2 of the ICA provides that, "The provisions of this Agreement shall be independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion." (Exhibit 1).

"A severable contract is one in its nature and purpose susceptible of division and apportionment, having two or more parts, in respect to matters and things contemplated and embraced by it, not necessarily dependent upon each other, nor is it intended by the parties that they shall be. **The entirety or severability of a contract depends primarily upon the intent of the parties** rather than upon the divisibility of the subject, although the latter aids in determining the intention. We think it a significant indication of the nature of the contract and the intent of the parties that the document embodying the agreement of the parties provides for a mutual exchange of performances which is indicative of a severable contract." Columbia Architectural

Grp., Inc. v. Barker, 274 S.C. 639, 641, 266 S.E.2d 428, 429 (1980), citing *Field v. Byrd*, 73 S.C. 1, 6, 51 S.E. 678, 679 (1905) (emphasis added).

The presence of a severability clause argues in favor of the conclusion that the parties intended that the contract be severable rather than entire. “The Agreement here contains a severability clause, reflecting that if any part of the contract is found ‘unenforceable for any reason, the remainder shall remain enforceable.’ Given this intent and our belief that removing the unconscionable clause does not disrupt the core of the parties’ bargain, we disagree with the circuit court that the entire Agreement must fall.” *Doe v. TCSC, LLC*, 430 S.C. 602, 846 S.E.2d 874 (S.C. App. 2020) (voiding an arbitration clause for unconscionability but not invalidating the entire contract) (citing *Columbia Architectural Grp.*).

Therefore, to the extent 10.2 is found to be in violation of the Anti-Indemnity Statute, that section can be severed without rendering 10.1 unenforceable.

E. DRH’s Claims For Negligence, Breach Of Warranties, And Breach Of Contract Are Independently Viable

DRH could sue and recover damages against the Third-Party Defendants under theories of negligence, gross negligence, recklessness, breach of contract, and breach of warranties, related to construction deficiencies, regardless of whether Plaintiff ever filed a lawsuit. Therefore, DRH’s causes of action are not “disguised” equitable indemnity claims derivative of Plaintiff’s lawsuit. DRH’s rights to pursue these claims do not evaporate simply because DRH was not the first to discover the Third-Party Defendants’ failures and a lawsuit was instituted by Plaintiff after the structure was sold. The Third-Party Defendants’ reliance upon *Stoneledge v. Clear View, LLC*, 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015) (hereinafter referred to as “*Stoneledge I*”) and *Stoneledge at Lake Keowee Owners’ Ass’n v. Builders FirstSource-Southeast Grp.*, 413 S.C. 630, 776 S.E.2d 434 (Ct. App. 2015) (hereinafter referred to as “*Stoneledge II*”) (collectively referred

to as “Stoneledge”) is misplaced. Moreover, the Third-Party Defendants’ interpretation of the Stoneledge decisions is overbroad.

Instead, a more reasonable interpretation of the Stoneledge decisions is that if the general contractor alleges and proves damages that do arise separately from having to defend itself in the purchasers’ lawsuit, the general contractor’s claims for breach of warranty and negligence are independent from the equitable indemnity claim. Indeed, a careful reading of Stoneledge reveals that the court did not make a blanket bright line rule, but rather did an analysis, mostly of the allegations in the third-party complaint, to determine if the general contractor had plead, alleged, or proved a factual issue of the existence of damages not arising from the plaintiffs’ lawsuit.

As the court explained in Stoneledge II, “[t]he issue [the general contractor] raises – whether the circuit court properly interpreted its claims for breach of contract and breach of warranty as one claim for equitable indemnity – requires us to construe its cross-complaint, and thus presents a question of law.” Stoneledge II at 634. In determining that the general contractor’s claims for breach of warranty and breach of contract were equitable indemnity claims, the court explained that “[the general contractor’s] injuries arose exclusively from having to defend itself in [plaintiff’s] lawsuit.” Id. at 636.

In reviewing the general contractor’s allegations, the court held that the

allegations demonstrate [the general contractor] did not sustain its own damages as a result of any breach of contract or breach of warranty by the respondents. Rather, the allegations show [plaintiff] is the party that suffered damages, and [the general contractor’s] injuries ***arose exclusively from having to defend itself in [plaintiff’s] lawsuit.*** Consequently, the damages [the general contractor] seeks to recover resulted only from its potential liability to [plaintiff] and from the expenses [the general contractor] incurred defending itself.

Id. at 634. (Emphasis added). The court then highlighted this point further:

[u]nder [the general contractor's] own allegations, its cross-claims arose only when it faced potential liability for [plaintiff's] damages and incurred fees and costs defending against [plaintiff's] lawsuit.

Id. at 637.

The *Stoneledge* court looked to two federal court cases in making this decision: *South Carolina National Bank v. Stone*, 749 F. Supp. 1419 (D.S.C. 1990) and *United States Fidelity & Guaranty Co. v. Patriot's Point Development Authority*, 788 F. Supp. 880 (D.S.C. 1992) (“USF&G”). As explained by the *Stoneledge* court,

In *Stone*, the defendants asserted cross-claims for breach of contract, negligence, and fraud against co-defendants that settled with the plaintiffs. The district court barred the non-settling defendants from asserting these cross-claims against the settling defendants because it found they were not independent causes of action. The court explained the cross-claims arose only if the non-settling defendants were liable to the plaintiffs, and these purported causes of action are nothing more than claims for ... indemnification with a slight change in wording.

Similarly, in *USF&G*, the defendants argued they had “independent claims” against a co-defendant in addition to their claim for indemnification. The district court barred the defendants from bringing these claims, finding **“without plaintiffs suing the ... defendants[,] the ‘independent claims’ ... would not exist,”** and thus “these claims are really nothing more than claims for indemnity.” *Id.* We agree with *Stone* and *USF&G* and find the reasoning in those decisions applies to this case. Under [the general contractor's] own allegations, its cross-claims arose only when it faced potential liability for [plaintiff's] damages and incurred fees and costs defending against [plaintiff's] lawsuit.

Stoneledge II at 636-637 (emphasis added).

Here, Plaintiff's lawsuit did not give rise to DRH's legal rights against the Third-Party Defendants. DRH can bring claims of implied warranties negligence/gross negligence/recklessness against the Third-Party Defendants. See *Kennedy v. Columbia Lumber and Mfg. Co., Inc.*, 384 S.E.2d 730, 299 S.C. 335 (S.C. 1988). Those rights existed before the

lawsuit was initiated by Plaintiff, which only provided notice of those issues to DRH. Thus, these claims, which existed but were latent, are not disguised indemnity claims derivative of the Plaintiff's lawsuit – they are preexisting claims which are separate and distinct from DRH's claim for equitable indemnity. Moreover, in addition to the damages DRH is incurring related to defending this lawsuit, DRH seeks to recover for extra workload, repairs or repair costs of the defective work, costs of investigation, and damage and harm to reputation. (DRH's Amended Answer to Plaintiff's Complaint and Crossclaims, ¶¶ 87, 96, and 112).

These separate damages are explained by the court in Addy v. Bolton, 257 S.C. 28, 183 S.E.2d 708 (1971). In Addy, the defendant owner of a building was sued by its tenant when the building caught fire. The building owner then sued the contractor whose negligent work caused the fire. The owner's recovery of fees and costs from the negligent contractor was upheld by the South Carolina Supreme Court, reasoning that "the weight of authority sustains [the building owner's] right of recovery, either on the theory of an implied contract to indemnify, or because they were put to the necessity of defending themselves against the claim by the tortious conduct of the contractor, or by his breach of contract." Addy at 33. As explained by the Stoneledge court, "[u]nlike in this case, the Addy appellants did suffer their own damages independent of their obligation to defend themselves in the underlying lawsuit." Stoneledge II at 639 (*Emphasis added*).

The facts in Addy are aligned with the facts of this case. Like the building owner in Addy, DRH is forced to defend itself from the Plaintiff's claims arising from the Third-Party Defendants' tortious conduct (negligent performance of work) and breach of warranties (failure to perform work in a workmanlike manner). Moreover, DRH seeks not only damages related to defending this lawsuit, but also for costs to investigate and repair the deficient or defective work, attorneys'

fees and costs, and damage to reputation. These facts distinguish this case from Stoneledge I and Stoneledge II. DRH's damages are thus recoverable under the separate causes of action it has pled, and those claims must remain in this action.

F. DRH Does Not Have Unclean Hands and Can Recover In Equity

Various Third-Party Defendants contend that DRH cannot recover under its equitable indemnity claim because DRH is not without fault. However, they cannot meet their burden of proof to obtain judgment as a matter of law on DRH's equitable indemnity claim by arguing that the jury *might* find DRH liable to Plaintiff. Because there is a question of fact as to whether DRH is at fault for the alleged construction defects, the third-party defendants' motions for summary judgment as to DRH's claim for equitable indemnity should be denied.

South Carolina courts have consistently found that equitable indemnity claims may be brought against a negligent co-defendant during the initial action. *See, e.g., Stoneledge at Lake Keowee Owners' Ass'n v. Clear View Constr., LLC*, 413 S.C. 615, 622, 776 S.E.2d 426, 430 (Ct. App. 2015) (stating that "[w]e agree Addy controls this case to the extent it shows Marick may assert a claim for equitable indemnity against a negligent co-defendant"). Additionally, Stoneledge held that the lower court erred in granting summary judgment on the merits of the general contractor's equitable indemnity crossclaim because the general contractor presented a question of fact as to whether it was at fault for the alleged construction defect.

"[T]he doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." Wachovia Bank, N.A. v. Coffey, 389 S.C. 68, 75, 698 S.E.2d 244, 247 (Ct. App. 2010) (citation omitted). The third-party defendants bear the burden of proof in seeking summary judgment on such an

affirmative defense. However, they have failed to come forward with any evidence that DRH has unclean hands as a matter of law.

It is well settled that where a party is exposed to liability to a third party due to the conduct of another, through no fault of its own, that party may recover in equitable indemnity against the second party. See *Town of Winnsboro v. Wiedeman-Singleton, Inc.*, 303 S.C. 52, 398 S.E.2d 500 (Ct. App. 1990). Moreover, a general contractor is not automatically responsible for the negligence of a subcontractor. See *Fields v. J. Haynes Waters Builders*, 376 S.C. 545, 658 S.E.2d 80 (S.C. 2008).

It is clear that there is a factual issue whether or not DRH appropriately supervised and oversaw the project. DRH did not self-perform any of the construction on the project, and therefore, relied on the subcontractors for their knowledge, expertise, experience and installation. Because there is a question of fact as to whether DRH had fault, the Third-Party Defendants' unclean hands defense does not preclude DRH's claim for equitable indemnity at this time.

CONCLUSION

Based on the foregoing, the Third-Party Defendants have not met their burden of proof, and therefore, the Third-Party Defendants' Motions for Summary Judgment on DRH's Crossclaims must be denied.

WHEREFORE, Defendant DRH shall, and hereby does, move the Court for an Order denying the Third-Party Defendants' Motions for Summary Judgment on DRH's Crossclaims.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ John Crawford

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Counsel for Defendant D.R. Horton, Inc.

July 11, 2023
Greenville, South Carolina



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR AJ Landscaping and Grading LLC ("Contractor")
☒ Sole Proprietorship ☐ Partnership ☐ Corporation ☐ LLC ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No. _____
 Name of Owner(s)/Officer(s): Antonio Jimenez
 Division Name: _____ Area Name: _____ Assigned Vendor No. _____
 Address for All Notices: 117 East View Circle
 City: Simpsonville State: SC Zip Code: 29681
 Telephone: 804 304 0388 Fax: 804 399 9036 E-Mail Address: Ajlandscapeandgrading@gmail.com
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 27 day of March, 2013, between D.R. Horton Inc. ("Owner") and Contractor.

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of the Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement (the "Work") shall include all work performed and materials supplied by Contractor to Owner including but not limited to the labor, services and/or materials, equipment, transportation, or facilities necessary to complete the construction-related activities generally described in Exhibit A. The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing will not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to or in place of Contractor. Contractor will be awarded Work on a lot by lot basis. To the extent Exhibit A contains more than one type of construction-related activity, Contractor must clarify with Owner before the Work commences as to which construction-related activity it has been awarded for the lot in question.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, method and performance of the Work. Contractor shall not be considered an agent or employee of Owner for any purpose, nor shall any employees or permitted subcontractors of Contractor. Contractor shall not represent itself as the agent of Owner unless owner has specifically permitted Contractor to do so in writing. The results achieved shall satisfy the requirements of this Agreement. Contractor shall be responsible for the performance of its employees and permitted subcontractors, and all personnel used by Contractor in the performance of Work shall be qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further agrees to provide written notification to all of its present and future employees of Contractor's provision for Worker's Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work herein covered or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall pay and shall be solely responsible for all tax withholding, Social Security, state unemployment and all other withholding as required by law. Contractor's employees, agents or permitted subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNLESS CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule, the superseded Pricing Schedule shall remain in effect for Purchase Orders issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing of the house incorporating the Work from Owner to a purchaser. Contractor hereby agrees that timely invoicing is an important and material term to this agreement, and timely invoicing is a part of Contractor's performance of all material terms of this contract. Contractor hereby waives payment for any Work where Contractor fails to invoice Owner in a timely manner in conformity to this agreement. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR

Executed this 27 day of March, 2013.

Owner: _____ Contractor: _____
 By: Ajlandscapeandgrading LLC By: EDMOND G. JEANFREAU, JR.
 Name: Antonio Jimenez Name: D.R. HORTON INC.
 Title: Owner Title: PURCHASE
 Division President

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ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO SUBCONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN AND THAT OWNER DOES NOT AGREE TO PAY TO SUBCONTRACTOR INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF DELAYED PAYMENTS.

4.2 Payment to Subcontractors. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed from Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties; and these joint payments shall satisfy amounts owed by Owner to Contractor, notwithstanding the fact that the third parties may not endorse the checks. In any instance where Owner receives written notice from one of Contractor's sub-contractors, whereby the subcontractor claims a failure to be paid for the Work, Owner reserves the right to pay the subcontractor directly or to make payment payable to both the Contractor and its subcontractor.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the Contract Price shall waive and release all claims against Owner and the property under this Agreement, but shall not waive any claims of Owner arising out of Work later found to be defective and shall not release Contractor from liability for warranties and warranty service and/or defective Work. Contractor shall remedy any defects and pay for any damage resulting from any defects in or caused by the Work or as required by any other contracts between Owner and Contractor or by law or customary practice. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or assigns is an acceptance of the Work or materials not in compliance with this Agreement.

5. SCHEDULE OF WORK.

5.1 Time is of the Essence. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work.

5.2 Construction Schedule. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.3 Commencement of the Work. Owner shall issue an authorization (either pursuant to a written purchase order, payment schedule, or work invoice ("Purchase Order") or verbal instructions from an authorized Owner representative) to commence the Work and Contractor shall not commence the Work at a job location until Contractor has received instructions to begin Work at a specific job location. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.4 Changes in Construction Schedule. Contractor agrees that Owner shall have the right to make changes to the schedule of Work at Owner's discretion and agrees to comply with such changes.

6. PERFORMANCE STANDARDS.

6.1 Applicable Standards. Contractor shall perform all Work in a good and workmanlike manner, in accordance with the plans and specifications of Owner, according to industry standard practices, and warrants that the Work will meet or exceed FHA minimum property standards, VA requirements, all laws (statutory or common) and regulations, and any applicable building code requirements.

6.2 Contractors' Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized Owner's employee and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications as the plans and specifications affect the Work and materials incorporated in the Work, and that the plans and specifications are clear and unambiguous, and has accepted and agreed to be bound by all such requirements.

6.3 Government Requirements. Contractor will comply with all applicable federal, state, local, and county statutes, ordinances, regulations, codes, licensing requirements and standards, and the requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 as amended, as well as the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., or similar laws or regulations, and the rules, regulations, or orders of all public authorities relating to performance of the Work, including without limitation, the procurement and posting of all required permits and notices. In addition, Contractor will not discriminate in its hiring or employment and will follow all state and federal employment laws or regulations. Contractor shall perform background checks and use only appropriate employees to perform warranty or repair work after a house is occupied.

6.4 Indemnity. To the fullest extent allowed by law, Contractor will agree to indemnify, defend, and hold Owner harmless from all actions, claims, investigations or other acts to enforce such laws or regulations, and further agrees to indemnify Owner from the payment of any fine, penalty or damages imposed, levied, assessed, or found as a result of the Contractor's failure to comply with or adhere to the applicable laws and regulations, or from Contractor's failure to cause its employees or subcontractors to comply with such laws and regulations.

6.5 Observation and Testing by Owner and Repair by Contractor. Owner shall have the right to observe or test the Work at any time during or after construction, but that observation or testing is solely for the benefit of Owner's and is not for Contractor's benefit. Owner's failure to note defects in the Work during an inspection will not waive any of Contractor's obligations, representations or warranties related to the Work. Notwithstanding anything contained in this Agreement to the contrary, all Work shall be performed and any defects shall be corrected timely and in accordance with this Agreement to the satisfaction of Owner.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work, and shall report in writing to Owner any defects prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractor's work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses and approvals necessary for or applicable to the performance of the Work.

6.8 Change Orders. The Contractor shall furnish the materials for and to make all changes requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and or days that Work may be performed,

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(ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) work site safety requirements.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste materials or rubbish caused by its operations and shall remove all of Contractor's materials, and if materials are furnished by Owner, Contractor shall move all usable materials provided by Owner to a location designated by Owner. Contractor shall sweep out any waste material from inside the home under construction upon completion of its operation. All refuse shall be placed in receptacles provided or at locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up activities and collect a one hundred dollar (\$100.00) fine from Contractor for each incident. The cost of such clean-up and the aforementioned fine shall be deducted from any sums owed by Owner to Contractor, or shall be immediately payable by Contractor upon demand therefore by Owner.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from or in any way related to the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Owner reserves the right to set minimum standards or rules relating to Work on its site. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OWNERS MINIMUM REQUIREMENTS. THE OWNER ASSUMES NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe condition or practice observed on the Work Site. Further, Contractor shall immediately notify Owner of any accidents or injuries on the Work Site. Contractor shall have an ongoing safety program and conduct inspections to determine that safe working conditions and equipment exist and safe practices are observed. Contractor shall prohibit and prevent the presence of children under age eighteen (18) from the Work Site.

7.1 Safety Laws and Indemnity Agreement. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards, statutes, and industry best practices concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations. Contractor shall provide Owner with written verification of its compliance with all applicable safety and health standards and regulations, including but not limited to OSHA's Hazard Communication Standard for the Construction Industry, 29 C.F.R. §1926.59 et seq., and provide written notice to Owner of the contact person responsible for Contractor's compliance with all safety and health standards and regulations. To the fullest extent allowed by law, Contractor agrees to indemnify, defend, and hold Owner harmless from all actions prosecuted to enforce and the payment of any fine or penalty imposed under such safety laws and regulations and shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work.

7.2 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, permitted subcontractors or suppliers at a job location or performance of the Work by any person under the influence of alcohol or drugs.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate corporations, and successors and assigns, that all labor performed and materials furnished by Contractor shall conform to the specifications of this Agreement, shall be free from any defects or deficiencies in workmanship or materials, and will comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, will meet or exceed the FHAVA minimum property standards, and will comply with the Residential Warranty Corporation ("RWC") Program and the applicable limited warranty standards, which Contractor has read and understands and to which Contractor agrees to be bound. All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects for purposes of Contractor's obligations under this Contract. Contractor shall make good and promptly repair all Work not complying with the standards set forth in this section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Paragraph 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, the initial homeowner of the property on that is the subject of the Work: (i) for a period of ten (10) years all structural elements, including, but not limited to, roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers; (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home; and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; (d) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (i) any statutory warranty or (ii) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner (a "Homeowners Warranty"). Contractor expressly agrees to be bound by any such Homeowners Warranty, and to the extension of warranty period hereunder. Furthermore, notwithstanding the foregoing, Contractor agrees that all express and implied warranties shall remain in full force and effect for so long as Owner is obligated to warrant the Work pursuant to applicable law. Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Homeowners Warranty that is longer than the Warranty Periods stated above; provided, however, failure to give that notice will not affect the extension of the Warranty Period to the applicable warranty period under the Homeowner's Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty obligations, Contractor's indemnity obligations, or the ability of Owner to request Contractor to perform warranty services in the future.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment, and shall furnish all certificates required by any municipality and/or VA and/or FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and are not in limitation of periods of applicable statutes of limitation.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Project is located.

9.3 Lien Claim Indemnity. If any liens are filed against Owner relating to portions of the Work for which Owner has paid Contractor, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such lien or affidavit to be removed.

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and released of record. Contractor agrees to INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any liens relating to portions of the Work for which Owner has paid Contractor, and further agrees at Owner's request to any or all of the following: (i) procure a bond to indemnify Owner and any home purchaser from Owner, in an amount sufficient to discharge that lien, or (ii) refund to Owner all monies, including any additional amount necessary to cover all of Owner's or home purchaser's attorneys' fees and court costs paid in discharging the lien, whichever remedy Owner elects in its sole and absolute discretion, or (iii) provide sworn testimony that payment has already been made to Contractor for the work for which the alleged lien applies.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY AGREES TO HOLD HARMLESS, INDEMNIFY, PROTECT AND DEFEND OWNER, ITS PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THE AFOREMENTIONED ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "INDEMNITEE"), FROM AND AGAINST ANY AND ALL DEMANDS, CLAIMS, ACTIONS, CAUSES OF ACTION, PROCEEDINGS, LAWSUITS, SETTLEMENTS, JUDGMENTS, FINES, PENALTIES, LOSSES, ATTORNEYS FEES, LITIGATION COSTS, INTEREST, AND EXPENSES OF ANY KIND (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "LOSSES") FOR DAMAGES FROM BODILY OR PERSONAL INJURY, DEATH, THE DESTRUCTION OR LOSS OF PROPERTY (INCLUDING LOSS OF USE), OR ANY OTHER KIND OF DAMAGES OR HARM, ARISING OUT OF, OR RESULTING FROM, OR RELATED IN ANY WAY TO THE WORK PERFORMED AND/OR THE MATERIALS SUPPLIED UNDER THIS CONTRACT, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY INDEMNITEE. SUCH LOSSES SPECIFICALLY INCLUDE, BUT ARE IN NO WAY LIMITED TO LOSSES ARISING OUT OF OR ATTRIBUTABLE TO: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR OBLIGATIONS OF CONTRACTOR SET FORTH HEREIN; (2) THE WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR, CONTRACTOR'S AGENTS OR EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, AND/OR ALL OTHER ENTITIES OVER WHOM THE CONTRACTOR MAY EXERCISE CONTROL (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "CONTRACTOR'S AGENTS"); (3) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF CONTRACTOR AND/OR CONTRACTOR'S AGENTS; OR (4) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE INDEMNITY FOR LOSSES CAUSED SOLELY BY FAULT OR NEGLIGENCE OF THE INDEMNITEE. THE LOSSES DESCRIBED HEREIN SHALL INCLUDE, BUT ARE NOT LIMITED TO, DEMANDS, CLAIMS, OR ACTIONS ASSERTED BY (1) ANY PRESENT OR FUTURE OWNER OF THE HOUSE INCORPORATING THE WORK; AND (2) ANY OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY CONTRACTOR AND/OR CONTRACTOR'S AGENTS). THE INDEMNIFICATION OBLIGATION UNDER THIS CONTRACT SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. THE INDEMNITY PROVISIONS CONTAINED HEREIN ARE INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY LAW.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. IT IS THE EXPRESS INTENTION OF THE PARTIES THAT CONTRACTOR'S INDEMNITY OBLIGATIONS HEREIN WILL SURVIVE THE TERMINATION OF CONTRACTOR OR THIS AGREEMENT. INDEMNITEE SHALL HAVE THE RIGHT, AT ITS DISCRETION AND CHOOSING, TO DEFEND ANY AND ALL CLAIMS WHICH MAY BE ASSERTED AGAINST IT, AND CONTRACTOR AGREES TO REIMBURSE INDEMNITEE FOR ANY AND ALL EXPENDITURES WHICH INDEMNITEE MAY MAKE OR INCUR ON ACCOUNT OF ANY SUCH CLAIM.

10.3 CONTRACTOR AND CONTRACTOR'S AGENTS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS OR EQUIPMENT.

10.4 Subcontractor's and Supplier's Indemnity Obligations. Contractor shall require each of its subcontractor to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required in this section and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms as Section 13. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the actions of any subcontractor engaged by Contractor, whether in written agreement or otherwise, or who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed to be the obligation of the subcontractors to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with completed operations coverage which contains a per occurrence limit of no less than one million dollars (\$1,000,000.00), and an aggregate limit of no less than two million dollars (\$2,000,000.00) protecting against liability for bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type of, or nature of, the Work or limit the type of structure on which the Work is to be performed. The CGL Policy shall not contain a deductible or self-insured retention of more than \$25,000.00. Contractor shall continuously maintain a CGL Policy covering completed operations for any applicable statute of repose for commencing lawsuits associated with the Work.

11.2 Other Insurance. Contractor agrees to carry (i) Worker's Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Worker's Compensation obligations imposed by law; (ii) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than one million dollars (\$1,000,000.00) and an aggregate of no less than one million dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (iii) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person (Bodily Injury) and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner as an Additional Insured on the CGL Policy or policies required above covering both on-going operations and completed operations (equivalent to form CG20101185 or form CG2037). Coverage obtained by Contractor naming Owner as an Additional Insured shall be primary with any insurance of Owner being excess coverage. That insurance coverage will be carried continuously during the term of this Agreement and thereafter as required by this Agreement with insurance companies acceptable to Owner in its sole and absolute discretion. That insurance shall provide for a waiver of subrogation. All insurance shall be with

INITIALS: OWNER cajo, CONTRACTOR ELP

a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the required policies. Each Certificate of Insurance or policy shall contain an unqualified clause to the effect that the policy shall (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days' prior written notice to Owner, (ii) be carried continuously from the date of commencement of the Work until expiration of the period of the Contractor's warranty provided in this Agreement, (iii) specifically identify Owner as an Additional Insured, and (iv) indicate that coverage applies in the state where the Work is being performed. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself and the Work required to be performed under this Agreement.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER IN ITS SOLE AND ABSOLUTE DISCRETION) IN EFFECT AT THE TIME WORK IS PERFORMED TO COMPENSATE OWNER FOR ANY ADDITIONAL COSTS OF ITS WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS, CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS CONTRACT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work to the extent permitted under this Agreement, Contractor guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Owner as an Additional Insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or another contractor's work is damaged by an act for which Contractor, or its employees, agents or subcontractors, are responsible, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct such Work, replace or repair any defective material, or repair any damage. Contractor shall make all repairs and correct such within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours notice on a non-emergency basis, or (ii) retain a third party to undertake to perform those duties, and retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld resulting in a deficiency, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and reasonable attorneys' fees, incurred by Owner, and shall pay to Owner this amount within thirty (30) days of demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Paragraph 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or permitted subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location as a result of Contractor's actions or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement, Exhibit A of this Agreement, or the specifications; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order that is Contractor's obligation under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary tools, material, or equipment for, or cleaned up after, the Work; (viii) Contractor fails to comply with any other provision of this Agreement.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement and rights and remedies available under this Agreement shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise unpeped or available by law. Owner shall have a right to collect from Contractor its reasonable attorneys' fees and expenses incurred in enforcing Contractor's obligations.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These Disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking equitable relief from and arbitrator or a court of appropriate jurisdiction.

13.3 Arbitration. If mediation fails, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq., regardless of any other choice of law provision in any underlying contract or this Agreement. All demands for arbitration shall be made before the expiration of the applicable statutes of limitations and repose. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court of competent jurisdiction.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrators mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes, is over \$200,000, but only one arbitrator shall be appointed if the Dispute is 200,000 or less. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of a mediator or arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint a mediator or arbitrator. The AAA's Code of Arbitrator Ethics (revised March 1, 2004) is applicable to all arbitrations.

INITIALS: OWNER CAJO, CONTRACTOR 

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13.5 Rules. To the extent not in conflict with the Federal Arbitration Act, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner may join Contractor in any litigation, mediation, or arbitration initiated against Owner by a third person so that the rights of all parties (Owner, Contractor, Subcontractor, or any third person) shall be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner where necessary to facilitate resolution in a single forum. If multiple lawsuits or arbitrations are commenced, they shall all be consolidated into a single proceeding. Notwithstanding any other provision of this section, if a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect to unilaterally waive mediation or arbitration and litigate the Dispute with Contractor.

14. TERMINATION.

14.1 Termination by Owner for Cause or Convenience. This Agreement shall remain in full force and effect until terminated in writing by mailing notice to the other Party. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) Days' written notice before the effective date of termination, and shall perform fully under this Agreement during that notice period. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.3 Survival. All obligations, duties and warranties for Work performed under this Agreement shall survive termination.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement, (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement, (iii) this Agreement is or will be (when executed) a binding obligation of Contractor, enforceable in accordance with its terms, (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority, (v) Contractor has, and each Contractor's employees, agents or permitted subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement, (vi) Contractor is in compliance with all governmental requirements to which it is subject, and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement, and with respect to prices and quantities only, the Price Schedule and all written Purchase Orders shall be the entire agreement between Owner and Contractor related to the Work, and there are no other agreements, oral or written, made by or relied upon by Owner and Contractor. Except as otherwise provided in this Agreement, no provision of this Agreement may be amended or supplemented except in writing signed by both Owner and Contractor.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights and obligations are not assignable or transferable without the express written consent of Owner, who may consent can be withheld in Owner's sole and absolute discretion. Subject to the restrictions and prohibitions on assignment set forth in this section, the terms of the Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Contractor shall provide and transfer ownership to any and all samples and/or shop drawings requested by Owner.

18. NOTICES. All notices required pursuant to this Agreement or otherwise shall be in writing and shall be delivered to the respective business address of Owner and Contractor. However, Contractor's business address shall be as noted on page one (1) of this Agreement. Notices shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by overnight delivery service, and upon confirmation if sent by facsimile transmission.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or articles.

SOUTH CAROLINA REVISED 7/23/2007

INITIALS: OWNER CASO, CONTRACTOR [Signature]

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EXHIBIT A
SCOPE OF WORK

no do landscape and irrigation
work

INITIALS: OWNER AJ , CONTRACTOR

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SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR A-2 Inc. ("Contractor")
 Sole Proprietorship ☐ Partnership ☐ Corporation ☒ L.L.C. ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No. 36-2163705
 Name of Owner(s)/Officer(s): Michael T. Green
 Division Name: _____ Area Name: _____ Assigned Vendor No.: _____
 Address for All Notices: PO Box 460
 City: Duncan State: SC Zip Code: 29334
 Telephone: 843-303-3084 Fax: 843-576-4053 E-Mail Address: a2inc1234@gmail.com
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 3 day of April, 2018, between
 DR Horton Inc. ("Owner") and Contractor.

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of this Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement shall include all work performed and materials supplied by Contractor, directly or indirectly, to Owner, including but not limited to the labor, services and/or materials, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized by written purchase order, or similar document by Owner's authorized field personnel (the "Work"). The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing shall not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to, or in place of, Contractor.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, method and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further shall provide written notification to all of its present and future employees of Contractor's provision for Workers Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall be solely responsible for and will pay all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNTIL CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule implementing a price increase, the superseded Pricing Schedule shall remain in effect for Purchase Orders, as defined herein, issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing from Owner to a purchaser of the house incorporating the Work. To the extent permitted by law, Contractor waives its right to payment for any Work not invoiced in a timely manner. Owner shall timely pay Contractor for completed, accepted Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, and Contractor provides invoices for progress payments, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order, as defined herein.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO CONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN. CONTRACTOR AGREES THAT OWNER DOES AND WILL NOT OWE INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF ANY DELAYED PAYMENT.

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA, IF ANY.

Executed this 3 day of April, 2018

Owner:
By: [Signature]
Name: William McCallough
Title: Controller, AVP

Contractor:
By: Michael T. Green
Name: Michael T. Green
Title: Pres

INITIALS: OWNER mm, CONTRACTOR [Signature]

4.2 Contractor Payments. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed by Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Unless otherwise agreed by Owner and Contractor, payment to Contractor shall be made by check. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties; and these joint payments shall satisfy amounts owed Contractor, whether or not all parties endorse the checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the contract price shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of or resulting from the Work and shall not release Contractor from any obligations under this Agreement, including but not limited to liability for warranties, warranty service, or any other liability for alleged defects in the Work. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or customers or assigns shall constitute an acceptance of the Work or materials not in compliance with this Agreement, or be used in any way as evidence of acceptance by Owner.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.2 Authorization and Commencement of the Work. Authorization for any Work shall be in writing, either pursuant to a written purchase order, work invoice, or similar document ("**Purchase Order**"). Contractor shall have no authority to commence the Work at any specific job location until Owner has issued instructions to proceed. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.3 Changes in Construction Schedule. Owner shall have the right to make changes to the schedule of Work at Owner's sole discretion, and Contractor shall comply with such changes. Contractor shall not be entitled to any additional compensation for such schedule changes.

6. PERFORMANCE OF THE WORK.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FHA minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all laws (statutory and common), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements). In the event of conflicting provisions, specifications will take precedence over the drawings; the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive; later modifications or changes will supersede or take precedence over earlier provisions. Contractor shall immediately notify Owner in writing of any allegedly conflicting provisions.

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall have absolute authority to act, in all respects, on behalf of and for Contractor.

6.3 Contractor's Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized employee of Owner and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, and that the plans and specifications are clear and unambiguous, and that Contractor has accepted and agreed to be bound by all such requirements.

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "**Requirements**"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS** from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, regardless of any alleged fault of Owner. In addition, Contractor shall not discriminate illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform warranty or repair work after a house is occupied.

6.5 Observation, Inspection and Testing. Owner and any government agency inspector ("**Inspector**") shall have the right, but not the obligation, to observe, inspect or test the Work at any time, but that observation, inspection or testing is solely for the benefit of Owner and is not for Contractor's benefit. Contractor shall cooperate with Owner and Inspector during any such inspection. The failure by Owner or Inspector to note defects in the Work during an inspection shall not waive or vary any of Contractor's obligations, representations or warranties related to the Work.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses, approvals, and as-built drawings necessary for, or applicable to, the performance of the Work. Contractor shall provide copies to Owner immediately upon request.

6.8 Change Orders. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("**Change Order**") or Purchase Order signed by Owner and Contractor before the commencement of such changes. Contractor shall comply with any Change Order requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including but not limited to, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not

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limited to trash, unused building materials, garbage, refuse or rubbish ("Waste"), caused by its operations and shall remove all of Contractor's materials at the conclusion of the Work. If materials are furnished by Owner, Contractor shall move all usable materials at the conclusion of the Work to a location designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon Owner's demand and may be deducted from any sums owed Contractor.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

7.2 Safety Laws. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations ("Safety Law"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of, or noncompliance with, the Safety Law, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation or noncompliance by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, of the Safety Law, or safety citation, regardless of any alleged fault of Owner. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and, if required by law, provide written notice to Owner of the contact person responsible for Contractor's safety compliance.

7.3 Hazardous Materials. Contractor shall not permit any Hazardous Substances, defined below, to be brought onto or stored at any job site or used in the construction of the Work, except for commonly used construction materials, provided however, that all such material shall be handled in full compliance with all laws, ordinances and regulations. All notices required to be given with respect to such products shall be given by Contractor. Contractor shall not release or dispose, nor allow any other person to release or dispose, of Hazardous Substances or waste at any job site or into the soil, drains, surface or ground water, or air. "Hazardous Substance" means any substance or material which any state, federal or local governmental authority determines or designates as capable of posing a risk of injury to health, safety, property or the environment.

7.4 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, agents, subcontractors or suppliers at a job location, or performance of the Work by any person under the influence of alcohol or drugs. "Drugs" shall include any substance, whether or not illegal, which upon exposure, ingestion, inhalation, injection or by any other introduction, may impair one's ability to safely perform the Work.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. For the longer of ten years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work shall conform to the specifications of this Agreement (including but not limited to the standards referenced in Subsection 6.1), shall be free from any defects or deficiencies in workmanship or materials, shall comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, shall meet or exceed the FHA/VA minimum property standards, and shall comply with the Home Owners' Warranty, defined below and its applicable warranty standards (which Contractor has read and understands). All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects. Contractor shall be liable to make good or promptly repair all Work not complying with the standards set forth in this Section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Subsection 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, any initial home purchaser of property subject to the Work: (i) for a period of ten (10) years all structural elements, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; and (iii) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (a) any statutory warranty or (b) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner, including but not limited to the Residential Warranty Corporation Program (a "Home Owners Warranty"). Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Home Owners Warranty that is longer than the warranty periods stated above; provided, however, failure to give that notice will not affect the extension of the warranty period to the applicable warranty period under the Home Owners Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform warranty services thereafter.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product information, and guarantees by manufacturers on components of the Work, including any appliances or equipment, and shall furnish all certificates required by any third parties such as any municipality, the VA, or the FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and shall not limit or reduce any applicable statutes of limitation.

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

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9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. TO THE EXTENT PERMITTED BY LAW, CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS OR SIMILAR CLAIMS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the lesser of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of this State.

9.3 Lien Claim Indemnity. If any liens, affidavits of claim, stop payment notices, or lis pendens arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such liens, affidavits of claim, stop payment notices, or lis pendens to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such liens, affidavits of claim, stop payment notices, or lis pendens, and further agrees immediately upon Owners' request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge any and all liens, affidavits of claim, stop payment notices, or lis pendens, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any home purchaser in discharging the liens, affidavits of claim, stop payment notices, or lis pendens whichever remedy Owner elects in its sole and absolute discretion. This Section shall be in addition to any rights Owner has under applicable law with respect to such liens, affidavits of claim, stop payment notices, or lis pendens.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF, ATTORNEYS' FEES AND INTEREST), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (2) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR OR BY CONTRACTOR'S AGENTS OR EMPLOYEES, OR BY ITS SUPPLIERS OR SUBCONTRACTORS OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES; (3) ANY NEGLIGENCE OR INTENTIONAL ACT OR OMISSION, OR ANY STRICT LIABILITY, OF CONTRACTOR OR ANY OF CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, SUPPLIERS OR SUBCONTRACTORS, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR (4) ANY NEGLIGENCE OR INTENTIONAL ACT OR OMISSION, OR ANY STRICT LIABILITY, OF INDEMNITEE RELATED IN ANY WAY TO THE WORK. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY. THE DEFENSE DUTY IS TRIGGERED BY ALLEGATIONS IN A LAWSUIT OR OTHER SIMILAR ACTION, REGARDLESS OF WHETHER THEY ARE GROUNDED, FALSE OR FRAUDULENT, OR ALTERNATIVELY BY ANY FACTS (EXTRINSIC TO THE ALLEGATIONS) NOT PLED, OR NOT PLED WITH SPECIFICITY, BY THE CLAIMANT. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY INDEMNITEE AGAINST LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR AGREES THAT ITS OBLIGATIONS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

10.3 NO BAILMENT. CONTRACTOR AND ITS EMPLOYEES, PERSONNEL, AGENTS, SUPPLIERS, AND SUBCONTRACTORS, OF ANY TIER, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS, MATERIALS, OR EQUIPMENT; OR (2) ANY DAMAGE TO SUCH TOOLS, MATERIALS OR EQUIPMENT.

10.4 Subcontractors and Suppliers Indemnity Obligations. Contractor shall require each of its subcontractors to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth in Section 13 of this Agreement. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the acts and omissions of any subcontractor or supplier who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed also to be the obligation of the subcontractors or suppliers to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Requirements Applicable to All Required Insurance. Prior to commencing any Work under this Agreement, and until expiration of the periods set out below, Contractor shall maintain at its expense such insurance as will protect Contractor and Owner from claims and liabilities that may arise out of Contractor's operations under this Agreement, whether such operations are performed by Contractor or its subcontractors or suppliers, or any other person involved in performing Contractor's obligations under this Agreement. All policies of insurance provided and maintained by Contractor pursuant to the Agreement shall provide for a waiver of subrogation in favor of Owner, D.R. Horton, Inc., all affiliates and subsidiaries of

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D.R. Horton, Inc., and their respective affiliates, officers, directors, and employees (collectively "**Horton**") for damages to the extent covered by such policies. All policies provided and maintained pursuant to this Agreement shall indicate that coverage applies in the state where the Work is being performed; and are written by an insurer licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor determines to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement. In the event that Contractor obtains insurance coverage that is broader than the minimums required by this Agreement, this Agreement shall be deemed to require the broader coverage, including but not limited to any greater limits and any excess or umbrella coverages. Coverage obtained by Contractor with Horton as an additional insured shall be primary, with any insurance of Horton being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work. Contractor shall immediately notify Owner in writing of any incident, occurrence, injury, or situation related in any way with the Work which may give rise to any claim or loss under any of the insurance coverages required by this Section 11.

11.2 Commercial General Liability. Contractor shall maintain Commercial General Liability Insurance on an Occurrence Form (the "**CGL Policy**"), with a minimum per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and a minimum aggregate limit of no less than Two Million Dollars (\$2,000,000.00). The CGL Policy shall apply separately to Contractor's Work under this Agreement, and shall protect against bodily injury, property damage, and personal injury claims arising from the exposures of: premises-operations; products-completed operations, including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); independent subcontractors; contractual liability covering the indemnity obligations set forth in this Agreement; and where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type, nature, or volume of the Work or limit the type of structure or number of units on which the Work is to be performed. The CGL Policy shall not contain a deductible or self-insured retention of more than Twenty Five Thousand Dollars (\$25,000.00), and shall allow the satisfaction of any and all deductible or self-insured retention through payments made by any third party, including but not limited to Owner or any additional insured, co-insureds, co-insurers, or insureds other than the primary or first named insured. Contractor shall continuously maintain its CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work. To the fullest extent permitted by law, Contractor shall add Horton as Additional Insureds, specifically identifying Horton, on the CGL Policy covering both ongoing operations and completed operations using endorsement form CG 2010 1185 or, if unavailable, both forms CG 2010 1001 and CG 2037 1001, or endorsement forms providing equivalent coverage.

11.3 Workers Compensation and Employers Liability Insurance. Contractor shall maintain Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law and Employer's Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) for each accident for bodily injury, One Million Dollars (\$1,000,000.00) for bodily injury by disease, and One Million Dollars (\$1,000,000.00) for each employee for bodily injury by disease. The Workers Compensation and Employers Liability Policy shall not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner.

11.4 Business Automobile Insurance. Contractor shall maintain Business Automobile Liability Insurance coverage with limits of not less than One Million Dollars (\$1,000,000.00) per accident, specifying "all autos" coverage or "all owned, leased, hired or non-owned autos." The Business Automobile Liability Policy shall not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner. Owner shall be included as an Additional Insured on the Business Automobile Liability Policy.

11.5 Professional Liability Insurance. If Contractor's Work includes design services, Contractor shall maintain Contractor's Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment. The policy obtained to satisfy this requirement not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner.

11.6 Proof of Insured Status. Prior to commencing the Work, Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance signed by a duly authorized representative of the insurers and showing compliance with the insurance requirements set out above, including endorsements adding Horton as Additional Insured and waivers of subrogation. Alternatively, Owner reserves the right to request portions of policies (including but not limited to declarations pages and endorsements) or certified copies of the required policies. Contractor shall not be relieved of any indemnification obligation under this Agreement, including, but not limited to, those undertaken in Section 10 of this Agreement, by securing insurance coverage in accordance with Owner's insurance requirements or by Owner's approval of certificates of insurance or policies. Any acceptance of insurance coverage by Owner shall not be construed as accepting in any way deficiencies in the insurance.

11.7 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER BY OWNER POLICY WITH RESPECT TO PARTICULAR TRADE CATEGORIES IN ITS SOLE AND ABSOLUTE DISCRETION IN EFFECT AT THE TIME WORK IS PERFORMED) TO COMPENSATE OWNER REASONABLY FOR ANY ADDITIONAL COSTS OF ITS WORKERS COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR CONTRACTOR AND ITS EMPLOYEES UNDER THIS AGREEMENT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.8 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Horton as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with this Agreement.

11.9 Subrogation. Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including but not limited to claims relating to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Owner or any Indemnitee, and any of their consultants, subcontractors, agents, employees and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or if another contractor's

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work, or other property, is damaged by an act or omission of Contractor, or its employee, agent, supplier, or subcontractor, of any tier, or their respective employee or agent, Owner shall have the right to elect, at its sole, absolute discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs to complete, repair, or replace, plus any related costs or damage including re-inspection fees, with any excess to be paid to Contractor. If such costs exceed the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location as a result of Contractor's acts or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or (viii) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may set off from amounts owing to Contractor hereunder any amounts owing by Contractor to Owner's parent company, any subsidiary or affiliate, under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not mediate before seeking other relief.

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("FAA"). All demands for arbitration shall be made before the expiration of the applicable statutes of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified or corrected only as permitted by the FAA.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator(s) mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes against Owner, is for One Million Dollars (\$1,000,000.00) or more, but only one arbitrator shall be appointed if the Dispute is for less than One Million Dollars (\$1,000,000.00). If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

13.5 Rules. To the extent not in conflict with the FAA, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) can be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner. If multiple lawsuits or arbitrations are commenced, Owner in its sole discretion may consolidate them into a single proceeding. Notwithstanding any other provision of this Section 13, if Owner determines in its sole discretion that a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect unilaterally to waive mediation or arbitration and to litigate the Dispute in court with Contractor.

14. TERMINATION.

14.1 Termination by Owner. This Agreement shall remain in full force and effect until terminated in writing by Owner by mailing notice to Contractor. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) days written notice to Owner before the effective date of any termination by Contractor, and shall perform fully under this Agreement during that notice period.

14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor

INITIALS: OWNER WMM, CONTRACTOR M76

is duly authorized and has full power to execute and deliver this Agreement; (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement; (iii) this Agreement is or will be (when executed) a binding obligation of Contractor, enforceable in accordance with its terms; (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority; (v) Contractor has, and each Contractor's employees, agents or subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement; (vi) Contractor is in compliance with all governmental requirements to which it is subject; and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to amend and supersede all prior Independent Contractor Agreements (other than any Master National Independent Contractor Agreement) for this State or other prior understandings or written or oral agreements regarding Work in this State, specifically including but not limited to all prior pre-printed standard contractor/subcontractor agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods or services or both by Contractor relating to the subject matter herein. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work and shall be deemed subject to the terms of this Agreement. Any future Pricing Schedules or Purchase Orders entered into hereafter shall also be deemed to be subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices and quantities of sale only. Nothing in any subsequent agreement or document, unless a new Independent Contractor Agreement for this State is executed, shall alter the terms set forth in this Agreement. To the extent possible, this Agreement shall be deemed to supplement the terms of any other agreement or document, unless a new Independent Contractor Agreement is executed. In the event of any conflict between this Agreement and other such documents, this Agreement shall be deemed to control and prevail. Except as otherwise provided in this Agreement, no amendment or supplement to this Agreement shall be valid or binding unless in writing and signed by both Owner and Contractor. Notwithstanding anything in this Subsection to the contrary, this Agreement shall not amend or supersede any Master National Independent Contractor Agreement, but shall supplement its terms. In the event of a conflict, to the extent permitted by law, the Master National Independent Contractor Agreement shall control.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights, responsibilities, and obligations under this Agreement are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Any attempted assignment shall be null and void. This restriction includes, but is not limited to, the delegation or subcontracting of any Work or any amounts which may become due to Contractor as a result of the Work. Contractor shall remain fully liable under this Agreement regardless of any consent by Owner to any assignment or delegation of duties by Contractor, including but not limited to any work by a subcontractor. Contractor shall ensure that any subcontractor receives a copy of this Agreement and agrees in writing to be fully responsible for all obligations of Contractor under this Agreement, including but not limited to the insurance and indemnity provisions. Contractor shall also ensure that Owner is an intended third party beneficiary of any subcontractor agreement by including a specific provision to that effect. Contractor shall be responsible for enforcing any warranties given by its subcontractors, suppliers or manufacturers. Nothing contained herein, however, shall create any contractual relationship between Owner and any subcontractor, nor create any obligation on the part of Owner to make payment of any sums to any subcontractor. Subject to the restrictions and prohibitions on assignment set forth in this Subsection, the terms of this Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns. Owner may freely assign this Agreement, in whole or in part.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No act or conduct other than a specific, written waiver of a right shall be deemed a waiver by Owner. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina, and is applicable to Work for all construction projects in this State. In the event Contractor performs any work for Owner, or its parent company, affiliate or subsidiary, for a project in another State, and Contractor has not executed a written Independent Contractor Agreement for that State, Contractor hereby agrees that such work shall be governed by the terms and conditions of the form Independent Contractor Agreement of Owner (in use at the time of execution of this Agreement) for that State, which shall be deemed effective on the day this Agreement is executed. Upon request, Owner will provide Contractor with applicable Independent Contractor Agreements.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

18. NOTICES. All notices required or permitted pursuant to this Agreement or otherwise shall be in writing and shall be delivered as follows: to Contractor at Contractor's business address as shown on page one (1) of this Agreement; to Owner through Owner's official Registered Agent for service of legal process in the state where the Work is performed at that Registered Agent's registered office. Notices may be given by personal delivery, facsimile, commercial overnight delivery service, personal delivery or ordinary mail and shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by commercial overnight delivery service, and upon confirmation if sent by facsimile transmission or by personal delivery. Rejection, refusal to accept or the inability to deliver because of changed address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or subsections.

SOUTH CAROLINA VERSION (DECEMBER 9, 2016)

INITIALS: OWNER mm, CONTRACTOR MTG

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SCOPE OF WORK

The following is a description of Basic Services performed by the Independent Contractor:

- ① Bath tub repairs
- ② Cultured marble repairs
- ③ Vinyl window repairs



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR MJ Cowboys LLC ("Contractor")
 Sole Proprietorship ☐ Partnership ☒ Corporation ☐ LLC ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No.: 46-4331473
 Name of Owner(s)/Officer(s): Mauricio Reyna
 Division Name: Greenville Area Name: 70905 Assigned Vendor No.: 1956708
 Address for All Notices: 7740 Augusta Rd Ste 1A #129
 City: Piedmont State: SC Zip Code: 29673
 Telephone: 803-850-8510 Fax: 803-852-7562 E-Mail Address: mjcowsboysllc@gmail.com
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 16 day of MAY, 2014, between
D-R Horton Inc ("Owner") and Contractor.

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of this Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement shall include all work performed and materials supplied by Contractor, directly or indirectly, to Owner, including but not limited to the labor, services and/or materials, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized by written purchase order, or similar document by Owner's authorized field personnel (the "Work"). The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing shall not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to, or in place of, Contractor.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, method and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further shall provide written notification to all of its present and future employees of Contractor's provision for Workers Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall be solely responsible for and will pay all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNTIL CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule implementing a price increase, the superseded Pricing Schedule shall remain in effect for Purchase Orders, as defined herein, issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing from Owner to a purchaser of the house incorporating the Work. To the extent permitted by law, Contractor waives its right to payment for any Work not invoiced in a timely manner. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order, as defined herein.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-54 AND 29-6-59 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO CONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN. CONTRACTOR AGREES THAT OWNER DOES AND WILL NOT OWE INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF ANY DELAYED PAYMENT.

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA, IF ANY.

Executed this 16 day of MAY, 2014.

By: MARC MARTENS Name: Mauricio Reyna
 Title: CFO Title: Owner

INITIALS: OWNER MM CONTRACTOR MR

4.2 Contractor Payments. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed by Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Unless otherwise agreed by Owner and Contractor, payment to Contractor shall be made by check. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties; and these joint payments shall satisfy amounts owed by Owner to Contractor, whether or not all parties endorse the checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the contract price shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of or resulting from the Work and shall not release Contractor from any obligations under this Agreement, including but not limited to liability for warranties, warranty service, or any other liability for alleged defects in the Work. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or customers or assigns shall constitute an acceptance of the Work or materials not in compliance with this Agreement, or be used in any way as evidence of acceptance by Owner.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.2 Authorization and Commencement of the Work. Authorization for any Work shall be in writing, either pursuant to a written purchase order, work invoice, or similar document ("Purchase Order"). Contractor shall have no authority to commence the Work at any specific job location until Owner has issued instructions to proceed. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.3 Changes in Construction Schedule. Owner shall have the right to make changes to the schedule of Work at Owner's sole discretion, and Contractor shall comply with such changes. Contractor shall not be entitled to any additional compensation for such schedule changes.

6. PERFORMANCE OF THE WORK.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FHA minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all laws (statutory and common law), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements). In the event of conflicting provisions, specifications will take precedence over the drawings; the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive; later modifications or changes will supersede or take precedence over earlier provisions. Subcontractor shall immediately notify Contractor in writing of any allegedly conflicting provisions.

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall have absolute authority to act, in all respects, on behalf of and for Contractor.

6.3 Contractors' Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized employee of Owner and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, and that the plans and specifications are clear and unambiguous, and that Contractor has accepted and agreed to be bound by all such requirements.

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, rules, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "Requirements"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS** from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, regardless of any alleged fault of Owner. In addition, Contractor shall not discriminate illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform warranty or repair work after a house is occupied.

6.5 Observation, Inspection and Testing. Owner and any government agency inspector ("Inspector") shall have the right, but not the obligation, to observe, inspect or test the Work at any time during or after construction, but that observation, inspection or testing is solely for the benefit of Owner and is not for Contractor's benefit. Contractor shall cooperate with Owner and Inspector during any such inspection. The failure by Owner or Inspector to note defects in the Work during an inspection shall not waive or vary any of Contractor's obligations, representations or warranties related to the Work.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses, approvals, and as-built drawings necessary for, or applicable to, the performance of the Work. Contractor shall provide copies to Owner immediately upon request.

6.8 Change Orders. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes. Contractor shall comply with any Change Order requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such

INITIALS: OWNER CONTRACTOR MR.

rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not limited to trash, unused building materials, garbage, refuse or rubbish ("Waste"), caused by its operations and shall remove all of Contractor's materials at the conclusion of the Work. If materials are furnished by Owner, Contractor shall move all usable materials at the conclusion of the Work to a location designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon demand by Owner and may be deducted by Owner from any sums owed to Contractor.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

7.2 Safety Laws. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations ("Safety Law"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of, or noncompliance with, the Safety Law, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation or noncompliance by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, of the Safety Law, or safety citation, regardless of any alleged fault of Owner. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and, if required by law, provide written notice to Owner of the contact person responsible for Contractor's safety compliance.

7.3 Hazardous Materials. Contractor shall not permit any Hazardous Substances, defined below, to be brought onto or stored at any job site or used in the construction of the Work, except for commonly used construction materials, provided however, that all such material shall be handled in full compliance with all laws, ordinances and regulations. All notices required to be given with respect to such products shall be given by Contractor. Contractor shall not release or dispose, or allow any other person to release or dispose, of Hazardous Substances or waste at any job site or into the soil, drains, surface or ground water, or air. "Hazardous Substance" means any substance or material which any state, federal or local governmental authority determines or designates as capable of posing a risk of injury to health, safety, property or the environment.

7.4 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, agents, subcontractors or suppliers at a job location, or performance of the Work by any person under the influence of alcohol or drugs. "Drugs" shall include any substance, whether or not illegal, which upon exposure, ingestion, inhalation, injection or by any other introduction, may impair one's ability to safely perform the Work.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. For the longer of ten years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work shall conform to the specifications of this Agreement (including but not limited to the standards referenced in Subsection 6.1), shall be free from any defects or deficiencies in workmanship or materials, shall comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, shall meet or exceed the FHA/VA minimum property standards, and shall comply with the Home Owners' Warranty, defined below and its applicable warranty standards (which Contractor has read and understands). All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects. Contractor shall be liable to make good or promptly repair all Work not complying with the standards set forth in this Section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Subsection 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, any initial home purchaser of property subject to the Work: (i) for a period of ten (10) years all structural elements, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers; (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home; and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; and (iii) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (a) any statutory warranty or (b) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner, including but not limited to the Residential Warranty Corporation Program (a "Home Owners' Warranty"). Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Home Owners Warranty that is longer than the warranty periods stated above; provided, however, failure to give that notice will not affect the extension of the warranty period to the applicable warranty period under the Home Owners Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform warranty services thereafter.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product information, and guarantees by manufacturers on components of the Work, including any appliances or equipment, and shall furnish all certificates required by any third parties such as any municipality, the VA, or the FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and shall not limit or reduce any applicable statutes of limitation.

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon

INITIALS: OWNER  ; CONTRACTOR 

receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. TO THE EXTENT PERMITTED BY LAW, CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS OR SIMILAR CLAIMS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Work is located.

9.3 Lien Claim Indemnity. If any liens, affidavits of claim, stop payment notices, or its pendants arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such lien, affidavit, stop payment notice, or its pendants to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS FROM ANY LOSS, EXPENSE, INCLUDING LEGAL FEES AND DISBURSEMENTS, DAMAGE OR INJURY CAUSED OR OCCASIONED, DIRECTLY OR INDIRECTLY, BY ANY SUCH LIENS, AFFIDAVIT, STOP PAYMENT NOTICE, OR ITS PENDANT, AND FURTHER agrees immediately upon Owners' request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge that lien, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any home purchaser in discharging the lien, affidavit, stop payment notice, or its pendants whichever remedy Owner elects in its sole and absolute discretion. The provisions of this paragraph shall be in addition to any rights Owner may have under applicable law with respect to such liens, affidavits, stop payment notices, or its pendants.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF AND ATTORNEYS' FEES), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (2) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR OR BY CONTRACTOR'S AGENTS OR EMPLOYEES, OR BY SUPPLIERS OR SUBCONTRACTORS OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES; (3) ANY NEGLIGENCE OR INTENTIONAL ACT OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, OR SUBCONTRACTORS, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR (4) ANY NEGLIGENCE OR INTENTIONAL ACT OR OMISSION OF INDEMNITEE, RELATED IN ANY WAY TO THE WORK, EXCEPTING ONLY LIABILITY OR CLAIMS ARISING OUT OF BODILY INJURY TO PERSONS, DEATH, OR DAMAGE TO PROPERTY PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY INDEMNITEE AGAINST LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

10.3 NO BAILMENT. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, ALL SUBCONTRACTORS, AND SUPPLIERS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS, MATERIALS, OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS, MATERIALS OR EQUIPMENT.

10.4 Subcontractors and Suppliers Indemnity Obligations. Contractor shall require each of its subcontractors to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth in Section 13 of this Agreement. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the acts and omissions of any subcontractor or supplier who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed also to be the obligation of the subcontractors or suppliers to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with products-completed operations coverage, which contains a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit of no less than Two Million Dollars (\$2,000,000.00) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products-completed operations including materials designed, furnished, and/or

INITIALS: OWNER *h* CONTRACTOR *ma*

modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type of, or nature of, the Work or limit the type of structure on which the Work is to be performed. The CGL policy shall not contain a deductible or self-insured retention of more than \$25,000.00. Contractor shall continuously maintain a CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work.

11.2 Other Insurance. Contractor agrees to carry (a) Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law; (b) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (c) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person for bodily injury and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner as a named, Additional Insured, specifically identifying Owner, on the CGL Policy and policies required above covering both ongoing operations and completed operations (equivalent in scope to form CG 2010 1185 or, if unavailable, both forms CG 2010 1001 and CG 2037 1001). Coverage obtained by Contractor with Owner as an additional insured shall be primary, with any insurance of Owner being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work; (iii) provide for a waiver of subrogation; (iv) indicate that coverage applies in the state where the Work is being performed; and (v) be with a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the required policies, as requested by Owner.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER BY OWNER POLICY WITH RESPECT TO PARTICULAR TRADE CATEGORIES IN ITS SOLE AND ABSOLUTE DISCRETION IN EFFECT AT THE TIME WORK IS PERFORMED) TO COMPENSATE OWNER REASONABLY FOR ANY ADDITIONAL COSTS OF ITS WORKERS COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS AGREEMENT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Owner as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

11.7 Subrogation. Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including but not limited to claims relating to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Owner or any Indemnitee, and any of their consultants, subcontractors, agents, employees and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or if another contractor's work, or other property, is damaged by an act or omission of Contractor, its employees, agents, suppliers, or subcontractors, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location as a result of Contractor's acts or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or (viii) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may set off from amounts owing to Contractor hereunder any amounts owing by Contractor to Owner's parent company, any subsidiary or affiliate, under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations,

INITIALS: OWNER  CONTRACTOR 

rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Dispute. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Dispute") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking other relief.

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("FAA"). All demands for arbitration shall be made before the expiration of the applicable statute of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified or corrected only as permitted by the FAA.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator(s) mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes against Owner, is for \$1,000,000 or more, but only one arbitrator shall be appointed if the Dispute is for less than \$1,000,000. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

13.5 Rules. To the extent not in conflict with the FAA, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) can be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner. If multiple lawsuits or arbitrations are commenced, Owner in its sole discretion may consolidate them into a single proceeding. Notwithstanding any other provision of this Section 13, if Owner determines in its sole discretion that a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect unilaterally to waive mediation or arbitration and to litigate the Dispute in court with Contractor.

14. TERMINATION.

14.1 Termination by Owner. This Agreement shall remain in full force and effect until terminated in writing by Owner by mailing notice to Contractor. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) days written notice to Owner before the effective date of any termination by Contractor, and shall perform fully under this Agreement during that notice period.

14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement; (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement; (iii) this Agreement is or will be (when executed) a binding obligations of Contractor, enforceable in accordance with its terms; (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority; (v) Contractor has, and each Contractor's employees, agents or subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement; (vi) Contractor is in compliance with all governmental requirements to which it is subject; and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to amend and supersede all prior independent Contractor Agreements (other than any Master National Independent Contractor Agreement) or other prior understandings or written or oral agreements, specifically including but not limited to all prior pre-printed standard contractor/subcontractor agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods or services or both by Contractor relating to the subject matter herein. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work and shall be deemed subject to the terms of this Agreement. Any future Pricing Schedules or Purchase Orders entered into hereafter shall also be deemed to be subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices and quantities of sale only. Nothing in any subsequent agreement or document, unless a new Independent Contractor Agreement, shall alter the terms set forth in this Agreement. To the extent possible, this Agreement shall be deemed to supplement the terms of any other agreement or document, unless a new Independent Contractor Agreement. In the event of any conflict between this Agreement and other such documents, this Agreement shall be deemed to control and prevail. Except as otherwise provided in this Agreement, no amendment or supplement to this Agreement shall be valid or binding unless in writing and signed by both Owner and Contractor. Notwithstanding anything in this Subsection to the contrary, this Agreement shall not amend or supersede any Master National Independent Contractor Agreement, but shall supplement its terms. In the event of a conflict, to the extent permitted by

INITIALS: OWNER  CONTRACTOR 

law, the Master National Independent Contractor Agreement shall control.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights, responsibilities, and obligations under this Agreement are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Any attempted assignment shall be null and void. This restriction includes, without limitation, the delegation or subcontracting of any Work or any amounts which may become due to Contractor as a result of the Work. Contractor shall remain fully liable under this Agreement regardless of any consent by Owner to any assignment or delegation of duties by Contractor, including but not limited to any work by a subcontractor. Contractor shall ensure that any subcontractor receives a copy of this Agreement and agrees in writing to be fully responsible for all obligations of Contractor under this Agreement, including but not limited to the insurance and indemnity provisions. Contractor shall also ensure that Owner is an intended third party beneficiary of any subcontractor agreement by including a specific provision to that effect. Contractor shall be responsible for enforcing any warranties given by its subcontractors, suppliers or manufacturers. Nothing contained herein, however, shall create any contractual relationship between Owner and any subcontractor, nor create any obligation on the part of Owner to make payment of any sums to any subcontractor. Subject to the restrictions and prohibitions on assignment set forth in this Subsection, the terms of this Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns. Owner may freely assign this Agreement, in whole or in part.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No act or conduct other than a specific, written waiver of a right shall be deemed a waiver by Owner. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

18. NOTICES. All notices required or permitted pursuant to this Agreement or otherwise shall be in writing and shall be delivered as follows: to Contractor at Contractor's business address as shown on page one (1) of this Agreement; to Owner through Owner's official Registered Agent for service of legal process in the state where the Work is performed at that Registered Agent's registered office. Notices may be given by personal delivery, facsimile, commercial overnight delivery service, personal delivery or ordinary mail and shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by commercial overnight delivery service, and upon confirmation if sent by facsimile transmission or by personal delivery. Rejection, refusal to accept or the inability to deliver because of changed address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or subsections.

48026 Foundation Concrete
43048 Masonry
43060 Stone
45530 Flatwork Labor

SOUTH CAROLINA VERSION (REV. 12 APRIL 2013)

INITIALS: OWNER W CONTRACTOR MR

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SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Kings Landscaping LLC ("Contractor")
 Sole Proprietorship ☐ Partnership ☐ Corporation ☐ LLC ☒ Other (ATTACH W-9)
 Social Security No. or Tax ID No.: 910 74 0231 016 30 3205
 Name of Owner(s)/Officer(s): Antonio Jimenez & Maria Jimenez
 Division Name: _____ Area Name: _____ Assigned Vendor No.: _____
 Address for All Notices: 903 S. Main St.
 City: Fountain Inn State: SC Zip Code: 29044
 Telephone: 814 304 0388 Fax: () _____ E-Mail Address: Kingslandscaping15@gmail.com
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 5 day of October, 2016, between
DR Horton Inc. ("Owner") and Contractor.

1. SCOPE OF WORK This Agreement is entered on a blank basis. The terms of this Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement shall include all work performed and materials supplied by Contractor, directly or indirectly, in flower, including but not limited to the labor, services and/or materials, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized by written purchase order, or similar document by Owner's authorized field personnel (the "Work"). The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, shall not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to, or in place of, Contractor.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, method and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further shall provide written notification to all of its present and future employees of Contractor's provision for Workers Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work or to exercise a measure of control over the Work shall be deemed in mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall be solely responsible for and will pay all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNTIL CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule implementing a price increase, the superseded Pricing Schedule shall remain in effect for Purchase Orders, as defined herein, issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing from Owner in a purchaser of the house incorporating the Work. To the extent permitted by law, Contractor waives its right to payment for any Work not invoiced in a timely manner. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order, as defined herein.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-30 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO CONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN. CONTRACTOR

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA, IF ANY.

Executed this 5th day of October, 2016

By: [Signature]
 Name: Antonio Jimenez
 Title: Division President

Contractor:
 By: [Signature]
 Name: Antonio Jimenez & Maria Jimenez
 Title: Owner

INITIALS: OWNER (A) CONTRACTOR AV & MU

AGREES THAT OWNER DOES, AND WILL, NOT OWE INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF ANY DELAYED PAYMENT.

4.2 Contractor Payments. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed by Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Unless otherwise agreed by Owner and Contractor, payment to Contractor shall be made by check. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties, and these joint payments shall satisfy amounts owed by Owner to Contractor, whether or not all parties endorse the checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the contract price shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of or resulting from the Work and shall not release Contractor from any obligations under this Agreement, including but not limited to liability for warranties, warranty service, or any other liability for alleged defects in the Work. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or customers or assigns shall constitute an acceptance of the Work or materials not in compliance with this Agreement, or be used in any way as evidence of acceptance by Owner.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.2 Authorization and Commencement of the Work. Authorization for any Work shall be in writing, either pursuant to a written purchase order, work invoice, or similar document ("Purchase Order"). Contractor shall have no authority to commence the Work at any specific job location until Owner has issued instructions to proceed. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.3 Changes in Construction Schedule. Owner shall have the right to make changes to the schedule of Work at Owner's sole discretion, and Contractor shall comply with such changes. Contractor shall not be entitled to any additional compensation for such schedule changes.

6. PERFORMANCE OF THE WORK.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FHA minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all laws (statutory and common law), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements). In the event of conflicting provisions, specifications will take precedence over the drawings; the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive; later modifications or changes will supersede or take precedence over earlier provisions. Contractor shall immediately notify Owner in writing of any allegedly conflicting provisions.

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall have absolute authority to act, in all respects, on behalf of and for Contractor.

6.3 Contractor's Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized employee of Owner and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, and that the plans and specifications are clear and unambiguous, and that Contractor has accepted and agreed to be bound by all such requirements.

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, rules, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "Requirements"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS** from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, regardless of any alleged fault of Owner. In addition, Contractor shall not discriminate illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform warranty or repair work after a house is occupied.

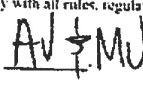
6.5 Observation, Inspection and Testing. Owner and any government agency inspector ("Inspector") shall have the right, but not the obligation, to observe, inspect or test the Work at any time during or after construction, but that observation, inspection or testing is solely for the benefit of Owner and is not for Contractor's benefit. Contractor shall cooperate with Owner and Inspector during any such inspection. The failure by Owner or Inspector to note defects in the Work during an inspection shall not waive or vary any of Contractor's obligations, representations or warranties related to the Work.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses, approvals, and as-built drawings necessary for, or applicable to, the performance of the Work. Contractor shall provide copies to Owner immediately upon request.

6.8 Change Orders. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes. Contractor shall comply with any Change Order requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which

INITIALS: OWNER  CONTRACTOR 

the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location, (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not limited to trash, unused building materials, garbage, refuse or rubbish ("Waste"), caused by its operations and shall remove all of Contractor's materials at the conclusion of the Work. If materials are furnished by Owner, Contractor shall move all usable materials at the conclusion of the Work to a location designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon demand by Owner and may be deducted by Owner from any sums owed to Contractor.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. **UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE.** Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

7.2 Safety Laws. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations ("Safety Law"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of, or noncompliance with, the Safety Law, and shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS** from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, law suits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation or noncompliance by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, of the Safety Law, or safety citation, regardless of any alleged fault of Owner. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and, if required by law, provide written notice to Owner of the contact person responsible for Contractor's safety compliance.

7.3 Hazardous Materials. Contractor shall not permit any Hazardous Substances, defined below, to be brought onto or stored at any job site or used in the construction of the Work, except for commonly used construction materials, provided however, that all such material shall be handled in full compliance with all laws, ordinances and regulations. All notices required to be given with respect to such products shall be given by Contractor. Contractor shall not release or dispose, nor allow any other person to release or dispose, of Hazardous Substances or waste at any job site or into the soil, drains, surface or ground water, or air. "Hazardous Substance" means any substance or material which any state, federal or local governmental authority determines or designates as capable of posing a risk of injury to health, safety, property or the environment.

7.4 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, agents, subcontractors or suppliers at a job location, or performance of the Work by any person under the influence of alcohol or drugs. "Drugs" shall include any substance, whether or not illegal, which upon exposure, ingestion, inhalation, injection or by any other introduction, may impair one's ability to safely perform the Work.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. For the longer of ten years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work shall conform to the specifications of this Agreement (including but not limited to the standards referenced in Subsection 6.1), shall be free from any defects or deficiencies in workmanship or materials, shall comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, shall meet or exceed the FHAA's minimum property standards, and shall comply with the Home Owners' Warranty, defined below and its applicable warranty standards (which Contractor has read and understands). All Work not conforming to these requirements shall be considered to be defective. All material shall be new and complying with the standards set forth in this Section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Subsection 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, any initial home purchaser of property subject to the Work: (i) for a period of ten (10) years all structural elements, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; and (iii) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (a) any statutory warranty or (b) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner, including but not limited to the Residential Warranty Corporation Program (a "Home Owners' Warranty"). Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Home Owners Warranty that is longer than the warranty periods stated above; provided, however, failure to give that notice will not affect the extension of the warranty period to the applicable warranty period under the Home Owners Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform warranty services thereafter.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product information, and guarantees by manufacturers on components of the Work, including any appliances or equipment, and shall furnish all certificates required by any third parties such as any municipality, the VA, or the FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and shall not limit or reduce any applicable statutes of limitation.

INITIALS: OWNER CONTRACTOR AU & MV

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. TO THE EXTENT PERMITTED BY LAW, CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS OR SIMILAR CLAIMS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Work is located.

9.3 Lien Claims Indemnity. If any liens, affidavits of claim, stop payment notices, or its penders arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such liens, affidavits of claim, stop payment notices, or its penders to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such liens, affidavits of claim, stop payment notices, or its penders, and further agrees immediately upon Owners' request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge any and all liens, affidavits of claim, stop payment notices, or its penders, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any home purchaser in discharging the liens, affidavits of claim, stop payment notices, or its penders whichever remedy Owner elects in its sole and absolute discretion. The provisions of this paragraph shall be in addition to any rights Owner may have under applicable law with respect to such liens, affidavits of claim, stop payment notices, or its penders.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF, ATTORNEYS' FEES AND INTEREST), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (2) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO WORK PERFORMED OR TO BE PERFORMED OR SUBCONTRACTORS OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, OR BY ITS SUPPLIERS OR SUBCONTRACTORS, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR (4) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, SUPPLIERS OR SUBCONTRACTORS, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR (4) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF INDEMNITEE RELATED IN ANY WAY TO THE WORK. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY INDEMNITEE AGAINST LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR AGREES THAT ITS OBLIGATIONS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE, AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

10.3 NO BAILMENT. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, ALL SUBCONTRACTORS, AND SUPPLIERS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS, MATERIALS, OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS, MATERIALS OR EQUIPMENT.

10.4 Subcontractors and Suppliers Indemnity Obligations. Contractor shall require each of its subcontractors to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee in the extent required and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth in Section 13 of this Agreement. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the acts and omissions of any subcontractor or supplier who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed also to be the obligation of the subcontractors or suppliers to Owner, for which Contractor shall be fully responsible to Owner.

INITIALS: OWNER

CONTRACTOR

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with products-completed operations coverage, which contains a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit of no less than Two Million Dollars (\$2,000,000.00) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products-completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk, covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type, nature, or volume of the Work or limit the type of structure or number of units on which the Work is to be performed. The CGL policy shall not contain a deductible or self-insured retention of more than \$25,000.00, and shall allow the satisfaction of any and all deductible or self-insured retention through payments made by any third party, including but not limited to Owner or any additional insured, co-insureds, co-insurers, or insureds other than the primary or first named insured. Contractor shall continuously maintain a CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work.

11.2 Other Insurance. Contractor agrees to carry (a) Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law; (b) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (c) Commercial Automobile Liability Insurance coverage with limits of not less than \$200,000 per person for bodily injury and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner, D.R. Horton, Inc., and all affiliates and subsidiaries of D.R. Horton, Inc. (collectively "Horton") as named, Additional Insureds, specifically identifying Horton, on the CGL Policy and policies required above covering both ongoing operations and completed operations equivalent in scope to form CG 2010 1 185 or, if unavailable, both forms CG 2010 1001 and CG 2037 10011. Coverage obtained by Contractor with Horton as an additional insured shall be primary, with any insurance of Horton being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work; (iii) provide for a waiver of subrogation; (iv) indicate that coverage applies in the state where the Work is being performed; and (v) be with a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement. In the event that Contractor obtains insurance coverage that is broader than the minimums required by this Agreement, this Agreement shall be deemed to require the broader coverage, including but not limited to any greater limits.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, portions of policies (including but not limited to declarations pages and endorsements), or certified copies of the required policies, as requested by Owner.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER BY OWNER POLICY WITH RESPECT TO PARTICULAR TRADE CATEGORIES IN ITS SOLE AND ABSOLUTE DISCRETION IN EFFECT AT THE TIME WORK IS PERFORMED) TO COMPENSATE OWNER REASONABLY FOR ANY ADDITIONAL COSTS OF ITS WORKERS COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS AGREEMENT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Horton as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

11.7 Subrogation. Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including but not limited to claims relating to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Owner or any indemnitee, and any of their consultants, subcontractors, agents, employees and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or if another contractor's work, or other property, is damaged by an act or omission of Contractor, its employees, agents, suppliers, or subcontractors, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs to complete, repair, or replace, plus any related costs or damage including re-inspection fees, with any excess to be paid to Contractor. If such costs exceed the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens

INITIALS: OWNER

CONTRACTOR

are filed against the job location as a result of Contractor's acts or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement; and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or (viii) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may set off set from amounts owing to Contractor hereunder any amounts owing by Contractor to Owner's parent company, any subsidiary or affiliate, under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking other relief.

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("FAA"). All demands for arbitration shall be made before the expiration of the applicable statutes of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified or corrected only as permitted by the FAA.

13.4 Choice of Mediator and Arbitrator: Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator(s) mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes against Owner, is for \$1,000,000 or more, but only one arbitrator shall be appointed if the Dispute is for less than \$1,000,000. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

13.5 Rules. To the extent not in conflict with the FAA, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) can be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner. If multiple lawsuits or arbitrations are commenced, Owner in its sole discretion may consolidate them into a single proceeding. Notwithstanding any other provision of this Section 13, if Owner determines in its sole discretion that a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect unilaterally to waive mediation or arbitration and to litigate the Dispute in court with Contractor.

14. TERMINATION.

14.1 Termination by Owner. This Agreement shall remain in full force and effect until terminated in writing by Owner by mailing notice to Contractor. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) days written notice to Owner before the effective date of any termination by Contractor, and shall perform fully under this Agreement during that notice period.

14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement; (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement; (iii) this Agreement is or will be (when executed) a binding obligation of Contractor, enforceable in accordance with its terms; (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority; (v) Contractor has, and in compliance with this Agreement, agents or subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work; (vi) Contractor is in compliance with all governmental requirements to which it is subject, and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

INITIALS: OWNER

CONTRACTOR

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to amend and supersede all prior Independent Contractor Agreements (other than any Master National Independent Contractor Agreement) or other prior understandings or written or oral agreements, specifically including but not limited to all prior pre-printed standard contractor-subcontractor agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods or services or both by Contractor relating to the subject matter herein. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work and shall be deemed subject to the terms of this Agreement. Any future Pricing Schedules or Purchase Orders entered into hereafter shall also be deemed to be subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices and quantities of sale only. Nothing in any subsequent agreement or document, unless a new Independent Contractor Agreement, shall alter the terms set forth in this Agreement. To the extent possible, this Agreement shall be deemed to supplement the terms of any other agreement or document, unless a new Independent Contractor Agreement. In the event of any conflict between this Agreement and other such documents, this Agreement shall be deemed to control and prevail. Except as otherwise provided in this Agreement, no amendment or supplement to this Agreement shall be valid or binding unless in writing and signed by both Owner and Contractor. Notwithstanding anything in this Subsection to the contrary, this Agreement shall not amend or supersede any Master National Independent Contractor Agreement, but shall supplement its terms. In the event of a conflict, to the extent permitted by law, the Master National Independent Contractor Agreement shall control.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights, responsibilities, and obligations under this Agreement are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Any attempted assignment shall be null and void. This restriction includes, without limitation, the delegation or subcontracting of any Work or any amounts which may become due to Contractor as a result of the Work. Contractor shall remain fully liable under this Agreement regardless of any consent by Owner to any assignment or delegation of duties by Contractor, including but not limited to any work by a subcontractor. Contractor shall ensure that any subcontractor receives a copy of this Agreement and agrees in writing to be fully responsible for all obligations of Contractor under this Agreement, including but not limited to the insurance and indemnity provisions. Contractor shall also ensure that Owner is an intended third party beneficiary of any subcontractor agreement by including a specific provision to that effect. Contractor shall be responsible for enforcing any warranties given by its subcontractors, suppliers or manufacturers. Nothing contained herein, however, shall create any contractual relationship between Owner and any subcontractor, nor create any obligation on the part of Owner to make payment of any sums to any subcontractor. Subject to the restrictions and prohibitions on assignment set forth in this Subsection, the terms of this Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns. Owner may freely assign this Agreement, in whole or in part.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No act or conduct other than a specific, written waiver of a right shall be deemed a waiver by Owner. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

18. NOTICES. All notices required or permitted pursuant to this Agreement or otherwise shall be in writing and shall be delivered as follows: to Contractor at Contractor's business address as shown on page one (1) of this Agreement; to Owner through Owner's official Registered Agent for service of legal process in the state where the Work is performed at that Registered Agent's registered office. Notices may be given by personal delivery, facsimile, commercial overnight delivery service, personal delivery or ordinary mail and shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by commercial overnight delivery service, and upon confirmation if sent by facsimile transmission or by personal delivery. Rejection, refusal to accept or the inability to deliver because of changed address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or subsections.

Landscaping

SOUTH CAROLINA VERSION (REV. 22 JUNE 2015)

INITIALS: OWNER AW CONTRACTOR AW + MJ



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Five Star Foundation LLC ("Contractor")
Sole Proprietorship ☐ Partnership ☐ Corporation ☒ L.L.C ☐ Other (ATTACH W-9)
Social Security No. or Tax ID No.: 58-2445381
Name of Owner(s)/Officer(s): Brian Fossier
Division Name: GVL Area Name: 109 Assigned Vendor No.: 1518749
Address for All Notices: PO Box 2739
City: Greer State: SC Zip Code: 29652
Telephone: 804 877-3265 Fax: 804 877-4932 E-Mail Address: fivestarfoundation@hotmail.com
Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
This agreement (the "Agreement") is entered into on this 2 day of October, 2019, between
DR Horton Inc. ("Owner") and Contractor.

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of this Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement shall include all work performed and materials supplied by Contractor, directly or indirectly, to Owner, including but not limited to the labor, services and/or materials, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized by written purchase order, or similar document by Owner's authorized field personnel (the "Work"). The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing shall not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to, or in place of, Contractor.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, method and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further shall provide written notification to all of its present and future employees of Contractor's provision for Workers Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall be solely responsible for and will pay all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNTIL CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule implementing a price increase, the superseded Pricing Schedule shall remain in effect for Purchase Orders, as defined herein, issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing from Owner to a purchaser of the house incorporating the Work. To the extent permitted by law, Contractor waives its right to payment for any Work not invoiced in a timely manner. Owner shall timely pay Contractor for completed, accepted Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, and Contractor provides invoices for progress payments, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order, as defined herein.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO CONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN. CONTRACTOR AGREES THAT OWNER DOES, AND WILL, NOT OWE INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF ANY DELAYED PAYMENT.

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA, IF ANY.

Executed this 2 day of October, 2019.

Owner:

By: [Signature]

Name:

Title: Division President

Contractor:

By: [Signature]

Name:

Title: Owner

INITIALS: OWNER BF, CONTRACTOR BF

4.2 Contractor Payments. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed by Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Unless otherwise agreed by Owner and Contractor, payment to Contractor shall be made by check. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties; and these joint payments shall satisfy amounts owed Contractor, whether or not all parties endorse the checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the contract price shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of or resulting from the Work and shall not release Contractor from any obligations under this Agreement, including but not limited to liability for warranties, warranty service, or any other liability for alleged defects in the Work. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or customers or assigns shall constitute an acceptance of the Work or materials not in compliance with this Agreement, or be used in any way as evidence of acceptance by Owner.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.2 Authorization and Commencement of the Work. Authorization for any Work shall be in writing, either pursuant to a written purchase order, work invoice, or similar document ("**Purchase Order**"). Contractor shall have no authority to commence the Work at any specific job location until Owner has issued instructions to proceed. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.3 Changes in Construction Schedule. Owner shall have the right to make changes to the schedule of Work at Owner's sole discretion, and Contractor shall comply with such changes. Contractor shall not be entitled to any additional compensation for such schedule changes.

6. PERFORMANCE OF THE WORK.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FHA minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all laws (statutory and common), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements). In the event of conflicting provisions, specifications will take precedence over the drawings; the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive; later modifications or changes will supersede or take precedence over earlier provisions. Contractor shall immediately notify Owner in writing of any allegedly conflicting provisions.

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall have absolute authority to act, in all respects, on behalf of and for Contractor.

6.3 Contractor's Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized employee of Owner and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, and that the plans and specifications are clear and unambiguous, and that Contractor has accepted and agreed to be bound by all such requirements.

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "**Requirements**"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS** from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, regardless of any alleged fault of Owner. In addition, Contractor shall not discriminate illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform warranty or repair work after a house is occupied.

6.5 Observation, Inspection and Testing. Owner and any government agency inspector ("**Inspector**") shall have the right, but not the obligation, to observe, inspect or test the Work at any time, but that observation, inspection or testing is solely for the benefit of Owner and is not for Contractor's benefit. Contractor shall cooperate with Owner and Inspector during any such inspection. The failure by Owner or Inspector to note defects in the Work during an inspection shall not waive or vary any of Contractor's obligations, representations or warranties related to the Work.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses, approvals, and as-built drawings necessary for, or applicable to, the performance of the Work. Contractor shall provide copies to Owner immediately upon request.

6.8 Change Orders. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("**Change Order**") or Purchase Order signed by Owner and Contractor before the commencement of such changes. Contractor shall comply with any Change Order requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including but not limited to, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not

INITIALS: OWNER AD CONTRACTOR BF

limited to trash, unused building materials, garbage, refuse or rubbish ("**Waste**"), caused by its operations and shall remove all of Contractor's materials at the conclusion of the Work. If materials are furnished by Owner, Contractor shall move all usable materials at the conclusion of the Work to a location designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon Owner's demand and may be deducted from any sums owed Contractor.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "**Work Site**"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

7.2 Safety Laws. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations ("**Safety Law**"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of, or noncompliance with, the Safety Law, and shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS** from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation or noncompliance by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, of the Safety Law, or safety citation, regardless of any alleged fault of Owner. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and, if required by law, provide written notice to Owner of the contact person responsible for Contractor's safety compliance.

7.3 Hazardous Materials. Contractor shall not permit any Hazardous Substances, defined below, to be brought onto or stored at any job site or used in the construction of the Work, except for commonly used construction materials, provided however, that all such material shall be handled in full compliance with all laws, ordinances and regulations. All notices required to be given with respect to such products shall be given by Contractor. Contractor shall not release or dispose, nor allow any other person to release or dispose, of Hazardous Substances or waste at any job site or into the soil, drains, surface or ground water, or air. "**Hazardous Substance**" means any substance or material which any state, federal or local governmental authority determines or designates as capable of posing a risk of injury to health, safety, property or the environment.

7.4 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, agents, subcontractors or suppliers at a job location, or performance of the Work by any person under the influence of alcohol or drugs. "**Drugs**" shall include any substance, whether or not illegal, which upon exposure, ingestion, inhalation, injection or by any other introduction, may impair one's ability to safely perform the Work.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. For the longer of ten years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work shall conform to the specifications of this Agreement (including but not limited to the standards referenced in Subsection 6.1), shall be free from any defects or deficiencies in workmanship or materials, shall comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, shall meet or exceed the FHA/VA minimum property standards, and shall comply with the Home Owners' Warranty, defined below and its applicable warranty standards (which Contractor has read and understands). All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects. Contractor shall be liable to make good or promptly repair all Work not complying with the standards set forth in this Section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Subsection 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, any initial home purchaser of property subject to the Work: (i) for a period of ten (10) years all structural elements, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; and (iii) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (a) any statutory warranty or (b) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner, including but not limited to the Residential Warranty Corporation Program (a "**Home Owners Warranty**"). Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Home Owners Warranty that is longer than the warranty periods stated above; provided, however, failure to give that notice will not affect the extension of the warranty period to the applicable warranty period under the Home Owners Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform warranty services thereafter.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product information, and guarantees by manufacturers on components of the Work, including any appliances or equipment, and shall furnish all certificates required by any third parties such as any municipality, the VA, or the FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and shall not limit or reduce any applicable statutes of limitation.

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

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9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. TO THE EXTENT PERMITTED BY LAW, CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS OR SIMILAR CLAIMS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the lesser of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of this State.

9.3 Lien Claim Indemnity. If any liens, affidavits of claim, stop payment notices, or lis pendens arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such liens, affidavits of claim, stop payment notices, or lis pendens to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such liens, affidavits of claim, stop payment notices, or lis pendens, and further agrees immediately upon Owners' request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge any and all liens, affidavits of claim, stop payment notices, or lis pendens, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any home purchaser in discharging the liens, affidavits of claim, stop payment notices, or lis pendens whichever remedy Owner elects in its sole and absolute discretion. This Section shall be in addition to any rights Owner has under applicable law with respect to such liens, affidavits of claim, stop payment notices, or lis pendens.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF, ATTORNEYS' FEES AND INTEREST), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (2) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR OR BY CONTRACTOR'S AGENTS OR EMPLOYEES, OR BY ITS SUPPLIERS OR SUBCONTRACTORS OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES; (3) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION, OR ANY STRICT LIABILITY, OF CONTRACTOR OR ANY OF CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, SUPPLIERS OR SUBCONTRACTORS, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR (4) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION, OR ANY STRICT LIABILITY, OF INDEMNITEE RELATED IN ANY WAY TO THE WORK. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY. THE DEFENSE DUTY IS TRIGGERED BY ALLEGATIONS IN A LAWSUIT OR OTHER SIMILAR ACTION, REGARDLESS OF WHETHER THEY ARE GROUNDLESS, FALSE OR FRAUDULENT, OR ALTERNATIVELY BY ANY FACTS (EXTRINSIC TO THE ALLEGATIONS) NOT PLED, OR NOT PLED WITH SPECIFICITY, BY THE CLAIMANT. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY INDEMNITEE AGAINST LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR AGREES THAT ITS OBLIGATIONS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

10.3 NO BAILMENT. CONTRACTOR AND ITS EMPLOYEES, PERSONNEL, AGENTS, SUPPLIERS, AND SUBCONTRACTORS, OF ANY TIER, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS, MATERIALS, OR EQUIPMENT; OR (2) ANY DAMAGE TO SUCH TOOLS, MATERIALS OR EQUIPMENT.

10.4 Subcontractors and Suppliers Indemnity Obligations. Contractor shall require each of its subcontractors to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth in Section 13 of this Agreement. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the acts and omissions of any subcontractor or supplier who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed also to be the obligation of the subcontractors or suppliers to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Requirements Applicable to All Required Insurance. Prior to commencing any Work under this Agreement, and until expiration of the periods set out below, Contractor shall maintain at its expense such insurance as will protect Contractor and Owner from claims and liabilities that may arise out of Contractor's operations under this Agreement, whether such operations are performed by Contractor or its subcontractors or suppliers, or any other person involved in performing Contractor's obligations under this Agreement. All policies of insurance provided and maintained by Contractor pursuant to the Agreement shall provide for a waiver of subrogation in favor of Owner, D.R. Horton, Inc., all affiliates and subsidiaries of

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D.R. Horton, Inc., and their respective affiliates, officers, directors, and employees (collectively "Horton") for damages to the extent covered by such policies. All policies provided and maintained pursuant to this Agreement shall indicate that coverage applies in the state where the Work is being performed; and are written by an insurer licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor determines to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement. In the event that Contractor obtains insurance coverage that is broader than the minimums required by this Agreement, this Agreement shall be deemed to require the broader coverage, including but not limited to any greater limits and any excess or umbrella coverages. Coverage obtained by Contractor with Horton as an additional insured shall be primary, with any insurance of Horton being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work. Contractor shall immediately notify Owner in writing of any incident, occurrence, injury, or situation related in any way with the Work which may give rise to any claim or loss under any of the insurance coverages required by this Section 11.

11.2 Commercial General Liability. Contractor shall maintain Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with a minimum per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and a minimum aggregate limit of no less than Two Million Dollars (\$2,000,000.00). The CGL Policy shall apply separately to Contractor's Work under this Agreement, and shall protect against bodily injury, property damage, and personal injury claims arising from the exposures of: premises-operations; products-completed operations, including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); independent subcontractors; contractual liability covering the indemnity obligations set forth in this Agreement; and where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type, nature, or volume of the Work or limit the type of structure or number of units on which the Work is to be performed. The CGL Policy shall not contain a deductible or self-insured retention of more than Twenty Five Thousand Dollars (\$25,000.00), and shall allow the satisfaction of any and all deductible or self-insured retention through payments made by any third party, including but not limited to Owner or any additional insured, co-insureds, co-insurers, or insureds other than the primary or first named insured. Contractor shall continuously maintain its CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work. To the fullest extent permitted by law, Contractor shall add Horton as Additional Insureds, specifically identifying Horton, on the CGL Policy covering both ongoing operations and completed operations using endorsement form CG 2010 1185 or, if unavailable, both forms CG 2010 1001 and CG 2037 1001, or endorsement forms providing equivalent coverage.

11.3 Workers Compensation and Employers Liability Insurance. Contractor shall maintain Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law and Employer's Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) for each accident for bodily injury, One Million Dollars (\$1,000,000.00) for bodily injury by disease, and One Million-Dollars (\$1,000,000.00) for each employee for bodily injury by disease. The Workers Compensation and Employers Liability Policy shall not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner.

11.4 Business Automobile Insurance. Contractor shall maintain Business Automobile Liability Insurance coverage with limits of not less than One Million Dollars (\$1,000,000.00) per accident, specifying "all autos" coverage or "all owned, leased, hired or non-owned autos." The Business Automobile Liability Policy shall not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner. Owner shall be included as an Additional insured on the Business Automobile Liability Policy.

11.5 Professional Liability Insurance. If Contractor's Work includes design services, Contractor shall maintain Contractor's Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment. The policy obtained to satisfy this requirement not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner.

11.6 Proof of Insured Status. Prior to commencing the Work, Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance signed by a duly authorized representative of the insurers and showing compliance with the insurance requirements set out above, including endorsements adding Horton as Additional Insured and waivers of subrogation. Alternatively, Owner reserves the right to request portions of policies (including but not limited to declarations pages and endorsements) or certified copies of the required policies. Contractor shall not be relieved of any indemnification obligation under this Agreement, including, but not limited to, those undertaken in Section 10 of this Agreement, by securing insurance coverage in accordance with Owner's insurance requirements or by Owner's approval of certificates of insurance or policies. Any acceptance of insurance coverage by Owner shall not be construed as accepting in any way deficiencies in the insurance.

11.7 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER BY OWNER POLICY WITH RESPECT TO PARTICULAR TRADE CATEGORIES IN ITS SOLE AND ABSOLUTE DISCRETION IN EFFECT AT THE TIME WORK IS PERFORMED) TO COMPENSATE OWNER REASONABLY FOR ANY ADDITIONAL COSTS OF ITS WORKERS COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR CONTRACTOR AND ITS EMPLOYEES UNDER THIS AGREEMENT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.8 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Horton as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with this Agreement.

11.9 Subrogation. Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including but not limited to claims relating to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Owner or any Indemnitee, and any of their consultants, subcontractors, agents, employees and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or if another contractor's

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work, or other property, is damaged by an act or omission of Contractor, or its employee, agent, supplier, or subcontractor, of any tier, or their respective employee or agent, Owner shall have the right to elect, at its sole, absolute discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs to complete, repair, or replace, plus any related costs or damage including re-inspection fees, with any excess to be paid to Contractor. If such costs exceed the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location as a result of Contractor's acts or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or (viii) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may set off from amounts owing to Contractor hereunder any amounts owing by Contractor to Owner's parent company, any subsidiary or affiliate, under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("**Disputes**") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not mediate before seeking other relief.

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("**FAA**"). All demands for arbitration shall be made before the expiration of the applicable statutes of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified or corrected only as permitted by the FAA.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator(s) mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes against Owner, is for One Million Dollars (\$1,000,000.00) or more, but only one arbitrator shall be appointed if the Dispute is for less than One Million Dollars (\$1,000,000.00). If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

13.5 Rules. To the extent not in conflict with the FAA, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("**AAA**") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) can be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner. If multiple lawsuits or arbitrations are commenced, Owner in its sole discretion may consolidate them into a single proceeding. Notwithstanding any other provision of this Section 13, if Owner determines in its sole discretion that a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect unilaterally to waive mediation or arbitration and to litigate the Dispute in court with Contractor.

14. TERMINATION.

14.1 Termination by Owner. This Agreement shall remain in full force and effect until terminated in writing by Owner by mailing notice to Contractor. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) days written notice to Owner before the effective date of any termination by Contractor, and shall perform fully under this Agreement during that notice period.

14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor

INITIALS: OWNER , CONTRACTOR .

is duly authorized and has full power to execute and deliver this Agreement; (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement; (iii) this Agreement is or will be (when executed) a binding obligations of Contractor, enforceable in accordance with its terms; (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority; (v) Contractor has, and each Contractor's employees, agents or subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement; (vi) Contractor is in compliance with all governmental requirements to which it is subject; and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to amend and supersede all prior Independent Contractor Agreements (other than any Master National Independent Contractor Agreement) for this State or other prior understandings or written or oral agreements regarding Work in this State, specifically including but not limited to all prior pre-printed standard contractor/subcontractor agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods or services or both by Contractor relating to the subject matter herein. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work and shall be deemed subject to the terms of this Agreement. Any future Pricing Schedules or Purchase Orders entered into hereafter shall also be deemed to be subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices and quantities of sale only. Nothing in any subsequent agreement or document, unless a new Independent Contractor Agreement for this State is executed, shall alter the terms set forth in this Agreement. To the extent possible, this Agreement shall be deemed to supplement the terms of any other agreement or document, unless a new Independent Contractor Agreement is executed. In the event of any conflict between this Agreement and other such documents, this Agreement shall be deemed to control and prevail. Except as otherwise provided in this Agreement, no amendment or supplement to this Agreement shall be valid or binding unless in writing and signed by both Owner and Contractor. Notwithstanding anything in this Subsection to the contrary, this Agreement shall not amend or supersede any Master National Independent Contractor Agreement, but shall supplement its terms. In the event of a conflict, to the extent permitted by law, the Master National Independent Contractor Agreement shall control.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights, responsibilities, and obligations under this Agreement are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Any attempted assignment shall be null and void. This restriction includes, but is not limited to, the delegation or subcontracting of any Work or any amounts which may become due to Contractor as a result of the Work. Contractor shall remain fully liable under this Agreement regardless of any consent by Owner to any assignment or delegation of duties by Contractor, including but not limited to any work by a subcontractor. Contractor shall ensure that any subcontractor receives a copy of this Agreement and agrees in writing to be fully responsible for all obligations of Contractor under this Agreement, including but not limited to the insurance and indemnity provisions. Contractor shall also ensure that Owner is an intended third party beneficiary of any subcontractor agreement by including a specific provision to that effect. Contractor shall be responsible for enforcing any warranties given by its subcontractors, suppliers or manufacturers. Nothing contained herein, however, shall create any contractual relationship between Owner and any subcontractor, nor create any obligation on the part of Owner to make payment of any sums to any subcontractor. Subject to the restrictions and prohibitions on assignment set forth in this Subsection, the terms of this Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns. Owner may freely assign this Agreement, in whole or in part.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No act or conduct other than a specific, written waiver of a right shall be deemed a waiver by Owner. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina, and is applicable to Work for all construction projects in this State. In the event Contractor performs any work for Owner, or its parent company, affiliate or subsidiary, for a project in another State, and Contractor has not executed a written Independent Contractor Agreement for that State, Contractor hereby agrees that such work shall be governed by the terms and conditions of the form Independent Contractor Agreement of Owner (in use at the time of execution of this Agreement) for that State, which shall be deemed effective on the day this Agreement is executed. Upon request, Owner will provide Contractor with applicable Independent Contractor Agreements.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

18. NOTICES. All notices required or permitted pursuant to this Agreement or otherwise shall be in writing and shall be delivered as follows: to Contractor at Contractor's business address as shown on page one (1) of this Agreement; to Owner through Owner's official Registered Agent for service of legal process in the state where the Work is performed at that Registered Agent's registered office. Notices may be given by personal delivery, facsimile, commercial overnight delivery service, personal delivery or ordinary mail and shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by commercial overnight delivery service, and upon confirmation if sent by facsimile transmission or by personal delivery. Rejection, refusal to accept or the inability to deliver because of changed address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or subsections.

SOUTH CAROLINA VERSION (DECEMBER 9, 2016)

INITIALS: OWNER AB, CONTRACTOR BF



MASTER NATIONAL ACCOUNTS INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR: ProBuild Holdings, Inc. and its wholly-owned subsidiaries ("Contractor")

☐ Sole Proprietorship ☐ Partnership ☒ Corporation ☐ L.L.C ☐ Other (ATTACH W-9)

Social Security No. or Tax ID No.: 56-2549797 for ProBuild Holdings, Inc. Please see ProBuild subsidiaries' attached W-9 forms.

Name of Owner(s)/Officer(s): Paul Hylibert -- CEO, ProBuild Holdings, Inc.

Division Name: All ProBuild Locations Area Name: All ProBuild Locations Assigned Vendor No.: 1173743

Address for All Notices: 7595 Technology Way, Suite 500 City: Denver State: CO Zip Code: 80237

Telephone: (303) 262-8500 Fax: (303) 262-8381

E-Mail Address: kamlin.nedved@probuild.com

Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.

This agreement (the "Agreement") is entered into on this 8th day of May, 2008, between D.R. Horton, Inc., ("Owner") and Contractor.

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of the Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement (the "Work") shall include all work performed and materials supplied by Contractor to Owner, including, but not limited to, the labor, services and/or materials, equipment, transportation, or facilities necessary to complete the construction-related activities of Owner authorized by written purchase order or similar document by Owner's authorized field personnel and accepted by Contractor. The applicable pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing will not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any Work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of Work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to or in place of Contractor.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, method and performance of the Work. The results achieved shall satisfy the requirements of this Agreement. Contractor shall be responsible for the performance of its employees and permitted subcontractors, and all personnel used by Contractor in the performance of Work shall be qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further agrees to provide written notification to all of its present and future employees of Contractor's provision for Worker's Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work herein covered or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total price per item or service due to Contractor.

3.2 Taxes. Contractor shall pay and shall be solely responsible for all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or permitted subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate; provided however, Contractor may collect and remit such sales taxes from Owner by including such sales or use taxes on the invoice for the labor or materials in question. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER BEFORE CONTRACTOR GIVES OWNER WRITTEN NOTICE OF SUCH PRICE INCREASE IN ACCORDANCE WITH THE TERMS OF THE THEN CURRENT PRICING SCHEDULE.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than ninety (90) days after completion of the Work. Owner shall pay Contractor within the locally agreed credit terms after receipt of an invoice for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order.

4.2 Payment to Subcontractors. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed from Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Owner may, at any time, in its

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA

Executed this 8 day of May, 2008.

Owner:

By: [Signature]

Name: VP Head Nat'l Accts

Title: Paul Contino

Contractor:

By: [Signature]

Name: Kamlin R. H. Nedved

Title: Director of National Accounts

INITIALS: OWNER [Initials] CONTRACTOR [Initials]

discretion, make checks payable jointly to Contractor and one or more third parties providing work for or supplying materials to Contractor; and these joint payments shall satisfy amounts owed by Owner to Contractor, notwithstanding the fact that the third parties may not endorse the checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the Contract Price after Contractor has been paid in full for all materials and labor shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of Work later found to be defective and shall not release Contractor from liability for warranties and warranty service and/or defective Work. Contractor shall remedy any defects and pay for any damage resulting from any defects in or caused by the Work or as required by any other contracts between Owner and Contractor or by law or customary practice. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or assigns is an acceptance of the Work or materials not in compliance with this Agreement.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work. Subject to the other provisions of this Agreement, Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors. Prior to Contractor being obligated to perform any Work, Owner and Contractor must agree on the completion date for such Work.

5.2 Commencement of the Work. Owner shall issue a written authorization (either pursuant to a written purchase order, payment schedule, or work invoice ("Purchase Order")) to commence the Work and Contractor shall not commence the Work at a job location until Contractor has received instructions to begin Work at a specific job location. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such work is interrupted at the direction of Owner, Contractor shall resume such work within two (2) working days of Owner's direction to resume.

5.3 Changes in Construction Schedule. Contractor agrees that Owner shall have the right to make changes to the schedule of Work at Owner's discretion and agrees to use commercial reasonable efforts to comply with such changes; provided however, if such changes result in a delay in the performance of the Work in excess of two (2) months, Contractor shall have the right to reprice the Work or rescind its agreement to perform/provide the Work.

6. PERFORMANCE STANDARDS.

6.1 Applicable Standards. Contractor shall perform all Work in a good and workmanlike manner, in accordance with the plans and specifications of Owner, according to industry standard practices, and warrants that the Work will meet or exceed FHA minimum property standards, VA requirements, all laws (statutory or common) and regulations, and any applicable building code requirements.

6.2 Contractors' Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date agreed to by Owner and Contractor pursuant to Section 5.1 and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, as the plans and specifications effect the Work and materials incorporated in the Work, and that the plans and specifications are clear and unambiguous, and has accepted and agreed to be bound by all such requirements.

6.3 Government Requirements. Contractor will comply with all applicable federal, state, local, and county statutes, ordinances, regulations, codes, licensing requirements and standards, and the requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 as amended, as well as the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., or similar laws or regulations and the rules, regulations, or orders of all public authorities relating to performance of the Work, including without limitation, the procurement and posting of all required permits and notices. In addition, Contractor will not discriminate in its hiring or employment and will follow all state and federal employment laws or regulations. Contractor shall perform background checks and use only appropriate employees to perform warranty or repair work after a house is occupied.

6.4 Indemnity. To the fullest extent allowed by law, Contractor will indemnify, defend, and hold Owner harmless from the payment of any fine or penalty imposed under applicable laws and regulations relating to the Work for failure of Contractor to comply or cause its employees or subcontractors to comply with those laws and regulations.

6.5 Observation and Testing by Owner and Repair by Contractor. Owner shall have the right to observe or test the Work at any time during or after construction, but that observation or testing is solely for the benefit of the Owner and is not for Contractor's benefit. Owner's failure to note defects in the Work during an inspection will not waive any of Contractor's obligations, representations or warranties related to the Work. Notwithstanding anything contained in this Agreement to the contrary, all Work shall be performed and any defects shall be corrected in accordance with this Agreement to the satisfaction of Owner.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work, and shall report in writing to Owner any defects prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractor's work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses and approvals necessary for or applicable to the performance of the Work.

6.8 Change Orders. The Contractor shall furnish the materials for and to make all changes requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes.

6.9 Subdivision Rules. Contractor shall comply fully with all known rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site safety requirements. This agreement includes those rules which provide for fines payable to Owner by Contractor for failure to comply with such rules. Contractor shall have no duty to insure that plans and specifications of Owner conform with the rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste materials or rubbish caused by its operations and shall remove all of Contractor's materials, and if materials are furnished by Owner, Contractor shall move all usable materials provided by Owner to a location designated by Owner. Contractor shall sweep out any waste material from inside the home under construction upon completion of their operation. All refuse shall be placed in receptacles provided or at locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up activities and collect a One Hundred Dollar (\$100.00) fine from Contractor for each incident.

INITIALS: OWNER RE CONTRACTOR KW

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The cost of such clean-up and the aforementioned fine shall be deducted from any sums owed by Owner to Contractor, or shall be immediately payable by Contractor upon demand therefore by Owner.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from or in any way related to the Work or conditions at the construction site on which the work is being performed (the "Work Site") created by Contractor, and ensuring full compliance with all government safety and OSHA rules and regulations. Owner reserves the right to set minimum standards or rules relating to work on its site. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OWNERS MINIMUM REQUIREMENTS. Contractor shall immediately notify Owner's construction supervisors of any unsafe condition or practice observed on the Work Site. Further, Contractor shall immediately notify Owner of any accidents or injuries on the Work Site. Contractor shall have an ongoing safety program and conduct inspections to determine that safe working conditions and equipment exist and safe practices are observed. Contractor shall prohibit and prevent the presence of children under age 18 from the Work Site.

7.2 Safety Laws and Indemnity Agreement. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations. Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq. and provide written notice to Owner of the contact person responsible for Contractor's safety compliance.

7.3 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, permitted subcontractors or suppliers at a job location or performance of the Work by any person under the influence of alcohol or drugs.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate corporations, or successors and assigns, that all labor performed and materials furnished by Contractor shall conform to the specifications of this Agreement, shall be free from any defects or deficiencies in workmanship or materials, and will comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, will meet or exceed the FHA/VA minimum property standards, and will comply with the Residential Warranty Corporation program being issued by Owner to homeowners in conjunction with the sale of the home which incorporates the Work, which is attached hereto as Exhibit A or such other similar warranty as Owner and Contractor may agree upon (the "Home Owners Warranty"). Contractor acknowledges that it has read and understands the aforementioned warranty. All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects. Contractor shall make good and promptly repair all Work not complying with the standards set forth in this Section at its own expense.

8.2 Homeowners Warranty. In addition to the warranty in Paragraph 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the date of the completion of the Work: (i) for a period of ten (10) years all structural elements, including but not limited to, roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; (d) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under any statutory warranty. If there is any discrepancy between this provision and any warranty set forth in the Home Owners Warranty, this provision shall control.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty obligations, Contractor's indemnity obligations, or the ability of Owner to request Contractor to perform warranty services in the future.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment, and shall furnish all certificates required by any municipality and/or VA and/or FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and are not in limitation of periods of applicable statutes of limitation.

9. LIENS AND RETAINAGE.

9.1 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all installation Work in progress, the greater of ten percent (10%) or any allowable retainer amount set forth in state lien statutes where the Project is located. For purposes of clarification, this section shall not apply to any Work other than installation Work.

9.3 Lien Claim Indemnity. If any liens are filed against Owner relating to portions of the Work for which Owner has paid Contractor, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such lien or affidavit to be removed and released of record. Contractor agrees to **INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS** from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any liens relating to portions of the Work for which Owner has paid Contractor, and further agrees at Owners' request to: (i) procure a bond to indemnify Owner and any home purchaser from Owner, in an amount sufficient to discharge that lien, or (ii) refund to Owner all monies, including any additional amount necessary to cover all of Owner's or home purchaser's attorneys' fees and court costs paid in discharging the lien, whichever remedy Owner elects in its sole and absolute discretion.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL HOLD HARMLESS, AND INDEMNIFY OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), AGAINST ALL DEMANDS, CLAIMS, ACTIONS, CAUSES OF ACTION, PROCEEDINGS, LAWSUITS, SETTLEMENTS, JUDGMENTS, FINES, PENALTIES, LOSSES OR EXPENSES (INCLUDING ATTORNEYS' FEES AND INTEREST), FOR DAMAGES FROM BODILY OR PERSONAL INJURY, DEATH, THE DESTRUCTION OR LOSS OF PROPERTY (INCLUDING LOSS OF USE), OR ANY OTHER KIND OF DAMAGES OR HARM (COLLECTIVELY, "LOSSES"), ARISING OUT OF, OR RESULTING FROM, OR RELATED TO THE WORK PERFORMED AND/OR THE MATERIALS SUPPLIED UNDER THIS AGREEMENT, INCLUDING LOSSES FOUNDED PARTIALLY UPON THE NEGLIGENT ACTS OR OMISSIONS OF

INITIALS: OWNER R, CONTRACTOR KW

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INDEMNITEE IN FAILING TO SUPERVISE CONTRACTOR, ATTRIBUTABLE IN WHOLE OR IN PART TO: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS COVENANTS OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (2) THE WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR OR BY CONTRACTOR'S AGENTS OR EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, AND/OR ALL OTHER ENTITIES OVER WHOM THE CONTRACTOR MAY EXERCISE CONTROL; OR (3) ANY NEGLIGENT OR INTENTIONAL ACT AND/OR OMISSION OF CONTRACTOR RELATED IN ANY WAY TO THE WORK (COLLECTIVELY, "INDEMNIFIED LOSSES"). IT IS THE EXPRESS INTENT OF THE PARTIES IN AGREEING TO THIS SECTION 10 THAT CONTRACTOR SHALL INDEMNIFY INDEMNITEE, FOR THE NEGLIGENCE OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES AND ANYONE OVER WHOM CONTRACTOR EXERCISES CONTROL AS WELL AS FOR OWNER'S AND/OR INDEMNITEE'S CONCURRENT OR JOINT NEGLIGENCE ARISING FROM A FAILURE TO PROPERLY SUPERVISE CONTRACTOR. THIS SHALL INCLUDE, BUT IS NOT LIMITED TO, DEMANDS, CLAIMS, OR ACTIONS ASSERTED BY ANY PRESENT OR FUTURE OWNER OF THE HOUSE INCORPORATING THE WORK, OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER). THE INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

10.2 NO INDEMNITY FOR CERTAIN LOSSES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR OR OTHERWISE REQUIRED TO HOLD HARMLESS OR INDEMNIFY INDEMNITEE FOR LOSSES ARISING OUT OF, OR RESULTING FROM, OR RELATED TO THE FOLLOWING (COLLECTIVELY, "NON-INDEMNIFIED LOSSES") (A) THE WORK PERFORMED AND/OR MATERIALS SUPPLIED BY, OR THE NEGLIGENT ACTS OR OMISSIONS OF, OTHER SUBCONTRACTORS OF INDEMNITEE OR (B) THE NEGLIGENCE OF INDEMNITEE EXCEPT TO THE EXTENT THAT SUCH NEGLIGENCE RELATES TO THE FAILURE TO PROPERLY SUPERVISE CONTRACTOR FOR WHICH CONTRACTOR SHALL BE REQUIRED TO SO INDEMNIFY INDEMNITEE PURSUANT TO SECTION 10.1 ABOVE.

10.3 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, AND PERMITTED SUBCONTRACTORS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS AND EQUIPMENT, AND WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS OR EQUIPMENT, OR (2) ANY DAMAGE TO THEIR TOOLS OR EQUIPMENT. CONTRACTOR'S INDEMNITY OBLIGATIONS WILL SURVIVE THE TERMINATION OF CONTRACTOR OR THIS AGREEMENT.

10.4 DUTY TO DEFEND. CONTRACTOR SHALL HAVE A DUTY TO DEFEND INDEMNITEE AS TO ANY INDEMNIFIED LOSS EVEN IF THE ALLEGATIONS INCLUDE NON-INDEMNIFIED LOSSES AS WELL. NOTWITHSTANDING THE FOREGOING, IF A COURT OF COMPETANT JURISDICTION DETERMINES A PORTION OF THE LOSSES CONSTITUTE NON-INDEMNIFIED LOSSES, INDEMNITEE SHALL BE RESPONSIBLE TO AND SHALL PROMPTLY REIMBURSE CONTRACTOR FOR A PERCENTAGE OF THE AGGREGATE COSTS OF DEFENSE THAT IS EQUAL TO A FRACTION, THE NUMERATOR OF WHICH IS THE AMOUNT OF NON-INDEMNIFIED LOSSES AND THE DENOMINATOR OF WHICH IS THE TOTAL OF THE INDEMNIFIED AND NON-INDEMNIFIED LOSSES AS DETERMINED BY SUCH COURT OR ARBITRATOR. SUBJECT TO THE FOREGOING, CONTRACTOR SHALL BE RESPONSIBLE FOR THE COSTS AND EXPENSE OF SUCH DEFENSE AND SHALL HAVE THE SOLE RIGHT TO SELECT LEGAL COUNSEL TO BE USED IN SUCH DEFENSE.

10.5 Subcontractors and Suppliers Indemnity Obligations. For all purposes of this Agreement, Contractor shall be fully responsible for all of the actions of any subcontractor engaged by Contractor, whether in written agreement or otherwise, or who performs any part of the Work.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with completed operations coverage which contains a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit of no less than Two Million Dollars (\$2,000,000.00) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type of, or nature of, the Work or limit the type of structure on which the Work is to be performed. The CGL policy shall not contain a deductible or self insured retention of more than \$250,000.00. Contractor shall continuously maintain a CGL Policy covering completed operations for any applicable statute of repose for commencing lawsuits associated with the Work.

11.2 Other Insurance. Contractor agrees to carry (a) Worker's Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Worker's Compensation obligations imposed by law; (b) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (c) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person (Bodily Injury) and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner as an Additional Insured on the CGL Policy or policies required above covering both on-going operations and completed operations (equivalent to form CG20101185 or form CG2037). Coverage obtained by Contractor naming Owner as an additional insured shall be primary with any insurance of Owner being excess coverage. That insurance coverage will be carried continuously during the term of this Agreement and thereafter as required by this Agreement with insurance companies acceptable to Owner (acting reasonably). That insurance shall provide for a waiver of subrogation. All insurance shall be with a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A- and a financial size rating of VII as determined by A.M. Best.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the required policies. Each Certificate of Insurance or policy shall contain an unqualified clause to the effect that (i) the insurer will endeavor to provide thirty (30) days prior written notice to Owner prior to cancellation, non-renewal, adverse change, or reduction of amounts of coverage, (ii) the policy shall be carried continuously from the date of commencement of the Work until expiration of the period of the Contractor's warranty provided in this Agreement, (iii) the policy shall specifically identify Owner as an Additional Insured, and (iv) the policy shall indicate that coverage applies in the state where the Work is being performed. The amounts and types of insurance required by this Agreement are

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the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself and the Work required to be performed under this Agreement.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER IN ITS REASONABLE DISCRETION) IN EFFECT AT THE TIME WORK IS PERFORMED TO COMPENSATE OWNER FOR ANY ADDITIONAL COSTS OF ITS WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS, CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS CONTRACT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work to the extent permitted under this Agreement, Contractor guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Owner as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

11.7 Subrogation. Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including, without limitation, claims relating to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against the Indemnitees for Indemnified Losses. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or another contractor's work is damaged by an act for which Contractor, or its employees, agents or subcontractors, are responsible, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct such Work, replace or repair any defective material, or repair any damage. Contractor shall make all repairs and correct such within twenty-four (24) hours of notice in an emergency (as determined by Owner in its reasonable discretion) and within forty-eight (48) hours notice on a non-emergency basis; or (ii) retain a third party or undertake to perform those duties, and retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld resulting in a deficiency, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and reasonable attorneys' fees, incurred by Owner, and shall pay to Owner this amount within thirty (30) days of demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Paragraph 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or permitted subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location as a result of Contractor's actions or omissions; (iii) in Owner's reasonable discretion, Owner believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement or the specifications; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order that is Contractor's obligation under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary tools, material, or equipment for, or cleaned up after, the Work; (viii) Contractor fails to comply with any other provision of this Agreement. Prior to any exercise of its rights under this section, Owner shall provide written notice to Contractor of the alleged breach by Contractor and Contractor shall have thirty (30) days to cure such breach. Any amounts withheld by Owner pursuant to this section shall not be greater than the amount reasonably necessary to cure Contractor's alleged breach of this Agreement.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement and rights and remedies available under this Agreement shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. Owner shall have a right to collect from Contractor its reasonable attorney's fees and expenses incurred in enforcing Contractor's obligations.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to the Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution pursuant to this Section 13. Disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking equitable relief from an arbitrator or a court of appropriate jurisdiction.

13.3 Arbitration. If mediation fails, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq., regardless of any other choice of law provision in any underlying contract or this Agreement. All demands for arbitration shall be made before the expiration of the applicable statutes of limitations and repose. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court of competent jurisdiction.

13.4 Number of Arbitrators. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes, is over more than \$200,000, but only one arbitrator shall be appointed if the Dispute is \$200,000 or less. The AAA's Code of Arbitrator Ethics (revised March 1, 2004) is applicable to all arbitrations.

13.5 Rules. To the extent not in conflict with the Federal Arbitration Act, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

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13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, a party may join the other party in any litigation, mediation, or arbitration initiated against such party by a third person so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) shall be subject to resolution in a single forum in the same proceeding. If multiple lawsuits or arbitrations are commenced, they shall all be consolidated into a single proceeding to the extent possible. Notwithstanding any other provision of this Section 13, if a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Contractor or Owner may elect to unilaterally waive mediation or arbitration and litigate the Dispute.

13.7 Costs and Expenses. Each party shall initially be responsible for its own costs and attorney's fees and similar costs, and shall share the expenses of the arbitration equally; provided that the arbitrator(s) shall award all expenses of the arbitration, costs and reasonable attorney's fees and similar costs to the prevailing party.

13.8 Lien Rights. Notwithstanding any provision in this Section 13 to the contrary, Contractor reserves the right to take any and all steps legally necessary to file and maintain any applicable statutory mechanic's, materialman's or similar lien to secure payment for the Work provided pursuant to this Agreement.

14. TERMINATION.

14.1 Termination by Owner for Cause of Convenience. This Agreement shall remain in full force and effect until terminated in writing by mailing notice to the other Party. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement. If Owner terminates this Agreement in the absence of a breach or default of Contractor, Owner shall be required to pay Contractor for any Work that has been completed and any costs incurred by Contractor in obtaining materials and labor to perform Work for which a purchase order or similar written authorization has been issued by Owner and accepted by Contractor; provided however, Contractor shall take commercially reasonable efforts to mitigate any such costs.

14.2 Termination by Contractor. Contractor may terminate this Agreement at any time, whether or not Owner is in breach or default of this Agreement. If Contractor terminates this Agreement in the absence of a breach or default by Owner, Contractor shall be required to complete all Work for which a purchase order or similar written authorization has been issued by Owner and accepted by Contractor.

14.3 Survival. All obligations, duties and warranties for Work performed under this Agreement shall survive termination.

15. REPRESENTATIONS.

15.1 Contractors Representations. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement, (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement, (iii) this Agreement is or will be (when executed) a binding obligation of Contractor, enforceable in accordance with its terms, (iv) this Agreement and Contractor's performance does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority, (v) Contractor has, and each Contractor's employees, agents or permitted subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement, (vi) Contractor is in compliance with all governmental requirements to that relate to the Work, and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

15.2 Owner's Representations. Owner represents to Contractor that: (i) the person executing this Agreement on behalf of Owner is duly authorized and has full power to execute and deliver this Agreement, (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement, (iii) this Agreement is or will be (when executed) a binding obligation of Owner, enforceable in accordance with its terms, (iv) this Agreement and Owner's performance, does not and will not violate any provisions of Owner's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Owner is subject, and the same do not require the consent or approval of any governmental authority, and (v) Owner has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Owner under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement is entered into on a national basis between the Owner and Contractor and shall be deemed to amend, supersede, and have retroactive effect on all prior Independent Contractor Agreements or other prior understandings or written or oral agreements, specifically including, but not limited to, all prior pre-printed standard contractor/subcontractor agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods and/or services by Contractor relating to the subject matter herein; provided however, the Agreement shall not affect the pricing, quantities or time of performance under any such existing agreement between the parties. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work of the respective operating divisions of Owner and Contractor. Any future Pricing Schedules or Purchase Orders entered into hereafter shall also be deemed to be subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices, quantities and time of performance only of sale only. Except as otherwise provided in this Agreement, no provision of this Agreement may be amended or supplemented except in writing, signed by the both Owner and Contractor.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights and obligations are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole discretion. Subject to the restrictions and prohibitions on assignment set forth in this section, the terms of the Agreement shall be binding on, and be for the benefit of, Owner, Contractor, each of Contractor's subsidiaries, and their respective successors, representatives, heirs and assigns.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No delay or failure by Owner or Contractor to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of Texas.

16.7 Force Majeure. Notwithstanding anything in this agreement to the contrary, Contractor shall not be liable for any failure or delay in delivery, installation, furnishing of materials or services by reason of an act of God, war, civil disturbance, strike, labor disturbance, storm, fire, flood,

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transportation contingencies, material or labor shortage, law, regulation, act or order of any government or any agency or official thereof, or any other causes not within its control.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Contractor shall provide and transfer ownership to any and all samples and/or shop drawings requested by Owner.

18. NOTICES. All notices required pursuant to this Agreement or otherwise shall be in writing and shall be delivered to the respective business address of Owner and Contractor. However, Contractor's business address shall be as noted on page one (1) of this Agreement. Notices shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by overnight delivery service, and upon confirmation if sent by facsimile transmission.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or articles.

ACCEPTED:
PROBUILD HOLDINGS, INC.

By: Kenneth H. Nedved
Its: Director of National Accts.
Dated: 5/8/08

ACCEPTED:
D. R. HORTON, INC.

By: [Signature]
Its: VP, Dir of Nat'l Accts.
Dated: 5/10/08

INITIALS: OWNER [Signature] CONTRACTOR [Signature]

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Version 1 of the ICA

1. AJ Landscaping & Grading
2. Allpro Textures, LLC,
3. Alpha & Omega Construction Group, Inc.
4. A Grade Above Others, LLC
5. BMC East, LLC D/B/A Coleman Floors, LLC
6. Builders Firstsource Southeast Group, LLC a/k/a Builders Firstsource, Inc
7. Bravo Carpenters, Inc.
8. Caryl Mechanics, II, Inc. and Caryl Mechanicals, Inc.
9. Five Star Construction Inc.
10. Galloway Bell, Inc. a/k/a Galloway-Bell, Inc. II Bget Floored, LLC
11. IBP Asset, LLC d/b/a Blue Ridge Building Products
12. JLS Masonry, Inc.
13. Long Heating & Air Conditioning, Inc.
14. Manale Landscaping, LLC
15. P&T Construction, LLC
16. Rodney Howard Grading Co.
17. Sodfather, Inc.
18. Stock Building Supply, LLC
19. Dupree Plumbing Company, Inc.
20. Willow Tree Landscaping, Inc.
21. CBU Enterprises, Inc.
22. M&M Foundations, LLC

Version 2 of the ICA

1. American Concrete and Precast, Inc.
2. A-Z, Inc.
3. Cannaday Siding and Gutter, Inc.
4. Rite Rug Co

Version 3 of the ICA

1. A&J Framing, Inc.
2. MJ Cowboys, LLC
3. Nazareth Builders, LLC
4. BKF Builders, Inc.
5. Cortes Painting, LLC

Version 4 of the ICA

1. Kings Landscaping, LLC
2. Landshapers, LLC
3. M&L Reyna Construction, LLC
4. NB Contractors, LLC
5. Atlanta Floor Designs Center

Version 5 of the ICA

1. Five Star Foundation, LLC

Version 6 of the ICA

1. Probuild Company a/k/a Probuilding Holdings, Inc.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; AllPro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J Framing,
Inc.; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor
Designs Center; A Grade Above Others,
LLC; Brand-Vaughan Lumber Co, Inc.; BKF
Builders, Inc.; Builders Designhouse, LLC;
BMC East LLC d/b/a Coleman Floor, LLC;
Builders Firstsource Southeast Group, LLC,
a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Cortes Painting, LLC;
CBU Enterprises, Inc.; CPI Security Systems,
Inc.; DOM Group, LLC; Ferguson
Enterprises, Inc.; Five Star Construction Inc.;
Five Star Foundations, LLC; Galloway-Bell,
Inc., a/k/a Galloway-Bell, Inc. II; Get
Floored, LLC; GBS Building Supply – US
LBM, LLC, f/k/a GBS Building Supply, Inc.;
General Shale Brick Inc.; Greener Pastures,
Inc., a/k/a Green Pastures of Aiken, LLC;
IBS Asset, LLC d/b/a Blue Ridge Building
Products; Installed Building Products, LLC,

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**GALLOWAY-BELL, INC. A/K/A
GALLOWAY-BELL, INC II'S
MEMORANDUM IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT
AS TO CLAIMS ASSERTED BY THIRD-
PARTY PLAINTIFF D.R. HORTON, INC.**

a/k/a Installed Building Products II LLC; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danlar, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC, a/k/a M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, Inc., a/k/a P & T Construction, Inc.; P & L Enterprises, LLC; Probuild Company, LLC a/k/a Probuild Holdings, Inc.; Rite Rug Company, Inc., a/k/a, Rite Rug Co.; Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractors Service; Tucker Materials, Inc, a/k/a Gypsum; Silver Line Building Products Corp.; Dupree Plumbing Co., Inc.; UTM Enterprises, Inc; and Willow Tree Landscaping, Inc., and Silver Line Building Products Corporation

Third-Party Defendants.

PLEASE TAKE NOTICE that Galloway- Bell, Inc. a/k/a Galloway-Bell, Inc. II (“Galloway-Bell”), by and through counsel, submits, its Memorandum in Support of its Motion for Summary Judgment as to all claims asserted by Third-Party Plaintiff D.R. Horton, Inc. (“D.R. Horton”) against Galloway-Bell, in addition, Galloway-Bell incorporates co-defendant Builder Services Group, Inc. D/B/A Gale Contractor Services’ arguments in its Memorandum in Support of Motion for Summary Judgment in so much as those arguments apply to batt and blown insulation.

PROCEDURAL BACKGROUND

This class action litigation stems from alleged construction defects and deficiencies in the Rose Hill subdivision in Anderson, South Carolina. There are approximately 221 single-family homes out of 271 single-family homes that are a part of this class action suit. The suit was originally filed on September 25, 2019; however, the suit was then stayed to allow DR Horton an opportunity to comply with the Notice and Opportunity to Cure statute. The Plaintiffs found DR Horton's recommended repairs unsatisfactory and filed a motion for class certification.

Construction began in 2007 and was completed in 2017. The predominant issues relate to the installation of the exterior envelope components, installation of ductwork, failure of HVAC systems, and insufficient grading and drainage of the yards. DR Horton served as the general contractor for the project which began in 2007 and wasn't completed until 2017. The suit was certified as a class action on January 27, 2021. D.R. Horton filed a third-party suit against Galloway-Bell and other subcontractors on March 11, 2021. The Third-Party Complaint includes allegations against Galloway-Bell for negligence, breach of warranty, breach of contract, equitable indemnity, and contractual indemnity.

FACTUAL BACKGROUND

Galloway-Bell was hired by DR Horton to install batt insulation in the attics and walls of 110 homes. They claimed that the class action suit contained allegations that implicated Galloway-Bell's scope of work. However, the complaint contained no such direct allegations against this scope. The Plaintiff retained two experts, Dr. Rhett Whitlock, and Warren Maddox to identify deficiencies with the project and prescribe repairs. Neither expert identified issues with batt insulation. D.R Horton retained two experts, Steve Moore and Chad Jones, to identify deficiencies and prescribe repairs. DR Horton's experts did not identify issues with batt insulation. A status

conference was held on April 21, 2023, where counsel for the Plaintiff represented to the Court that insulation defects were not alleged in this suit. Finally, the Plaintiff's responses to Galloway-Bell's Request to Admit also confirm that there are no known deficiencies or damages related to blown and batt insulation.

I. Plaintiff's Experts

A. Dr. Rhett Whitlock

On April 11, 2013, counsel for Galloway-Bell deposed Rhett Whitlock. The deposition was taken by topic. Before the insulation topic was covered, Plaintiff's Counsel stipulated that the witness had no opinions on insulation:

Q.: Dr. Whitlock, we're going to talk about insulation. Okay?

Mr. Lucey: If I can shorten it up, he has no opinions about insulation defects of any kind, and he's not covering HVAC insulation.

The witness went on to testify that he had not been asked to opine on insulation and he had no plans to do so:

Q. And last but not least, as you sit here today, are you able to opine to a reasonable degree of engineering certainty regarding any installation of insulation at any of the properties out as Rose Hill?

A. I am not. I have not been asked to and I –I don't plan to.

Whitlock Dep. Vol. VI, P. 1553:12-16 & 1555:3-9, attached as Exhibit 1

Dr. Whitlock also produced a report. The report contained a line item for removal and replacement of insulation, but Dr. Whitlock testified this scope did not involve defects from batt and blown insulation:

Q. In your cost estimate where there's line items calling for insulation to be removed and replaced, that has nothing to do with any alleged defects from installation of the batt and blown insulation, correct?

A. That's correct.

Whitlock Dep. Vol VI, P. 1558:1-23, attached as Exhibit 2.

B. Warren Maddox

Mr. Maddox was retained to evaluate HVAC issues. His report included items related to the insulation of duct work, however Mr. Maddox testified this repair did not involve an issue with the installation of insulation.

Q. As far as the blown insulation, you had not included it in that report so you wouldn't be testifying about it. Did I understand that correctly?

A. That's correct.

Q. So is it fair to say that your report of May 7th, 2020, does not include any issues that need to be addressed due to the installation of the insulation since that is not mentioned?

A. That's correct.

Q. And the same thing with respect to your report of January 27th, 2021; again, there are no issues in that that need to be addressed due to the installation of the insulation?

A. That's correct.

Q. And then, finally, just to round it out, your preliminary report dated December 10th, 19 2021, again, there are no issues in that that need to be addressed due to the installation of the insulation, correct?

A. Correct.

W. Maddox Dep. P. 347: 1-22., attached as Exhibit 3.

II. D.R. Horton's Experts

A. Steve Moore

Steve Moore, PE, RRC, REWC of Applied Building Sciences was retained by D.R. Horton to opine on project deficiencies and provide an estimate on the same. Mr. Moore testified that he did not have any criticisms of batt and blown insulation:

Q. And at the risk of asking obvious questions, so sitting here today, you have no criticisms or opinions concerning any installation errors or defects with the installation of the batt or blown insulation at Rose Hill?

A. I have no opinions on the insulation at this point, sir.

Q. Okay. And issues with respect to -- any issues with respect to the batt or blown insulation are not contained in your report or cost of repair estimate?

A. Correct, sir.

S. Moore Dep. P. 611:10-25, Ex. 5, attached as Exhibit 4.

B. Chad Jones

Chad Jones of Warren Forensics was retained to opine about HVAC issues. His report includes issues with HVAC insulation but not the batt and blown insulation performed by Galloway-Bell:

Q. Okay. Did your investigation include any of the batt or blown insulation in the attic?

A. No, sir. No. No, sir.

Q. All right. And I apologize because this is going to seem like an obvious question, but you would be surprised. We've discussed insulation a number of -- multiple times today, but I just want to make clear, the insulation that you have been discussing would have been associated with either being wrapped around the flex duct or included within the rigid ductwork; is that correct?

A. Well, it's actually wrapped on the rigid duct, just to parse it out. And then insulation that would come factory-applied to the flex duct, yes, sir.

...

Q. And maybe a better way to have asked my question originally is that the insulation that we have discussed today in association with the ductwork has nothing to do with the batt or blown insulation?

A. Yes, sir. That's a totally separate issue.

....

Q. And so just to put a point on it, sitting here today, you have no opinions to a reasonable degree of engineering certainty as to any deficiencies with the installation of the batt or blown insulation?

A. I have no opinions to offer you on the batt or blown insulation.

C. Jones Dep. P. 238:15-25; 239:1-5;240: 12-18., attached as Exhibit 5.

III. Court Admissions

On April 21, 2023, Judge Sprouse ordered that counsel for Plaintiff or Counsel for DR Horton to prepare an Order memorializing these stipulations. Inexplicably this Order has not yet been filed but there has been no retraction by Plaintiff's counsel to the statement that deficiencies with batt and blown insulation are not alleged in this suit.

IV. Discovery

Galloway-Bell served Request to admit on the Plaintiff. In those Request, Galloway-Bell requests and Plaintiff admits as follows:

1. Admit that you are not aware of any deficiencies with the insulation installation.

Answer: Admitted as to blown and batt insulation.

2. Admit that you have not identified any damages related to the insulation.

Answer: Admitted as to blown and batt insulation.

Galloway Bell Request to Admit to Plaintiff, attached as Exhibit 6.

V. The Contract

D.R. Horton's third-party suit is based on its independent contractor agreement with Galloway-Bell. That contract contains the following indemnification clause:

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY AGREES TO HOLD HARMLESS, INDEMNIFY, PROTECT AND DEFEND OWNER, ITS PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THE AFOREMENTIONED ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "INDEMNITEE"), FROM AND AGAINST ANY AND ALL DEMANDS, CLAIMS, ACTIONS, CAUSES OF ACTION, PROCEEDINGS, LAWSUITS, SETTLEMENTS, JUDGMENTS, FINES, PENALITIES, LOSSES, ATTORNEYS FEES, LITIGATION COSTS, INTEREST, AND EXPENSES OF ANY KIND (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "LOSSES") FOR DAMAGES FROM BODILY OR PERSONAL INJURY, DEATH, THE DESTRUCTION OR LOSS OF PROPERTY (INCLUDING LOSS OF USE), OR ANY OTHER KIND OF DAMAGES OR HARM, ARISING OUT OF, OR RESULTING FROM, OR RELATED IN ANY WAY TO THE WORK PERFORMED AND/OR THE MATERIALS SUPPLIED UNDER THIS CONTRACT, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY INDEMNITEE. SUCH LOSSES SPECIFICALLY INCLUDE, BUT ARE IN NO WAY LIMITED TO LOSSES ARISING OUT OF OR ATTRIBUTABLE TO: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR OBLIGATIONS OF CONTRACTOR SET FORTH HEREIN; (2) THE WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR, CONTRACTOR'S AGENTS OR EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, AND/OR ALL OTHER ENTITIES OVER WHOM THE CONTRACTOR MAY EXERCISE CONTROL (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "CONTRACTOR'S AGENTS"); (3) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF CONTRACTOR AND/OR CONTRACTOR'S AGENTS; OR (4) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE INDEMNITY FOR LOSSES CAUSED SOLELY BY FAULT OR NEGLIGENCE OF THE INDEMNITEE. THE LOSSES DESCRIBED HEREIN SHALL INCLUDE, BUT ARE NOT LIMITED TO, DEMANDS, CLAIMS, OR ACTIONS ASSERTED BY (1) ANY PRESENT OR FUTURE OWNER OF THE HOUSE INCORPORATING THE WORK; AND (2) ANY OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY CONTRACTOR AND/OR CONTRACTOR'S AGENTS). THE INDEMNIFICATION OBLIGATION UNDER THIS CONTRACT SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. THE INDEMNITY PROVISIONS CONTAINED HEREIN ARE INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY LAW.

Attached as Exhibit 7 South Carolina Independent Contractor Agreement between Galloway-Bell and D.R. Horton.

D.R. Horton contends that this clause was triggered when Plaintiff issued a Notice and Opportunity to Cure Improper Construction Conditions and Resulting Damages correspondence dated December 11, 2019 ("NOC"). See Exhibit 8. The NOC cites "missing/inadequate insulation at exterior walls" and "insufficient insulation in attics" as a criticism, however discovery in this case, along with the pleadings of this case neither raise nor support this initial claim. Without any such allegation in the lawsuit, the indemnification clause, even if valid is not triggered.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Hancock v. Mid-South Mgmt., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "However,

when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Moore v. Barony House Restaurant, LLC*, 382 S.C. 35, 40, 674S.E.2d 500, 503 (Ct. App. 2009). The plain language of Rule 56(c), SCRPC, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial. *Bray v. Marathon Corp.*, 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001).

ARGUMENT

I. Galloway-Bell is entitled to summary judgment as Galloway-Bell’s work is not the basis of Plaintiff’s claims against D.R. Horton.

While Plaintiff alleges a myriad of defects and deficiencies within the subject homes, none of these complaints are based on the insulation work performed by Galloway-Bell. *See* Complaint. The depositions, expert reports, discovery, pleadings, and courtroom admissions all support that there are no allegations against Galloway-Bell’s scope of work.

Neither Plaintiffs’ nor D. R. Horton’s expert, have given any indication of liability of Galloway-Bell. Dr. Rhett Whitlock, Plaintiff’s expert, never mentions insulation in his scope of repair nor does he include it in his calculations for repair costs. *See* Ex.1 Depo. of Whitlock. Steven Moore, D.R. Horton’s expert, did not mention insulation in his repair assessment nor did he include insulation cost in the repair costs. *See* Ex. 5 Depo. of Moore. At every stage of this litigation, it has been shown that not only is Galloway-Bell not liable but, more importantly, the non-moving party, D.R. Horton, does not have any evidence supporting their allegations or their indemnity action.

Therefore, it is clear no dispute of material fact exists regarding Galloway-Bell’s insulation installment at the subject home, and as such Galloway-Bell is entitled to summary judgment.

II. D.R. Horton's claim for contractual indemnity is void as a matter of law and public policy.

While it is abundantly clear that there are no pending allegations against Galloway-Bell for D.R. Horton to maintain a cause of action against Galloway-Bell, even if such allegations existed, the indemnity clause relied on by D.R. Horton to bring such an action is void because the language in the contract does not clearly and unequivocally provide indemnity for D.R. Horton's own negligence.

The Supreme Court of South Carolina has held when an indemnitee seeks indemnification for its own negligence, not differentiating between sole or concurrent, there must be **clear and unequivocal** evidence the parties intended such. *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018), reh'g denied (Oct. 19, 2018). Furthermore, "a contract of indemnity will not be construed to indemnify the indemnitee against losses resulting from its own negligent acts unless such intention is expressed in clear and unequivocal terms." *Id.*

In this matter, the contract includes competing language, it begins by stating the indemnity clause applies to "any other kind of damages or harm, arising out of, or resulting from, or related in any way to the work performed and/or the materials supplied under this contract whether caused in part by indemnitee..." *Id.* at Ex. 8.

This clause cast doubt on whether it is requiring indemnification against Galloway-Bell's negligence or D.R. Horton's negligence in so much as the entire paragraph is discussing Galloway-Bell's negligence and then sneaks in "whether caused in part by indemnitee" mid-sentence. The construction of this clause clearly fails the clear and unequivocal requirement in the *Concord & Cumberland* decision.

Moreover, even if this clause was found to be valid under *Concord & Cumberland*, the clause is unenforceable as a matter of public policy. As demonstrated in every aspect of this case, there are no pending claims against the batt and blown insulation installed by Galloway-Bell. The only way for the record to be clearer would be for the Plaintiff to install a neon sign in the neighborhood proclaiming Rose Hill loves its batt and blown insulation. The point of indemnity between a general contractor and a subcontractor is to make the general contractor whole for the subcontractor's negligence. Where not one but four experts have opined there is no defect in the work performed by Galloway Bell, Plaintiff's counsel has stated on the record in open court and on the record in Dr. Rhett Whitlock's deposition that insulation issues are not being claimed in the suit, and finally where no expert for D.R. Horton has claimed any defect in Galloway-Bell's work, there can be no doubt that any costs arising from D.R. Horton's defense of the Plaintiff's claims are in no way due to a defect in Galloway-Bell's work. To require Galloway-Bell to pay for the defense of claims related to other contractor's work would quite simply be the height of inequity and therefore D.R. Horton's claims for contractual indemnity must fail as a matter of law and public policy.

III. D.R. Horton's claims for Negligence, Breach of Express and Implied Warranty, and Breach of Contract are based on the potential liability to Plaintiffs and as such are merely claims for indemnity.

Here again, no claims are pending against D.R. Horton arising from Galloway-Bell's scope of work. However even if such claims were pending, those claims are merely disguised indemnity claims and therefore must fail. See *Stoneledge at Lake Keowee Owners' Ass'n. Inc. v. Clear View Construction, Inc.*, 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015) and *Stoneledge at Lake Keowee Owners' Ass'n., Inc. v. Builders First Source-Se. Grp.*, 413 S.C. 630, 776 S.E.2d 434 (Ct. App. 2015).

In Stoneledge, the court addressed a similar claim where the general contractor brought cross-claims against its subcontractors for breach of contract, contractual indemnity, equitable indemnity, breach of warranty, and negligence. The subcontractors moved for summary judgment as to the claims of breach of warranty and breach of contract, arguing they were “disguised indemnity claims”. *Id.* Summary Judgement was granted and affirmed because the general contractor’s allegations demonstrated that it did not sustain its damages as a result of any breach of contract or breach of warranty by the subcontractor. Instead, the allegations showed the plaintiff suffered damages and the general contractor’s injuries arose out of defense of the lawsuit. *Id.* at 636, 776 S.E.2d at 437. Since the general contractor’s claims were not independent causes of action, summary judgment was proper. *Id.* at 639, 776 S.E.2d 439.

Here, the claims of negligence, breach of implied and express warranty, and breach of contract would only arise due to D.R. Horton’s liability to Plaintiff’s meaning it would not be an independent cause of action. This makes such claims nothing more than indemnity by another name and as such cannot stand.

IV. D.R. Horton has unclean hands and cannot recover under a theory of Equitable Indemnification.

The doctrine of unclean hands bars a party from recovering in equity if they acted unfairly in a matter that is the subject of litigation. *Inglese v. Beal*, 403 S.C. 290, 742 S.E.2d 687 (Ct. App. 2013). Plaintiff’s allegations against DR Horton are the basis for the underlying litigation; Plaintiff has outlined in detail the alleged actions taken by DR Horton that constitute unclean hands. *See* Complaint. Plaintiff has alleged DR Horton was negligent, grossly negligent, breached its implied warranties to Plaintiff, and violated the Unfair Trade Practices Act. *See* Complaint. These actions *all* show that DR Horton acted unfairly at Rose Hill and should therefore bar DR Horton from

recovering in equity against Galloway-Bell. *Inglese*, 403 S.C. 290, 742 S.E.2d 687 (Ct. App. 2013).

As discussed in detail, there are no pending claims or causes of action against the scope of work performed by Galloway-Bell. After years of litigation, there is no evidence in the record that Galloway-Bell was negligent in its installation of batt and blown insulation. There is no genuine issue of material fact for the jury to consider as it relates to D.R. Horton's equitable indemnity claim against Galloway-Bell and therefore this claim too must fail.

CONCLUSION

For the foregoing reasons, Galloway-Bell respectfully requests summary judgment, or in the alternative partial summary judgment to claims asserted by Third-Party Plaintiff D.R. Horton and for such other relief that the Court deems just and proper.

ROSS & CRISTALDI, LLC

s/ Emily Sheets

Jeffrey A. Ross, Bar No.: 74254

Philip P. Cristaldi, III, Bar No.: 102219

Emily C. Sheets, Bar No.: 78768

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Attorneys for Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II

Mt. Pleasant, South Carolina

July 11, 2023

EXHIBIT

1

EXHIBIT

ELECTRONICALLY FILED - 2023 Jul 11 2:45 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 ANDERSON COUNTY

4 DEPOSITION OF RHETT WHITLOCK, PhD, PE
5 VOLUME 6, APRIL 11, 2023

6 NATALIE ZITEK, Individually and on behalf of all
7 others similarly situated,

8 Plaintiff,

9 vs. CASE NO. 2019-CP-04-01942

10 D.R. HORTON, INC.,

11 Defendant.

12 _____
13 D.R. HORTON, INC.,

14 Third-Party Plaintiff,

15 vs.

16 AJ LANDSCAPING & GRADING, LLC a/k/a A J
17 LANDSCAPING & GRADING, LLC, et al.,

18 Third-Party Defendants,

19 _____
20 PROBUILD COMPANY, LLC, et al.,

21 Fourth-Party Plaintiffs,

22 vs.

23 HARRELSON PAINTING, LLC, et al.,

24 Fourth-Party Defendants,

25 _____
26 NICHOLAS SOTA a/k/a NICOLAS SOTO, Individually
27 and d/b/a SOTA HVAC,

28 Fifth-Party Plaintiff,

29 vs.

30 TORIBIO ISLAS AND ALEJANDRO SOTO,

31 Fifth-Party Defendants.

1 TIME: 8:30 AM EXHIBIT 1

2 LOCATION: JUSTIN O'TOOLE LUCEY LAW OFFICE
3 MOUNT PLEASANT, SOUTH CAROLINA
4

5
6 REPORTED BY: J. LYNN CLARK, RPR, CSR(IA)
7 NCRA CERTIFIED MERIT REPORTER
8 CLARK BOLEN
9 CHARLESTON, SC 29415
10 843-762-6294
11 WWW.CLARKBOLEN.COM
12 Lynn@ClarkBolen.com
13

14 A P P E A R A N C E S
15

16 ON BEHALF OF PLAINTIFF:

17 JUSTIN O'TOOLE LUCEY, P.A.
18 BY: JUSTIN LUCEY
19 BY: DABNY LYNN (VIA VC)
20 BY: CHARLOTTE WINCKLER (VIA VC)
21 BY: AMANDA FUNAI (VIA VC)
22 415 Mill Street
23 Mount Pleasant, SC 29465
24

25 ON BEHALF OF DR HORTON, INC.:

26 KENISON DUDLEY & CRAWFORD, LLC
27 BY: JASON IMHOFF
28 BY: KATHRYN L. HARDEN
29 704 East McBee Avenue
30 Greenville, SC 29601

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EXHIBIT 1

1 MS. STRATTA: Okay. Thank you
 2 those are all the questions I have.
 3 MR. LUCEY: 9:07 AM. We're moving
 4 to the second topic which is what, please,
 5 Ms. Sheets?
 6 MS. SHEETS: Insulation.
 7 MR. LUCEY: Who's taking the lead
 8 on that, please.
 9 MS. SHEETS: Me.
 10 EXAMINATION
 11 BY MS. SHEETS:
 12 Q. Dr. Whitlock, we're going to talk about
 13 insulation. Okay?
 14 MR. LUCEY: If I can shorten it up,
 15 he has no opinions about insulation defects of
 16 any kind, and he's not covering HVAC insulation.
 17 MS. SHEETS: Are you going to
 18 testify at trial?
 19 MR. LUCEY: I'm just putting it on
 20 the record.
 21 MS. SHEETS: I will be as quick as
 22 I possibly can and/or his testimony allows me.
 23 Q. (MS. SHEETS) Dr. Whitlock, we're taking
 24 a look at Exhibit Number 34 here and the green
 25 highlighted properties that you inspected. Did

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1 you inspect the interior of those properties?
 2 A. Many of them but not all of them.
 3 Q. During any of your interior inspections,
 4 did you go up into the attic for the purpose of
 5 observing or otherwise opining about any
 6 insulation that may be in any attic space?
 7 A. I did go into the attics but not for
 8 that purpose.
 9 Q. Did you have an opportunity in any of
 10 the homes that you inspected to go into either a
 11 basement-type area or look underneath a house in
 12 any type of way? And I do realize most of them
 13 are slab.
 14 A. I went into at least two basements,
 15 maybe more.
 16 Q. And when you were inside of those
 17 basements in those homes, were you there to
 18 observe any insulation conditions that may have
 19 been visible?
 20 A. No.
 21 Q. At any point -- strike that.
 22 On Exhibit Number 34 you have circled a
 23 number of these lots where you have performed
 24 testing. Does any of that testing include
 25 removing sheetrock for the purpose of examining

1 insulation?
 2 A. No.
 3 Q. And last but not least, as you sit here
 4 today, are you able to opine to a reasonable
 5 degree of engineering certainty regarding any
 6 installation of insulation at any of the
 7 properties out at Rose Hill?
 8 A. I am not. I have not been asked to and
 9 I -- I don't plan to.
 10 Q. During your interior observations of
 11 properties, did you note any conditions inside of
 12 any of these houses that gave you concern that
 13 something might be amiss about the insulation in
 14 any of these properties?
 15 A. When I was doing my work on the homes, I
 16 had an infrared camera, and I believe I was in
 17 one home where the infrared camera indicated
 18 there was no insulation in an exterior wall. And
 19 that's all -- that's the only thing I recall
 20 about insulation observations.
 21 Q. Did you use an infrared camera in every
 22 home that you did an interior inspection in?
 23 A. No.
 24 Q. How many homes did you use an infrared
 25 camera during an interior inspection?

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1 A. I'd have to guess. Order of magnitude
 2 15 or 20.
 3 Q. Why were you using an infrared camera in
 4 those homes?
 5 A. During water testing. To check for
 6 leaks.
 7 Q. Were you testing windows?
 8 A. Yes.
 9 Q. The home that you did the infrared
 10 camera testing in and you observed there was, as
 11 I think you testified, no insulation in those
 12 walls, which house was that?
 13 A. Well, I don't think I said there was no
 14 insulation. There was some missing insulation in
 15 the walls. It wasn't as if the entire wall was
 16 void of insulation. It was just a portion of a
 17 wall.
 18 And I cannot remember what home that
 19 was, and I don't know if I can find it easily.
 20 Q. Observing that condition in that home
 21 did not suggest to you that you needed to then
 22 see if that similar condition existed in any
 23 other home, correct?
 24 A. That's correct. I didn't see it in any
 25 other home.

EXHIBIT

2

EXHIBIT

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

DEPOSITION OF RHETT WHITLOCK, PhD, PE
VOLUME 6, APRIL 11, 2023

NATALIE ZITEK, Individually and on behalf of all
others similarly situated,

Plaintiff,

vs. CASE NO. 2019-CP-04-01942

D.R. HORTON, INC.,

Defendant.

D.R. HORTON, INC.,

Third-Party Plaintiff,

vs.

AJ LANDSCAPING & GRADING, LLC a/k/a A J
LANDSCAPING & GRADING, LLC, et al.,

Third-Party Defendants,

PROBUILD COMPANY, LLC, et al.,

Fourth-Party Plaintiffs,

vs.

HARRELSON PAINTING, LLC, et al.,

Fourth-Party Defendants,

NICHOLAS SOTA a/k/a NICOLAS SOTO, Individually
and d/b/a SOTA HVAC,

Fifth-Party Plaintiff,

vs.

TORIBIO ISLAS AND ALEJANDRO SOTO,

Fifth-Party Defendants.

EXHIBIT 9

1 TIME: 8:30 AM

2 LOCATION: JUSTIN O'TOOLE LUCEY LAW OFFICE
3 MOUNT PLEASANT, SOUTH CAROLINA
4

5
6 REPORTED BY: J. LYNN CLARK, RPR, CSR(IA)
7 NCRA CERTIFIED MERIT REPORTER
8 CLARK BOLEN
9 CHARLESTON, SC 29415
10 843-762-6294
11 WWW.CLARKBOLEN.COM
12 Lynn@ClarkBolen.com
13

14 A P P E A R A N C E S
15

16 ON BEHALF OF PLAINTIFF:

17 JUSTIN O'TOOLE LUCEY, P.A.
18 BY: JUSTIN LUCEY
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20 BY: CHARLOTTE WINCKLER (VIA VC)
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22 415 Mill Street
23 Mount Pleasant, SC 29465
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25 ON BEHALF OF DR HORTON, INC.:

26 KENISON DUDLEY & CRAWFORD, LLC
27 BY: JASON IMHOFF
28 BY: KATHRYN L. HARDEN
29 704 East McBee Avenue
30 Greenville, SC 29601

EXHIBIT

1 Q. Did you think you needed to look for it?

2 A. Well, I happened to look for it in the

3 process of doing the infrared studies in other

4 homes and didn't notice it anywhere else.

5 Q. In the one home where you observed

6 missing insulation, can you testify to a

7 reasonable degree of engineering certainty that

8 that is an installation deficiency?

9 A. All I can tell you is that it was

10 missing. It could have been there from the start

11 and got removed by a plumber or an electrician or

12 somebody else. I can't tell you why it's

13 missing. It's just missing.

14 Q. Dr. Whitlock, that's all the insulation

15 questions I have for you, unless another

16 counselor who's either on the phone here or in

17 the room here might have some additional

18 questions for you.

19 MR. LUCEY: Anybody have any

20 questions for this witness regarding insulation?

21 MS. STRATTA: I have one or two.

22 EXAMINATION

23 BY MS. STRATTA:

24 Q. Dr. Whitlock, this is Jessica Stratta

25 again. A few very brief follow-up questions.

1 MR. LUCEY: Anybody else? Last

2 chance on insulation before we move to siding.

3 Once, twice. Insulation is completed 9:14.

4 Emily, who's taking the lead on siding.

5 MS. SHEETS: You have me all day,

6 Justin.

7 EXAMINATION

8 BY MS. SHEETS:

9 Q. Dr. Whitlock, we are going to move on to

10 siding. The good news is my client, P&L, only

11 did a couple of houses, and you only looked at

12 one. But this is a big neighborhood, so I

13 imagine that I will be pretty brief here, but

14 there will be others after that.

15 So on the siding, have you discussed any

16 siding issues with Natalie Zitek?

17 A. I don't remember discussing siding with

18 her.

19 Q. Have you discussed any siding issues

20 with plaintiffs' counsel?

21 A. I have.

22 Q. What are those discussions?

23 A. When I first visited the site, I noticed

24 that there were areas where the siding appeared

25 to be loose. There was siding that looked like

1 Your repair estimate calls for removing

2 insulation from rigid ductwork and replacing new

3 insulation properly installed to the correct

4 thickness; is that correct?

5 A. Yes.

6 Q. The insulation around the ductwork is in

7 no way related to the batt and blown insulation

8 installed in the areas in the attic such as the

9 flooring and the walls, correct?

10 A. It's different.

11 Q. So that specific repair to the

12 insulation around the ductwork does not involve

13 the batt and blown insulation installed in the

14 attic elsewhere.

15 A. Correct.

16 Q. And your report does not discuss any

17 batt or blown insulation installed throughout the

18 houses at Rose Hill, correct?

19 A. That's correct.

20 Q. And you do not have any criticisms of

21 the batt and blown insulation installed at any of

22 the houses in Rose Hill, correct?

23 A. I do not.

24 MS. STRATTA: All right. Those are

25 all the questions I have. Thank you.

1 it was fried by the sun, vinyl siding. There was

2 cement -- fiber cement siding that wasn't

3 flashed.

4 Q. Okay.

5 A. There was poor or no caulking at the

6 terminations of the siding at trim. Issues like

7 that I saw here and there. I didn't see those

8 issues everywhere, but I saw them in quite a few

9 homes.

10 Q. Looking at Exhibit Number 34, and

11 particularly the properties that you performed

12 testing on, which are circled with a blue circle,

13 did you look at siding on each of those homes if

14 it existed?

15 A. I looked at the siding, and I

16 photographed the siding, but I didn't test the

17 siding.

18 Q. You didn't remove it to see what was

19 underneath?

20 A. I didn't remove the siding to see how

21 the siding was installed.

22 Q. Did you observe anyone else do that?

23 A. ABS did some of that in their most

24 recent destructive testing.

25 Q. Did any of ABS's testing change any of

EXHIBIT

3

EXHIBIT 3

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

DEPOSITION OF WARREN MADDUX, P.E.
OCTOBER 26, 2022

NATALIE ZITEK, Individually and on behalf of all
others similarly situated,

Plaintiff,

vs. CASE NO. 2019-CP-04-01942

DR HORTON, INC., et al.,
Defendants,

DR HORTON, INC.,

Third-Party Plaintiff,

vs.

AJ LANDSCAPING & GRADING, LLC, a/k/a AJ
LANDSCAPING & GRADING, LLC, et al.,

Third-Party Defendants,

PROBUILD COMPANY, LLC, et al.,

Fourth-Party Plaintiffs,

vs.

HARRELSON PAINTING, LLC, et al.,

Fourth-Party Defendants,

1 NICHOLAS SOTO a/k/a NICOLAS SOTO, Individually
2 and d/b/a SOTO HVAC,

EXHIBIT 3

3 Fifth-Party Plaintiff,

4 VS.

5 TORIBIO ISLAS AND ALEJANDRO SOTO,

6 Fifth-Party Defendants.

7 TIME: 8:45 A.M.

8
9 LOCATION: KENISON, DUDLEY & CRAWFORD
10 GREENVILLE, SOUTH CAROLINA

11 REPORTED BY: TERI L. KENNELLY, NCRA
12 CERTIFIED REALTIME REPORTER
13 CLARK BOLEN, INC.
14 P.O. Box 73129
15 Charleston, SC 29415
16 843-762-6294
17 WWW.CLARKBOLEN.COM
18 Office@ClarkBolen.com
19
20
21
22
23
24
25

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EXHIBIT 3

1 I represent Gale Contractor Services.
 2 I've deposed you before, I believe. You are
 3 familiar with Gale Contractor Services; is that
 4 correct?
 5 A. I am. I know who they are.
 6 Q. I believe when you testified in Smith's
 7 case, you said that you saw their trucks around
 8 town and whatnot, correct?
 9 A. Correct.
 10 Q. Based on -- do you have any experience
 11 with Gale Contractor Services upon which you are
 12 relying for your opinions or testimony in this
 13 case?
 14 A. Say that again.
 15 Q. I'm sorry. Did you not hear me?
 16 A. No.
 17 Q. Okay. Are you -- based on your
 18 experience or knowledge of Gale Contractor
 19 Services, are you relying on any of that for your
 20 opinions or testimony in this case?
 21 A. I'm not -- no. I guess I don't really
 22 fully understand what you're asking in that
 23 question. You know, I'm testifying today about
 24 the issues that are in my report, and if Gale did
 25 those -- any of that ductwork, then that would be

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1 the issue.
 2 (Off-the-record discussion.)
 3 Q. Well, I will represent to you that Gale
 4 installed -- part of their scope of work was
 5 installation of the blown insulation in the
 6 attics and the batt insulation in the walls. Do
 7 you have any prior experience with Gale
 8 Contractor Services that is informing your
 9 opinions with respect to any issues you saw with
 10 the batt or blown insulation in this case?
 11 A. No.
 12 Q. And we've talked about the 32 houses
 13 that you inspected. Are you relying on your
 14 sheet that has the visual only, the spreadsheet
 15 that was supplied by Annette Mixson earlier
 16 today? Is that what you're relying on for the
 17 number 32?
 18 A. Yes. That and my pictures.
 19 MR. EMGE: And Madam Court
 20 Reporter, if we could go ahead and enter that as
 21 Exhibit Number 6. It's in the Dropbox as Bates
 22 label Maddox 113 through 220.
 23 (Exhibit No. 6 marked for
 24 identification.)
 25 Q. Now, I wanted to make sure -- you

1 testified earlier that -- and I wrote it down so
 2 that I would not forget it, but that, as far as
 3 the blown insulation, you had not included it in
 4 that report so you wouldn't be testifying about
 5 it. Did I understand that correctly?
 6 A. That's correct.
 7 Q. So is it fair to say that your report of
 8 May 7th, 2020, does not include any issues that
 9 need to be addressed due to the installation of
 10 the insulation since that is not mentioned?
 11 A. That's correct.
 12 Q. And the same thing with respect to your
 13 report of January 27th, 2021; again, there are no
 14 issues in that that need to be addressed due to
 15 the installation of the insulation?
 16 A. That's correct.
 17 Q. And then, finally, just to round it out,
 18 your preliminary report dated December 10th,
 19 2021, again, there are no issues in that that
 20 need to be addressed due to the installation of
 21 the insulation, correct?
 22 A. Correct.
 23 Q. All right. Your -- and believe me, I am
 24 not going to beat the dead horse of the energy
 25 bills too much, but you have not done any

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1 calculations to be able to offer any testimony
 2 with respect to any amount of that energy waste
 3 or cost that would be attributable to the
 4 installation of the insulation, have you?
 5 A. We did not include anything in that
 6 regard.
 7 Q. Okay. Great. Now, are you aware that
 8 the R factor for the insulation, blown insulation
 9 in the attic, was supposed to be R-30? Does that
 10 sound right to you?
 11 A. That would be correct.
 12 Q. And the depth which the blown insulation
 13 has to be applied would be a certain depth that's
 14 dictated by the manufacturer's instructions,
 15 correct?
 16 A. Correct.
 17 MR. EMGE: Madam Court Reporter, if
 18 we could mark as Exhibit 7 in the Warren Maddox
 19 folder, I believe it's -- we marked it GCS
 20 Exhibit 4. It's Maddox Bates label 959.
 21 (Exhibit No. 7 marked for
 22 identification.)
 23 Q. Warren, do you have access to that? Or
 24 I can share my screen.
 25 A. Why don't you share your screen.

EXHIBIT

4

EXHIBIT 4

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

DEPOSITION OF L. STEVEN MOORE, PE
VOLUME 3, MAY 11, 2023

NATALIE ZITEK, Individually and on behalf of all
others similarly situated,

Plaintiff,

vs. CASE NO. 2019-CP-04-01942

D.R. HORTON, INC.,

Defendant.

D.R. HORTON, INC.,

Third-Party Plaintiff,

vs.

AJ LANDSCAPING & GRADING, LLC a/k/a A J
LANDSCAPING & GRADING, LLC, et al.,

Third-Party Defendants,

PROBUILD COMPANY, LLC, et al.,

Fourth-Party Plaintiffs,

vs.

HARRELSON PAINTING, LLC, et al.,

Fourth-Party Defendants,

NICHOLAS SOTA a/k/a NICOLAS SOTO, Individually
and d/b/a SOTA HVAC,

Fifth-Party Plaintiff,

vs.

TORIBIO ISLAS AND ALEJANDRO SOTO,

Fifth-Party Defendants.

EXHIBIT 4

1 TIME: 8:30 A.M.
2 LOCATION: VIA REMOTE VIDEOCONFERENCE
3 REPORTED BY: RUTH L. MOTT, RPR, CRR
4 CLARK BOLEN
5 CHARLESTON, SC 29415
6 843-762-6294
7 WWW.CLARKBOLEN.COM
8 Office@ClarkBolen.com

A P P E A R A N C E S

(ALL APPEARANCES BY VIDEOCONFERENCE:)

ON BEHALF OF PLAINTIFF:

9 LAW OFFICE OF JUSTIN O'TOOLE LUCEY
10 BY: JUSTIN LUCEY
11 BY: DABNY LYNN
12 BY: MANDEE FUNAI
13 BY: CHARLOTTE WINCKLER
14 415 Mill Street
15 Mount Pleasant, SC 29464

ON BEHALF OF D.R. HORTON, INC.:

14 KENISON, DUDLEY & CRAWFORD
15 BY: JASON IMHOFF
16 704 East McBee Avenue
17 Greenville, SC 29601

ON BEHALF OF LONG HEATING & AIR CONDITIONING,
INC.:

18 MCANGUS GOUDELOCK & COURIE
19 BY: HEATH STEWART
20 1320 Main Street, 10th Floor
21 Columbia, SC 29201

21 ON BEHALF OF SODFATHER, INC., LANDSCAPE
22 CONTRACTORS, GALLOWAY-BELL, INC. A/K/A
23 GALLOWAY-BELL, INC. II, P & L ENTERPRISES, LLC,
24 AND WILLOW TREE LANDSCAPING, INC.:

23 ROSS & CRISTALDI
24 BY: PHIL CRISTALDI
25 863 Coleman Boulevard, Suite B
Mount Pleasant, SC 29464

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PLAINTIFFS' CONTACT SHEET, 157 AND 179 814	
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DEFENDANT'S SOUTHERN DYNAMIC 903	
EXHIBIT NO. 2 ENGINEERING AND DESIGN	
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DEFENDANT'S PALMETTO EXTERMINATORS, 918	
EXHIBIT NO. 4 104 STURBRIDGE 928	
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EXHIBIT NO. 5 4-30-22	
DEFENDANT'S KDC 89698 933	
EXHIBIT NO. 6	
DEFENDANT'S WORD VERSION OF 2-8-23 968	
EXHIBIT NO. 7 APPLIED BUILDING SCIENCES	
REPORT TO JOHN CRAWFORD	
STAMPED WITH DRAFT	

INFORMATION REQUESTED PAGE 833, LINE1

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EXHIBIT 4

L. STEVEN MOORE, PE,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. EMGE:

Q. Good morning, Mr. Moore. May I call you Steve?

A. Please do.

Q. Okay. Steve, my name is Chip Emge. I represent Gale Contractor Services in this matter, and Gale performed the installation of insulation, batt and blown insulation, garage doors and gutters and downspouts on some of the homes, some combination of those homes throughout Rose Hill.

And so my first question -- and I will try not to repeat any of the questions that have occurred over the past two days, but I can't guarantee that. My first question is, do you have any knowledge of which subcontractor did what work on any individual house?

A. No, sir, I do not.

Q. Okay. And did your investigation -- and I believe yesterday or day before you said you did not investigate MEP issues; is that correct?

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A. Any which issues? I'm sorry.

Q. MEP?

A. That's correct, with the exception of the plumbing, air release valve, overflow line.

Other than that, we did not. We had some initial photos and -- up in the attics, but we are not going to opine on any mechanical, electrical or other plumbing issues other than the hot water heater air relief valve.

Q. And at the risk of asking obvious questions, so sitting here today, you have no criticisms or opinions concerning any installation errors or defects with the installation of the batt or blown insulation at Rose Hill?

A. I have no opinions on the insulation at this point, sir.

Q. Okay. And issues with respect to -- any issues with respect to the batt or blown insulation are not contained in your report or cost of repair estimate?

A. Correct, sir.

Q. Okay. Let's turn to the garage doors.

Did your investigation include the installation of the garage doors? And by the garage doors,

EXHIBIT 4

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1 I'm literally talking about the things that go up
2 and down.
3 A. We did not. There were no allegations
4 of any issues with the garage doors, and we did
5 not look at any garage doors for any issues
6 whatsoever.
7 Q. Okay. And so again, you -- sitting here
8 today, you have no criticisms or opinions
9 concerning any installation errors or defects
10 with respect to the installation of the garage
11 doors?
12 A. Correct, sir.
13 Q. And your report and cost of repair
14 contained nothing related to damages caused by --
15 damages, if any, caused by garage doors?
16 A. Correct, sir.
17 Q. And just to clarify, we've talked a lot
18 about the lintels over the garage doors over the
19 past two days. The lintel issue has nothing to
20 do with the garage doors themselves; is that
21 correct?
22 A. That is correct, sir.
23 Q. Okay. Let's turn to the gutters and
24 downspouts. Did your investigation include
25 issues related to the installation of the gutters

1 report, whoops, from October 5th, 2020. Do you
2 see that?
3 A. I do, sir.
4 Q. Okay. And what I wanted to question you
5 about, there was just one observation on page 15
6 of 25 -- I'm sorry, yes, 15 of 25. This is --
7 there we go. This is at 4 Dartford, and what I'm
8 interested in, this area where my cursor is
9 circled -- and I will just read it for the
10 record.
11 It says, the mulch was washed out on
12 left side of porch under a downspout. At the
13 right end of porch, the garden bed mulch is
14 higher than the porch. Observation of the gutter
15 above this area indicates that rainwater may
16 overflow the gutter in this area.
17 Responsibility: Gutter installer and
18 homeowner. Recommendation: At the left end of
19 the porch, route the downspout out to the lawn
20 area. At the right end of porch, observe whether
21 rainwater overflows the gutter and, if so,
22 replace the gutter with larger gutter. Homeowner
23 should adjust garden bed mulch so as not to trap
24 rainwater on the porch.
25 Did I read that correctly?

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Page 615

1 and downspouts?
2 A. It did not, sir.
3 Q. Okay. So do you have -- again, do you
4 have any criticisms or opinions concerning any
5 installation errors or defects with respect to
6 the gutters or downspouts?
7 A. I do not, sir.
8 Q. Okay. And your report and cost estimate
9 do not contain any items that are related or need
10 repair as a result of installation defects or
11 errors with respect to the gutters and
12 downspouts; is that correct?
13 A. Yes, sir.
14 Q. Okay. I just wanted to clarify one
15 thing in your report, and this is Plaintiffs
16 24.5. Do you have that in front of you?
17 A. I do not have any exhibits, sir. If you
18 need me to see it, then it will have to be a
19 share situation.
20 Q. Okay. Let me do that.
21 Okay. Can you see my screen? Do I need
22 to blow it up a little bit?
23 A. I can read it fine, sir.
24 Q. Okay. And this is -- just to scroll
25 back, this is Exhibit 24.5, and this is your

1 A. Yes, sir.
2 Q. Okay. So my first question is, the
3 mulch and whatever plantings were there would not
4 have been there when that gutter was originally
5 installed; is that correct?
6 A. Correct, sir.
7 Q. And when you say responsibility -- and I
8 know you said your opinions have changed
9 somewhat. When you say responsibility, gutter
10 installer and homeowner, is that still the case?
11 A. There are no issues -- there are no
12 alleged issues whatsoever with the gutters or
13 downspouts. I would have no recommendations or
14 opinion to make any changes to this one.
15 MR. EMGE: All right. Well,
16 Mr. Moore, Steve, that went a little bit quicker
17 than I thought. Thank you very much. We're off
18 to a good start as far as brevity on the
19 questions this morning.
20 THE WITNESS: Thank you, sir.
21 EXAMINATION
22 BY MS. MAHON:
23 Q. This is Christy Mahon. I just have a
24 few questions. I will represent to you that
25 Dr. Whitlock did not have any opinions in these

EXHIBIT

5

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

EXHIBIT 5

DEPOSITION OF
CHAD JONES
APRIL 13, 2023

NATALIE ZITEK, Individually and on behalf of all
others similarly situated,

Plaintiff,

vs. CASE NO. 2019-CP-04-01942

D.R. HORTON, INC., et al.,

Defendants,

D.R. HORTON, INC.,

Third-Party Plaintiff,

vs.

AJ LANDSCAPING & GRADING, LLC, a/k/a AJ
LANDSCAPING & GRADING, LLC, et al.,

Third-Party Defendants,

PROBUILD COMPANY, LLC, et al.,

Fourth-Party Plaintiffs,

vs.

HARRELSON PAINTING, LLC, et al.,

Fourth-Party Defendants,

EXHIBIT C

NICHOLAS SOTO a/k/a NICOLAS SOTO, Individually
and d/b/a SOTO HVAC,

Fifth-Party Plaintiff,

VS.

TORIBIO ISLAS AND ALEJANDRO SOTO,

Fifth-Party Defendants.

TIME: 9:19 A.M.

LOCATION: Via Videoconference

REPORTED BY: JESSICA BOLANOS
CLARK BOLEN, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARKBOLEN.COM
Office@ClarkBolen.com

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EXHIBIT 5

1 A. No, sir, no. Nobody does testing that
2 they don't have to.

3 Q. In your opinion and based upon your
4 qualifications, experience, and education, did
5 Mr. Maddox perform sufficient scientific analysis
6 and testing to provide an across-the-board
7 increased energy cost number for the different
8 types of homes at Rose Hill?

9 MS. LYNN: Objection.

10 A. In my opinion, his analysis is
11 inadequate to blanket-apply \$230 to each home in
12 Rose Hill.

13 MR. TEAGUE: Thank you for your
14 time. I appreciate it.

15 THE WITNESS: Thank you, sir.
16 Holler if you're at the Dixie sometime.

17 MR. TEAGUE: All right.

18 MS. LYNN: Is there anybody else
19 with HVAC and plumbing questions?

20 I think the judge's order is pretty
21 clear that, you know, if your trade's not
22 implicated, you're auditing.

23 EXAMINATION

24 BY MR. EMGE:

25 Q. This is Chip Emge. Mr. Jones, can you

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1 hear me all right?

2 A. Yes, sir.

3 Q. Great. I represent Gale Contractor
4 Services in this matter. Have you ever heard of
5 Gale Contractor Services?

6 A. I can't say that I have.

7 Q. Okay. And is it fair -- I believe your
8 testimony earlier -- that you used Mr. Maddox's
9 report as the basis for the areas that you were
10 going to investigate; is that correct?

11 A. In my -- in my initial site visit, I
12 mean, that was pretty much all I had. Yes. And
13 my focus was dealing with the opinions put
14 forward by Mr. Maddox initially.

15 Q. Okay. Did your investigation include
16 any of the batt or blown insulation in the attic?

17 A. No, sir. No. No, sir.

18 Q. All right. And I apologize because this
19 is going to seem like an obvious question, but
20 you would be surprised.

21 We've discussed insulation a number
22 of -- multiple times today, but I just want to
23 make clear, the insulation that you have been
24 discussing would have been associated with either
25 being wrapped around the flex duct or included

1 within the rigid ductwork; is that correct?

2 A. Well, it's actually wrapped on the rigid
3 duct, just to parse it out. And then insulation
4 that would come factory-applied to the flex duct,
5 yes, sir.

6 Q. But that --

7 A. We also had some insulation -- no, no.
8 Strike that. It's been a long day.

9 Q. Well, I think you may have been thinking
10 about some insulation around some of the exterior
11 plumbing fixtures.

12 Is that what you were thinking of?

13 A. No, sir. My mind went to the PVC drain
14 line, which is HVAC, but I just saw a pipe in my
15 head, so I thought plumbing for a second. But
16 that's not the case.

17 Q. Okay. And maybe a better way to have
18 asked my question originally is that the
19 insulation that we have discussed today in
20 association with the ductwork has nothing to do
21 with the batt or blown insulation?

22 A. Yes, sir. That's a totally separate
23 issue.

24 Q. Okay. So in any of the photographs
25 that -- 300 or so that we reviewed today that

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1 showed batt or blown insulation, those were taken
2 for purposes other than to show any deficiencies
3 with the insulation, the batt or blown
4 insulation?

5 A. I have no opinions on the batt. If I
6 happen to see one of the little thermometers that
7 gives you the depth, a lot of times I'll take a
8 picture of it in the field, but I'm -- I have not
9 been engaged to discuss the actual insulation of
10 the thermal envelope of the house. How about
11 that?

12 Q. Okay. And so just to put a point on it,
13 sitting here today, you have no opinions to a
14 reasonable degree of engineering certainty as to
15 any deficiencies with the installation of the
16 batt or blown insulation?

17 A. I have no opinions to offer you on the
18 batt or blown insulation.

19 MR. EMGE: Thank you, Mr. Jones.
20 That's all I have.

21 THE WITNESS: Have a good day, sir.

22 MS. LYNN: Next.

23 EXAMINATION

24 BY MS. MAHON:

25 Q. Hey, Mr. Jones. This is Christy Mahon.

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EXHIBIT 5

1 I represent a company called Soto HVAC or
 2 Nicholas Soto. Are you familiar with either the
 3 individual or that company?
 4 A. I do not personally know them, but I
 5 recognize the name from Mr. Haraway's deposition
 6 transcript.
 7 Q. They were purportedly a sub of Long's.
 8 Does that refresh your recollection?
 9 A. Yes, ma'am, that is my recollection.
 10 Q. Okay. All right. And I will represent
 11 to you that -- let me go back.
 12 You said that you are using the Maddox
 13 report as the basis for your opinions. That's
 14 where you started at, correct?
 15 A. That was -- that was square one, yes,
 16 ma'am.
 17 Q. Okay. And Mr. Maddox testified that he
 18 did not have opinions on certain things, and I
 19 will run through that with you. But I asked
 20 Mr. Maddox about it and I asked Mr. Lewis about
 21 it, and neither one of them had any opinions
 22 about these particular issues.
 23 But they were the setting of the outdoor
 24 units, the installation of the supply return air
 25 grilles and thermostats, the wire in the zone

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1 board, the running of the gas lines from main
 2 furnace, water heater, fireplace, range, and
 3 other drops -- and that was the gas line -- and
 4 hook up flue pipes for water heaters.
 5 Both of them have previously testified
 6 that neither one of them had any opinions on
 7 those particular areas. May I assume that you
 8 also don't have any opinions on those areas?
 9 A. I do not have any opinions to offer you
 10 at this point in time on that laundry list, no,
 11 ma'am.
 12 MS. MAHON: Thank you very much.
 13 If that changes, please let Ms. Wooten know so
 14 she can let me know. I appreciate your time.
 15 Thank you.
 16 THE WITNESS: Yes, ma'am. Have a
 17 good day.
 18 MS. LYNN: Anybody else with an
 19 HVAC/plumbing questions?
 20 MR. BEST: Dabny, this is Dean
 21 Best. I have just a few questions.
 22 EXAMINATION
 23 BY MR. BEST:
 24 Q. Mr. Jones, my name is Dean Best. I
 25 represent Bravo Carpenters. Are you familiar

1 with that company?
 2 A. I do not recognize the name, no, sir.
 3 Q. All right, sir. I'll represent to you
 4 that they were the framer on a significant number
 5 of these houses and also installed some interior
 6 doors.
 7 And to be a HVAC contractor, you have to
 8 have a specialty mechanic -- mechanic's --
 9 mechanical license; is that correct?
 10 A. That is correct. You have to be
 11 licensed. You know, there's different degrees
 12 and different levels you can get bonded at, but
 13 for this type of work it's going to be an AC,
 14 Alpha Charlie.
 15 Q. Okay. And to obtain that AC license,
 16 you have to show some level of proficiency with
 17 respect to the knowledge of the mechanical codes;
 18 is that correct?
 19 A. It's my understanding that it's tested,
 20 so it should show some level of proficiency.
 21 Q. All right. And general contractors like
 22 D.R. Horton and other folks, they have to have a
 23 license, or someone in the company has to have a
 24 general contractor's license, correct?
 25 A. Yes, sir.

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1 Q. And to obtain that license, you have to
 2 demonstrate some level of proficiency with
 3 respect to knowledge of, I would imagine, most
 4 building codes, including mechanical, correct?
 5 A. Again, it's my understanding there is a
 6 threshold you have to clear to earn your GC
 7 license. I'm not as familiar of the ins and outs
 8 as I am the mechanical side.
 9 Q. Sure.
 10 A. But you can't just order one off the
 11 internet, no, sir.
 12 Q. Got ya. Agreed.
 13 Framers don't have to have a specialty
 14 mechanical license, do they?
 15 A. I'm not aware of a framer having to have
 16 a mechanical license, no, sir.
 17 Q. Interior carpenters do not have to have
 18 a mechanical license, do they?
 19 A. That would seem very unreasonable to me.
 20 Q. Okay. You will agree with me that one
 21 of the responsibilities of the general contractor
 22 is to coordinate the work of its subcontractors;
 23 is that a fair statement?
 24 A. Yes, sir. I agree with that statement.
 25 Q. Okay. And if a -- if a general

EXHIBIT

6

EXHIBIT 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE NO.: 2019-CP-04-01942
	)	
Natalie Zitek, individually and on behalf of all	)	
others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
D.R. Horton, Inc., et al.,	)	
	)	
Defendants.	)	
	)	
D.R. Horton, Inc.,	)	PLAINTIFF'S RESPONSE TO
	)	DEFENDANT GALLOWAY-BELL,
Third-Party Plaintiff,	)	INC., A/K/A GALLOWAY-BELL,
	)	INC. II'S REQUESTS FOR
	)	ADMISSION
v.	)	
	)	
AJ Landscaping & Grading, LLC a/k/a A J	)	
Landscaping & Grading, LLC, et al.	)	
	)	
Third-Party Defendants.	)	
	)	
ProBuild Company, LLC; et al.,	)	
	)	
Fourth-Party Plaintiffs,	)	
	)	
v.	)	
	)	
Harrelson Painting, LLC, et al.,	)	
	)	
Fourth-Party Defendants.	)	
	)	
Nicholas Soto a/k/a Nicolas Soto, Individually	)	
and d/b/a Soto HVAC,	)	
	)	
Fifth-Party Plaintiffs,	)	
	)	
v.	)	
	)	
Toribio Islas and Alejandro Soto,	)	
	)	
Fifth-Party Defendants.	)	
	)	

TO: COUNSEL FOR DEFENDANT GALLOWAY-BELL, INC.

Plaintiff, Natalie Zitek (“Plaintiff”), by and through her undersigned counsel, hereby answers Defendant Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II’s (“Defendant”) Requests for Admission as follows:

ANSWERS TO REQUESTS FOR ADMISSION

1. Admit that you are not aware of any deficiencies with the insulation installation.

ANSWER:

Admitted as to blown and batt insulation.

2. Admit that you have not identified any damages related to the insulation.

ANSWER:

Admitted as to blown and batt insulation.

3. Admit that you know of no expert who has opined that there were any deficiencies with the installation of the insulation.

ANSWER:

Plaintiff has insufficient information to admit or deny this request, and therefore it is denied.

4. Admit that you know of no expert who has opined that there is any damage related to improper installation of insulation at any project that is at issue in this suit.

ANSWER:

Plaintiff has insufficient information to admit or deny this request, and therefore it is denied.

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Attorneys for Plaintiff

May 16, 2023

Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing ***Plaintiff's Answers to Galloway-Bell's Requests for Admission*** upon all parties to this matter by depositing a true copy of the same in the U.S. Mail, proper postage prepaid, and/or electronic mail and addressed to counsel of record as follows:

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May 16, 2023
Mount Pleasant, South Carolina

EXHIBIT

7



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Galloway Bell Inc. ("Contractor")
 Sole Proprietorship ☐ Partnership ☐ Corporation ☒ L.L.C. ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No.: 57-0545429
 Name of Owner(s)/Officer(s): Rvt Galloway Cally Galloway Jeff Bell
 Division Name: _____ Area Name: _____ Assigned Vendor No.: _____
 Address for All Notices: 3334 Hwy 153
 City: Piedmont State: SC Zip Code: 29673
 Telephone: 864 269 6120 Fax: 864 269 7853 E-Mail Address: shutsan@gallowaybell.com
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 17 day of Dec, 2012, between
D.R. HORTON INC ("Owner") and Contractor.

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of the Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement (the "Work") shall include all work performed and materials supplied by Contractor to Owner including but not limited to the labor, services and/or materials, equipment, transportation, or facilities necessary to complete the construction-related activities generally described in Exhibit A. The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing will not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to or in place of Contractor. Contractor will be awarded Work on a lot by lot basis. To the extent Exhibit A contains more than one type of construction-related activity, Contractor must clarify with Owner before the Work commences as to which construction-related activity it has been awarded for the lot in question.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, method and performance of the Work. Contractor shall not be considered an agent or employee of Owner for any purpose, nor shall any employees or permitted subcontractors of Contractor. Contractor shall not represent itself as the agent of Owner unless owner has specifically permitted Contractor to do so in writing. The results achieved shall satisfy the requirements of this Agreement. Contractor shall be responsible for the performance of its employees and permitted subcontractors, and all personnel used by Contractor in the performance of Work shall be qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further agrees to provide written notification to all of its present and future employees of Contractor's provision for Worker's Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work herein covered or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall pay and shall be solely responsible for all tax withholding, Social Security, state unemployment and all other withholding as required by law Contractor's employees, agents or permitted subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNLESS CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule, the superseded Pricing Schedule shall remain in effect for Purchase Orders issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing of the house incorporating the Work from Owner to a purchaser. Contractor hereby agrees that timely invoicing is an important and material term to this agreement, and timely invoicing is a part of Contractor's performance of all material terms of this contract. Contractor hereby waives payment for any Work where Contractor fails to invoice Owner in a timely manner in conformity to this agreement. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR

Executed this 29 day of March, 2013.

Owner: D R Horton Homes Inc Contractor: Cally
 By: EDMOND G JEANPIERRE, JR By: Cally Galloway
 Name: PURCHASING Name: Cally Galloway
 Title: Division President Title:

INITIALS: OWNER EJG, CONTRACTOR Cally

ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO SUBCONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE. HEREIN AND THAT OWNER DOES NOT AGREE TO PAY TO SUBCONTRACTOR INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF DELAYED PAYMENTS.

4.2 Payment to Subcontractors. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed from Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties; and these joint payments shall satisfy amounts owed by Owner to Contractor, notwithstanding the fact that the third parties may not endorse the checks. In any instance where Owner receives written notice from one of Contractor's sub-contractors, whereby the subcontractor claims a failure to be paid for the Work, Owner reserves the right to pay the subcontractor directly or to make payment payable to both the Contractor and its subcontractor.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the Contract Price shall waive and release all claims against Owner and the property under this Agreement, but shall not waive any claims of Owner arising out of Work later found to be defective and shall not release Contractor from liability for warranties and warranty service and/or defective Work. Contractor shall remedy any defects and pay for any damage resulting from any defects in or caused by the Work or as required by any other contracts between Owner and Contractor or by law or customary practice. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or assigns is an acceptance of the Work or materials not in compliance with this Agreement.

5. SCHEDULE OF WORK.

5.1 Time is of the Essence. Contractor acknowledges that TIME IS OF THE ESSENCE in the performance of all Work.

5.2 Construction Schedule. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.3 Commencement of the Work. Owner shall issue an authorization (either pursuant to a written purchase order, payment schedule, or work invoice ("Purchase Order") or verbal instructions from an authorized Owner representative) to commence the Work and Contractor shall not commence the Work at a job location until Contractor has received instructions to begin Work at a specific job location. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.4 Changes in Construction Schedule. Contractor agrees that Owner shall have the right to make changes to the schedule of Work at Owner's discretion and agrees to comply with such changes.

6. PERFORMANCE STANDARDS.

6.1 Applicable Standards. Contractor shall perform all Work in a good and workmanlike manner, in accordance with the plans and specifications of Owner, according to industry standard practices, and warrants that the Work will meet or exceed FHA minimum property standards, VA requirements, all laws (statutory or common) and regulations, and any applicable building code requirements.

6.2 Contractors' Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized Owner's employee and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications as the plans and specifications affect the Work and materials incorporated in the Work, and that the plans and specifications are clear and unambiguous, and has accepted and agreed to be bound by all such requirements.

6.3 Government Requirements. Contractor will comply with all applicable federal, state, local, and county statutes, ordinances, regulations, codes, licensing requirements and standards, and the requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 as amended, as well as the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., or similar laws or regulations, and the rules, regulations, or orders of all public authorities relating to performance of the Work, including without limitation, the procurement and posting of all required permits and notices. In addition, Contractor will not discriminate in its hiring or employment and will follow all state and federal employment laws or regulations. Contractor shall perform background checks and use only appropriate employees to perform warranty or repair work after a house is occupied.

6.4 Indemnity. To the fullest extent allowed by law, Contractor will agree to indemnify, defend, and hold Owner harmless from all actions, claims, investigations or other acts to enforce such laws or regulations, and further agrees to indemnify Owner from the payment of any fine, penalty or damages imposed, levied, assessed, or found as a result of the Contractor's failure to comply with or adhere to the applicable laws and regulations, or from Contractor's failure to cause its employees or subcontractors to comply with such laws and regulations.

6.5 Observation and Testing by Owner and Repair by Contractor. Owner shall have the right to observe or test the Work at any time during or after construction, but that observation or testing is solely for the benefit of Owner's and is not for Contractor's benefit. Owner's failure to note defects in the Work during an inspection will not waive any of Contractor's obligations, representations or warranties related to the Work. Notwithstanding anything contained in this Agreement to the contrary, all Work shall be performed and any defects shall be corrected timely and in accordance with this Agreement to the satisfaction of Owner.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work, and shall report in writing to Owner any defects prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractor's work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses and approvals necessary for or applicable to the performance of the Work.

6.8 Change Orders. The Contractor shall furnish the materials for and to make all changes requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed;

INITIALS: OWNER klh; CONTRACTOR lwj.

(ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) work site safety requirements.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste materials or rubbish caused by its operations and shall remove all of Contractor's materials, and if materials are furnished by Owner, Contractor shall move all usable materials provided by Owner to a location designated by Owner. Contractor shall sweep out any waste material from inside the home under construction upon completion of its operation. All refuse shall be placed in receptacles provided or at locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up activities and collect a one hundred dollar (\$100.00) fine from Contractor for each incident. The cost of such clean-up and the aforementioned fine shall be deducted from any sums owed by Owner to Contractor, or shall be immediately payable by Contractor upon demand therefore by Owner.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from or in any way related to the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Owner reserves the right to set minimum standards or rules relating to Work on its site. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OWNERS MINIMUM REQUIREMENTS. THE OWNER ASSUMES NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe condition or practice observed on the Work Site. Further, Contractor shall immediately notify Owner of any accidents or injuries on the Work Site. Contractor shall have an ongoing safety program and conduct inspections to determine that safe working conditions and equipment exist and safe practices are observed. Contractor shall prohibit and prevent the presence of children under age eighteen (18) from the Work Site.

7.1 Safety Laws and Indemnity Agreement. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards, statutes, and industry best practices concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations. Contractor shall provide Owner with written verification of its compliance with all applicable safety and health standards and regulations, including but not limited to OSHA's Hazard Communication Standard for the Construction Industry, 29 C.F.R. §1926.59 et seq., and provide written notice to Owner of the contact person responsible for Contractor's compliance with all safety and health standards and regulations. To the fullest extent allowed by law, Contractor agrees to indemnify, defend, and hold Owner harmless from all actions prosecuted to enforce and the payment of any fine or penalty imposed under such safety laws and regulations and shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work.

7.2 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, permitted subcontractors or suppliers at a job location or performance of the Work by any person under the influence of alcohol or drugs.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate corporations, and successors and assigns, that all labor performed and materials furnished by Contractor shall conform to the specifications of this Agreement, shall be free from any defects or deficiencies in workmanship or materials, and will comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, will meet or exceed the FHA/VA minimum property standards, and will comply with the Residential Warranty Corporation ("RWC") Program and the applicable limited warranty standards, which Contractor has read and understands and to which Contractor agrees to be bound. All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects for purposes of Contractor's obligations under this Contract. Contractor shall make good and promptly repair all Work not complying with the standards set forth in this section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Paragraph 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, the initial homeowner of the property on that is the subject of the Work: (i) for a period of ten (10) years all structural elements, including, but not limited to, roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; (d) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (i) any statutory warranty or (ii) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner (a "Homeowners Warranty"). Contractor expressly agrees to be bound by any such Homeowners Warranty and to the extension of warranty period hereunder. Furthermore, notwithstanding the foregoing, Contractor agrees that all express and implied warranties shall remain in full force and effect for so long as Owner is obligated to warrant the Work pursuant to applicable law. Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Homeowners Warranty that is longer than the Warranty Periods stated above; provided, however, failure to give that notice will not affect the extension of the Warranty Period to the applicable warranty period under the Homeowner's Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty obligations, Contractor's indemnity obligations, or the ability of Owner to request Contractor to perform warranty services in the future.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment, and shall furnish all certificates required by any municipality and/or VA and/or FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and are not in limitation of periods of applicable statutes of limitation.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Project is located.

9.3 Lien Claim Indemnity. If any liens are filed against Owner relating to portions of the Work for which Owner has paid Contractor, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such lien or affidavit to be removed.

INITIALS: OWNER ebt, CONTRACTOR ewy

and released of record. Contractor agrees to INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any liens relating to portions of the Work for which Owner has paid Contractor, and further agrees at Owners' request to any or all of the following: (i) procure a bond to indemnify Owner and any home purchaser from Owner, in an amount sufficient to discharge that lien, or (ii) refund to Owner all monies, including any additional amount necessary to cover all of Owner's or home purchaser's attorneys' fees and court costs paid in discharging the lien, whichever remedy Owner elects in its sole and absolute discretion, or (iii) provide sworn testimony that payment has already been made to Contractor for the work for which the alleged lien applies.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY AGREES TO HOLD HARMLESS, INDEMNIFY, PROTECT AND DEFEND OWNER, ITS PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THE AFOREMENTIONED ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "INDEMNITEE"), FROM AND AGAINST ANY AND ALL DEMANDS, CLAIMS, ACTIONS, CAUSES OF ACTION, PROCEEDINGS, LAWSUITS, SETTLEMENTS, JUDGMENTS, FINES, PENALTIES, LOSSES, ATTORNEYS FEES, LITIGATION COSTS, INTEREST, AND EXPENSES OF ANY KIND (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "LOSSES") FOR DAMAGES FROM BODILY OR PERSONAL INJURY, DEATH, THE DESTRUCTION OR LOSS OF PROPERTY (INCLUDING LOSS OF USE), OR ANY OTHER KIND OF DAMAGES OR HARM, ARISING OUT OF, OR RESULTING FROM, OR RELATED IN ANY WAY TO THE WORK PERFORMED AND/OR THE MATERIALS SUPPLIED UNDER THIS CONTRACT, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY INDEMNITEE. SUCH LOSSES SPECIFICALLY INCLUDE, BUT ARE IN NO WAY LIMITED TO LOSSES ARISING OUT OF OR ATTRIBUTABLE TO: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR OBLIGATIONS OF CONTRACTOR SET FORTH HEREIN; (2) THE WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR, CONTRACTOR'S AGENTS OR EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, AND/OR ALL OTHER ENTITIES OVER WHOM THE CONTRACTOR MAY EXERCISE CONTROL (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "CONTRACTOR'S AGENTS"); (3) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF CONTRACTOR AND/OR CONTRACTOR'S AGENTS; OR (4) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE INDEMNITY FOR LOSSES CAUSED SOLELY BY FAULT OR NEGLIGENCE OF THE INDEMNITEE. THE LOSSES DESCRIBED HEREIN SHALL INCLUDE, BUT ARE NOT LIMITED TO, DEMANDS, CLAIMS, OR ACTIONS ASSERTED BY (1) ANY PRESENT OR FUTURE OWNER OF THE HOUSE INCORPORATING THE WORK; AND (2) ANY OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY CONTRACTOR AND/OR CONTRACTOR'S AGENTS). THE INDEMNIFICATION OBLIGATION UNDER THIS CONTRACT SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. THE INDEMNITY PROVISIONS CONTAINED HEREIN ARE INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY LAW.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. IT IS THE EXPRESS INTENTION OF THE PARTIES THAT CONTRACTOR'S INDEMNITY OBLIGATIONS HEREIN WILL SURVIVE THE TERMINATION OF CONTRACTOR OR THIS AGREEMENT. INDEMNITEE SHALL HAVE THE RIGHT, AT ITS DISCRETION AND CHOOSING, TO DEFEND ANY AND ALL CLAIMS WHICH MAY BE ASSERTED AGAINST IT, AND CONTRACTOR AGREES TO REIMBURSE INDEMNITEE FOR ANY AND ALL EXPENDITURES WHICH INDEMNITEE MAY MAKE OR INCUR ON ACCOUNT OF ANY SUCH CLAIM.

10.3 CONTRACTOR AND CONTRACTOR'S AGENTS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS OR EQUIPMENT.

10.4 Subcontractor's and Supplier's Indemnity Obligations. Contractor shall require each of its subcontractor to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required in this section and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms as Section 13. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the actions of any subcontractor engaged by Contractor, whether in written agreement or otherwise, or who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed to be the obligation of the subcontractors to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with completed operations coverage which contains a per occurrence limit of no less than one million dollars (\$1,000,000.00), and an aggregate limit of no less than two million dollars (\$2,000,000.00) protecting against liability for bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type of, or nature of, the Work or limit the type of structure on which the Work is to be performed. The CGL Policy shall not contain a deductible or self insured retention of more than \$25,000.00. Contractor shall continuously maintain a CGL Policy covering completed operations for any applicable statute of repose for commencing lawsuits associated with the Work.

11.2 Other Insurance. Contractor agrees to carry (i) Worker's Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Worker's Compensation obligations imposed by law; (ii) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than one million dollars (\$1,000,000.00) and an aggregate of no less than one million dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (iii) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person (Bodily Injury) and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner as an Additional Insured on the CGL Policy or policies required above covering both on-going operations and completed operations (equivalent to form CG20101185 or form CG2037). Coverage obtained by Contractor naming Owner as an Additional Insured shall be primary with any insurance of Owner being excess coverage. That insurance coverage will be carried continuously during the term of this Agreement and thereafter as required by this Agreement with insurance companies acceptable to Owner in its sole and absolute discretion. That insurance shall provide for a waiver of subrogation. All insurance shall be with

INITIALS: OWNER AB, CONTRACTOR CS

a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the required policies. Each Certificate of Insurance or policy shall contain an unqualified clause to the effect that the policy shall (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days' prior written notice to Owner, (ii) be carried continuously from the date of commencement of the Work until expiration of the period of the Contractor's warranty provided in this Agreement, (iii) specifically identify Owner as an Additional Insured, and (iv) indicate that coverage applies in the state where the Work is being performed. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself and the Work required to be performed under this Agreement.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER IN ITS SOLE AND ABSOLUTE DISCRETION) IN EFFECT AT THE TIME WORK IS PERFORMED TO COMPENSATE OWNER FOR ANY ADDITIONAL COSTS OF ITS WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS CONTRACT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work to the extent permitted under this Agreement, Contractor guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Owner as an Additional Insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or another contractor's work is damaged by an act for which Contractor, or its employees, agents or subcontractors, are responsible, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct such Work, replace or repair any defective material, or repair any damage. Contractor shall make all repairs and correct such within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours notice on a non-emergency basis; or (ii) retain a third party or undertake to perform those duties, and retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld resulting in a deficiency, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and reasonable attorneys' fees, incurred by Owner, and shall pay to Owner this amount within thirty (30) days of demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Paragraph 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or permitted subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location as a result of Contractor's actions or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement, Exhibit A of this Agreement, or the specifications; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order that is Contractor's obligation under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary tools, material, or equipment for, or cleaned up after, the Work; (viii) Contractor fails to comply with any other provision of this Agreement.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement and rights and remedies available under this Agreement shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. Owner shall have a right to collect from Contractor its reasonable attorneys' fees and expenses incurred in enforcing Contractor's obligations.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These Disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking equitable relief from and arbitrator or a court of appropriate jurisdiction.

13.3 Arbitration. If mediation fails, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq., regardless of any other choice of law provision in any underlying contract or this Agreement. All demands for arbitration shall be made before the expiration of the applicable statutes of limitations and repose. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court of competent jurisdiction.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrators mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes, is over \$200,000, but only one arbitrator shall be appointed if the Dispute is 200,000 or less. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of a mediator or arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint a mediator or arbitrator. The AAA's Code of Arbitrator Ethics (revised March 1, 2004) is applicable to all arbitrations.

INITIALS: OWNER ksj, CONTRACTOR luy

13.5 Rules. To the extent not in conflict with the Federal Arbitration Act, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner may join Contractor in any litigation, mediation, or arbitration initiated against Owner by a third person so that the rights of all parties (Owner, Contractor, Subcontractor, or any third person) shall be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner where necessary to facilitate resolution in a single forum. If multiple lawsuits or arbitrations are commenced, they shall all be consolidated into a single proceeding. Notwithstanding any other provision of this section, if a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect to unilaterally waive mediation or arbitration and litigate the Dispute with Contractor.

14. TERMINATION.

14.1 Termination by Owner for Cause of Convenience. This Agreement shall remain in full force and effect until terminated in writing by mailing notice to the other Party. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) Days' written notice before the effective date of termination, and shall perform fully under this Agreement during that notice period. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.3 Survival. All obligations, duties and warranties for Work performed under this Agreement shall survive termination.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement, (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement, (iii) this Agreement is or will be (when executed) a binding obligations of Contractor, enforceable in accordance with its terms, (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority, (v) Contractor has, and each Contractor's employees, agents or permitted subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement, (vi) Contractor is in compliance with all governmental requirements to which it is subject, and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement, and with respect to prices and quantities only, the Price Schedule and all written Purchase Orders shall be the entire agreement between Owner and Contractor related to the Work, and there are no other agreements, oral or written, made by or relied upon by Owner and Contractor. Except as otherwise provided in this Agreement, no provision of this Agreement may be amended or supplemented except in writing signed by both Owner and Contractor.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights and obligations are not assignable or transferable without the express written consent of Owner, who may consent can be withheld in Owner's sole and absolute discretion. Subject to the restrictions and prohibitions on assignment set forth in this section, the terms of the Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Contractor shall provide and transfer ownership to any and all samples and/or shop drawings requested by Owner.

18. NOTICES. All notices required pursuant to this Agreement or otherwise shall be in writing and shall be delivered to the respective business address of Owner and Contractor. However, Contractor's business address shall be as noted on page one (1) of this Agreement. Notices shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by overnight delivery service, and upon confirmation if sent by facsimile transmission.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or articles.

SOUTH CAROLINA REVISED 7/23/2007

INITIALS: OWNER feh, CONTRACTOR lwy

Exhibit A

Scope of Work

Insulation

Owner C. My

Contractor _____

EXHIBIT

8

JUSTIN O'TOOLE LUCEY, PA

Attorneys at Law

Justin Lucey
Joshua F. Evans
Stephanie D. Drawdy
Dabny Lynn

415 Mill Street, Mount Pleasant, SC 29464
Reply to: P.O. Box 806, Mount Pleasant, SC 29465
Phone: 843.849.8400 · Fax: 843.849.8406 · www.lucey-law.com

EXHIBIT 8

Anna S. McCann
Lauren M. Milton
Sohayla R. Townes
Collin H. Fuller

December 11, 2019

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

D.R. Horton, Inc.
c/o C T Corporation System
2 Office Park Court Suite 103
Columbia, South Carolina 29223

RE: *Rose Hill Subdivision in Anderson County, South Carolina*
Notice and Opportunity to Cure Improper Construction Conditions and Resulting Damages

To Whom It May Concern:

This letter is to notify D.R. Horton, Inc. that Natalie and Paul Zitek as well as other owners of D.R. Horton homes within the Rose Hill subdivision in Anderson County, South Carolina ("Rose Hill") intend to proceed with litigation should D.R. Horton, Inc. fail to cure the following improper construction conditions and resulting damages existing at their homes within thirty (30) days from the date of this letter:

1. Brick: Insufficient/improperly installed brick veneer and resulting cracking, separation, water damage, efflorescence, and cost to repair;
2. Stone: Insufficient/improperly installed stone veneer and resulting loose embedment, cracking, separation, water damage and cost to repair;
3. Doors: Insufficient/improperly installed front and patio doors, deteriorating trim, resulting water damage/leakage, and cost to repair;
4. Floors: Insufficient/improperly installed flooring and resulting buckling, cracking, separation, bumpiness, water damage, and cost to repair;
5. General Wall: Insufficient/improperly installed framing, missing/inadequate insulation at exterior walls, drywall cracking, increased utility bills, and cost to repair;
6. Roof: Insufficient/improperly installed roofs, deteriorating sheathing and roof decking, resulting water damage/leakage, blow-offs, and cost to repair;
7. Windows: Insufficient/improperly installed windows, resulting water damage/leakage, cracking, separation, and cost to repair;

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KDC 00013708

8. Vinyl Siding: Insufficient/improperly installed vinyl siding, resulting waviness, water damage, and cost to repair;
9. Hardi Siding: Insufficient/improperly installed Hardi siding, resulting cracking, water damage, efflorescence, and cost to repair;
10. Concrete/Soil: Insufficiently supported concrete/inadequate soil, resulting cracking, water damage, and cost to repair;
11. Grading/Drainage: Insufficient/improperly installed grading and/or drainage, resulting water damage, ponding, unevenness, landscaping difficulties, and cost to repair;
12. MEP: Inadequate free air space, improper duct work, insufficient insulation in attics, plumbing/HVAC leaks, insufficient PEX piping, non-galvanized piping, holes in roof sheathing at plumbing penetrations, inadequate outlets, insufficient amperage, power surges, and resulting cracking, water damage/leakage, cost to repair, and increased utility bills; and
13. Poor Work: Sloppy workmanship throughout Rose Hill homes and resulting cost to repair.

Time is of the essence and extensions will not be granted. Thereafter, the Rose Hill homeowners will proceed with serving litigation. Please contact us directly if you have any questions or concerns regarding this Notice and Opportunity to Cure.

Sincerely,

A handwritten signature in blue ink that reads "Dabny Lynn". The signature is written in a cursive, flowing style.

Dabny Lynn
Sohayla Townes

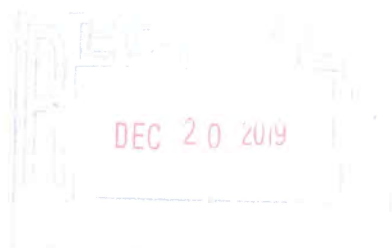
DL/dl

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U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee \$	Postmark Here
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy) \$	
☐ Return Receipt (electronic) \$	
☐ Certified Mail Restricted Delivery \$	
☐ Adult Signature Required \$	
☐ Adult Signature Restricted Delivery \$	
Postage \$	
Total Postage and Fees \$	
Sent To D.R. Horton, Inc. c/o CT Corporation Syst	
Street and Apt. No., or PO Box No. Office Park Ct, Suite 103	
City, State, ZIP+4® Columbia, SC 29223	
PS Form 3800, Apr. 11 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

EXHIBIT 8

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X <u>Pam Johnson</u> ☐ Agent ☐ Addressee	
1. Article Addressed to: <u>DR. Horton Inc.</u> <u>c/o CT Corporation System</u> <u>2 Office Park Court, Suite 103</u> <u>Columbia, SC 29223</u>  9590 9402 4502 8278 0951 54		B. Received by (Printed Name) <u>Pam Johnson</u> C. Date of Delivery <u>DEC 20 2019</u>	
2. Article Number (Transfer from service label) 7017 1450 0002 3749 3122		D. Is delivery address different from item 1? ☐ Yes ☒ No If YES, enter delivery address below:	
3. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☒ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Collect on Delivery ☒ Return Receipt for Merchandise ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation™ ☐ Restricted Delivery ☐ Signature Confirmation Restricted Delivery			
PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt	



STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
Natalie Zitek, individually, and on behalf)
of all others similarly situated,)

Plaintiff)

vs)

D.R. Horton, Inc., Jane Doe #1-10; and,)
John Doe #1-50,)

Defendant)

D.R. HORTON, INC.)

Third-Party Plaintiff)

vs)

AJ LANDSCAPING & GRADING,)
LLC, A/K/A AJ LANDSCAPING &)
GRADING, LLC; ALLPRO)
TEXTURES, LLC; ALPHA OMEGA)
CONSTRUCTION GROUP, INC.;)
AMERICAN CONCRETE AND)
PRECAST, INC.; A/K/A ACP)
CONCRETE, INC.; A&J FRAMING,)
INC; ALPHA E.M.C.; A-Z, INC.;)
ATLANTA FLOOR DESIGNS)
CENTER; A GRADE ABOVE)
OTHERS, LLC; BRAND-VAUGHAN)
LUMBER CO, INC.; BKF BUILDERS,)
INC.;BUILDERS DESIGNHOUSE,)
LLC; BMC EAST LLC D/B/A)
COLEMAN FLOOR, LLC; BUILDERS)
FIRSTSOURCE SOUTHEAST GROUP,)
LLC, A/K/A BUILDERS)
FIRSTSOURCE, INC; BRAVO)
CARPENTERS, INC.; CARYL)
MECHANICS II, INC., A/K/A CARYL)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No. 2019-CP-04-1942

**DEFENDANT D.R. HORTON, INC.'S
SUPPLEMENTAL MEMORANDUM IN
OPPOSITION TO THIRD-PARTY
DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT**

MECHANICALS, INC.; CANNADAY)
 SIDING & GUTTER, INC.; CORTES)
 PAINTING, LLC; CBU ENTERPRISES,)
 INC.; CPI SECURITY SYSTEMS, INC.;)
 DOM GROUP, LLC; FERGUSON)
 ENTERPRISES, INC.; FIVE STAR)
 CONSTRUCTION INC.; FIVE STAR)
 FOUNDATIONS, LLC; GALLOWAY-)
 BELL, INC. A/K/A GALLOWAY-)
 BELL, INC. II; GET FLOORED, LLC;)
 GBS BUILDING SUPPLY – US LBM,)
 LLC, F/K/A GBS BUILDING SUPPLY,)
 INC.; GENERAL SHALE BRICK INC.;)
 GREENER PASTURES, INC. A/K/A)
 GREENER PASTURES OF AIKEN,)
 LLC; IBP ASSET, LLC D/B/A BLUE)
 RIDGE BUILDING PRODUCTS; JLS)
 MASONRY, INC.; KINGS)
 LANDSCAPING, LLC;)
 LANDSHAPERS, LLC; LADE-)
 DANLAR, INC.; LANSING BUILDING)
 PRODUCTS, INC.; LONG HEATING &)
 AIR CONDITIONING, INC.; L&M)
 ELECTRIC, INC; MANALE)
 LANDSCAPING, LLC; MJ COWBOYS,)
 LLC; M&L GENERAL)
 CONSTRUCTION, LLC, A/K/A M&L)
 GENERAL CONSTRUCTION, INC.;)
 M&L REYNA CONSTRUCTION, LLC;)
 M&M FOUNDATIONS, LLC;)
 NAZARETH BUILDERS, LLC; NB)
 CONTRACTORS, LLC; POINSETT)
 DEVELOPMENT, LLC; POINSETT)
 HOMES, LLC; P&T CONSTRUCTION,)
 INC., A/K/A P&T CONSTRUCTION,)
 INC.; P&L ENTERPRISES, LLC;)
 PROBUILD COMPANY, LLC A/K/A)
 PROBUILD HOLDINGS, INC.; RITE)
 RUG CO.; RODNEY HOWARD)
 GRADING, INC. A/K/A RODNEY)
 HOWARD GRADING CO.;)
 SANDLAPPER CONCRETE, LLC;)
 SODFATHER INC., LANDSCAPE)
 CONTRACTORS; STOCK BUILDING)
 SUPPLY, LLC; TOPBUILD HOME)
 SERVICES, INC., A/K/A GALE)

CONTRACTORS SERVICE; TUCKER)
 MATERIALS, INC., A/K/A GYPSUM;)
 UTM ENTERPRISES, INC; DUPREE)
 PLUMBING COMPANY, INC. AND)
 WILLOW TREE LANDSCAPING, INC;)
 AND SILVER LINE BUILDING)
 PRODUCTS CORPORATION)
)

Third-Party

Defendants

TO: THIRD-PARTY DEFENDANTS M&M FOUNDATIONS, LLC, P&L ENTERPRISES, LLC, GALLOWAY-BELL, INC., II, PROBUILD COMPANY, LLC, BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC, BMC EAST, LLC, STOCK BUILDING SUPPLY, LLC, COLEMAN FLOOR, LLC, CANNADAY SIDING & GUTTER, INC., P&T CONSTRUCTION, INC., BKF BUILDERS, INC., IBP ASSET, LLC D/B/A BLUE RIDGE BUILDING PRODUCTS AND BUILDERS SERVICES GROUP, INC. D/B/A GALE CONTRACTOR SERVICES AND THEIR COUNSEL OF RECORD:

COMES NOW, Defendant D.R. Horton, Inc. (“D.R. Horton”) and hereby provides this Supplemental Memorandum in Opposition to Third-Party Defendants M&M Foundations, LLC, P&L Enterprise, LLC, Galloway-Bell, Inc. II, ProBuild Company, LLC, Builders FirstSource-Southeast Group, LLC, BMC East, LLC, Stock Building Supply, LLC, Coleman Floor, LLC, Cannady Siding & Gutter, Inc., P&T Construction, Inc., BKF Builders, Inc., IBP Asset, LLC d/b/a Blue Ridge Building Products, and Builders Services Group, Inc. d/b/a Gale Contractor Services Motions for Summary Judgment addressing arguments not specifically addressed in D.R. Horton’s initial opposition brief.

I. ARGUMENT

A. Statute of Limitations Does Not Bar D.R. Horton’s Claims Against Third-Party Defendants

M&M Foundations, LLC (“M&M”) and P&L Enterprise, LLC (“P&L”) contend that the statute of limitations bars claims against them because D.R. Horton brought its claims more than three years after these contractors last completed their work at Rose Hill or received their final

payment. This argument is misplaced. The statute of limitations does not begin to run until the injury is discovered by the Plaintiff.¹

On September 25, 2019, Plaintiff filed her claim against D.R. Horton, individually, and on behalf of all other similarly situated regarding alleged defects. D.R. Horton was first put on notice of this potential claim on December 11, 2019, when the Notice of a Right to Cure was provided to D.R. Horton by Plaintiff's counsel. On February 11, 2021, D.R. Horton filed its Answer. On March 11, 2021, D.R. Horton filed its Amended Answer and Third-Party Complaint against its subcontractors, including P&L Enterprises, LLC and M&M Foundations, LLC. P&L was served May 17, 2021, and M&M Foundations was served May 24, 2021. By applying South Carolina law and the "discovery rule", the Statute of Limitations regarding D.R. Horton's claims would not run until December 11, 2022, three years after D.R. Horton received notice regarding the potential claims. D.R. Horton's claims against these parties were brought well within the statute of limitations.

Under South Carolina law, a defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute was induced by the defendant's conduct.² Such inducement may consist either of an express representation that

¹ A number of Third-Party Defendants raised the statute of limitations in their motions as basis for granting summary judgment but provided no additional briefing on this grounds, including Galloway-Bell, Inc. II, Probuild Company, LLC, BMC East, LLC, Stock Building Supply, LLC and Coleman Floor, LLC. To the extent these parties are joining DRH's motion for summary judgment against Plaintiff on statute of limitations grounds, their motions should be similarly treated. Because none of these parties raised any specific grounds for the statute of limitations, DRH requests the ability to submit supplemental briefing should any of these parties be allowed to argue grounds for statute of limitations that were not raised in their briefing. *Skinner v. Skinner*, 257 S.C. 544, 549, 186 S.E.2d 523, 526 (1972) ("One of the basic purposes of a notice of motion is to apprise the opposing party of the relief sought and the grounds therefor... Ordinarily, a court may not grant relief beyond the limits or scope of notice."). Additionally, BMC East, LLC, and Cannady Siding & Gutter, Inc. raised the issue of not having a contract with DRH in their motion but did not brief this issue. Because these parties did not specifically brief this issue, DRH requests the ability to submit supplemental briefing should BMC and Cannady be permitted to argue grounds for no contract that were not raised in its briefing.

² *Black v. Lexington Sch. Dist. No. 2*, 327 S.C. 55 (1997).

the claim will be settled without litigation or conduct that suggests a lawsuit is not necessary.³ Although the issue of whether a defendant is estopped from claiming the statute of limitations is ordinarily a question of fact, summary judgment is appropriate where there is no evidence of conduct on the defendant's part warranting estoppel.⁴ “Generally, a cause of action accrues under South Carolina law ‘the moment the defendant breaches a duty owed to the Plaintiff.’”⁵ There are multiple reasons why a cause of action may not begin to accrue on the day of the initial breach. In this instance, South Carolina has adopted the “discovery rule,” which tolls the three-year statute of limitations from running until discovery of the potential claim by the injured party. The South Carolina Supreme Court elaborated that:

Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against *another party* might exist. This standard as to when the limitations period begins to run is objective rather than subjective. Therefore, the statutory period of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.⁶

Essentially, the “exercise of reasonable diligence” means that “the injured party must act with some promptness” once on notice of a potential claim.⁷ The law is clear that a plaintiff, or in this case a Third-Party Plaintiff, must be on notice that a claim might exist and that a party exists against whom the claim can be made in order to trigger the discovery rule.

³ Id.

⁴ Id.

⁵ Barr v. City of Rock Hill, 330 S.C. 640, 644, 500 S.E.2d 157, 159-60 (Ct. App. 1998).

⁶ Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 787 S.E.2d 485 (2016) (emphasis added). “In other words...whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against *another party* might exist.” Young v. South Carolina Dept. of Soc. Servs., 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999) (emphasis added).

⁷ Dean v. Ruscon Corp., 321 S.C. 360, 363-64, 468 S.E.2d 645, 647 (1996).

In this instance, the earliest D.R. Horton was potentially put on notice of claims against these third-party defendants was after it received the notice of the right to cure in December 2019.

P&L Enterprise, LLC claims that under South Carolina law, the statute of limitations bars any claim from being brought after three years from the completion of its work on Rose Hill. P&L states that its last day of work for D.R. Horton regarding the Rose Hill Subdivision was September 30, 2015, and it was last paid for this work on July 26, 2018. In arguing that either of these dates starts the statute of limitations period, P&L ignores the discovery rule.

M&M Foundations, LLC takes the identical position as P&L Enterprises, LLC, stating that M&M Foundations, LLC last day of work on the Rose Hill Subdivision was on June 24, 2016, and therefore the statute of limitations had passed before D.R. Horton filed its Third-Party Complaint. M&M Foundation, LLC alternatively suggests that the Court use the Certificate of Occupancy date to establish the starting date for the statute of limitations. Both arguments ignore the discovery rule.

The statute of limitations for D.R. Horton's claims against M&M and P&L did not begin to run from their last date of work, the date of last payment, or the date the certificate of occupancy was issued. At the earliest, it began once D.R. Horton was put on notice of potential claims of latent defects after Plaintiff filed suit in September 2019. For these reasons, M&M and P&L's motions for summary judgment on statute of limitations ground should be denied.

B. The Statute of Repose is Not a Basis for Dismissal of D.R. Horton's Claims Against ProBuild and Builders FirstSource

ProBuild and Builders (collectively “ProBuild”) specifically raises the statute of repose as a basis for summary judgment. The statute of repose is not a basis for dismissal of D.R. Horton’s claims against ProBuild.⁸

D.R. Horton built the homes at issue in this matter between 2011 and 2017. ProBuild installed windows and exterior doors on nearly every home involved in this class action lawsuit. Plaintiff’s Complaint was filed on September 25, 2019. D.R. Horton filed its Amended Answer and Third-Party Complaint on March 11, 2021 (the “Third-Party Complaint”). ProBuild was among the Third-Party Defendants included in the Third-Party Complaint. D.R. Horton brought the following claims in the Third-Party Complaint: contractual and equitable indemnity, breach of contract, breach of express and implied warranties, and negligence/gross negligence/recklessness. *See generally*, D.R. Horton’s Amended Answer & Third-Party Complaint. ProBuild was served with the Third-Party Complaint on June 1, 2021. ProBuild contends that claims arising out of work performed by ProBuild prior to May 31, 2013 – eight years and one day before ProBuild was served with the Third-Party Complaint – are barred by the Statute of Repose. D.R. Horton has similarly moved for summary judgment on Statute of Repose grounds as to homes with certificates of occupancy more than eight years before Plaintiff’s Complaint.

Pursuant to the Section 15-3-640 (the “Statute of Repose”), “[n]o actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real

⁸ Numerous Third-Party Defendants have raised arguments in their Motions for Summary Judgment based on the Statute of Repose. However, several Third-Party Defendants did not include any argument or evidence in support of this argument in the briefs in support of their motions. Other Third-Party Defendants included a catch-all argument in their motions incorporating any potential applicable argument made by another Third-Party Defendant. To the extent any other Third-Party Defendants submit supplemental briefs and evidence in support of their arguments that D.R. Horton’s claims are barred by the Statute of Repose, D.R. Horton reserves the right to supplement and respond.

property may be brought more than eight years after substantial completion of the improvement.” The Statute of Repose applies to breach of contract, negligent construction or repair, actions in contract or in tort, contribution or indemnification for damages sustained on account of an action described in this section, among other causes of action. S.C. Code Ann. § 15-3-640(1), (2), (5) and (6). However, the Statute of Repose is not available as a defense to a person guilty of fraud, gross negligence, or recklessness. *See* S.C. Code Ann. § 15-3-670(A). While “the violation of a building code ... does not constitute *per se* fraud, gross negligence, or recklessness, ... this type of violation may be admissible as evidence of fraud, negligence, gross negligence, or recklessness.” S.C. Code Ann. § 15-3-670(B).

The latest date that the Statute of Repose begins to run is on the date that the Certificate of Occupancy is issued. *See Lawrence v. Gen. Panel Corp.*, 425 S.C. 398, 822 S.E.2d 800 (2019). “For any improvement to real property, a certificate of occupancy ... in the case of new construction ... shall constitute proof of substantial completion of the improvement[.]”). S.C. Code Ann. § 15-3-640. “Substantial Completion” is defined as that degree of a completion of a project, improvement, or a specified area or portion thereof ... upon attainment of which the owner can use the same for the purpose for which it was intended[.]” S.C. Code Ann. S.C. Code Ann. § 15-3-630.

D.R. Horton contends that the applicable date for measuring the end of the Statute of Repose should be the date Plaintiff’s filed its complaint and not the date of D.R. Horton’s Third-Party Complaint.⁹ Further, if the Court grants D.R. Horton’s motion for summary judgment on Statute of Repose grounds, then it follows that summary judgment as to claims against ProBuild apart from gross negligence/recklessness would be appropriate for these specific homes. However,

⁹ If the statute of repose begins at issuance of the certificate of occupancy, then approximately 40 homes would be excluded from the class on this basis.

D.R. Horton's indemnity claims would remain viable because ProBuild's obligations to defend was triggered by Plaintiff's claim.

Moreover, as noted above, the Statute of Repose is not available as a defense to a person guilty of fraud, gross negligence, or recklessness. *See* S.C. Code Ann. § 15-3-670(A). Therefore, any homes that the Court finds are barred, DRH's claims for gross negligence/recklessness would survive summary judgment. ProBuild argues that the record is devoid of any evidence that ProBuild acted with gross negligence or recklessness and, therefore, ProBuild is entitled to summary judgment on that claim as well.

Gross negligence has been defined as:

[T]he intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. It is the failure to exercise slight care. Gross negligence is ordinarily a mixed question of law and fact.

Jinks v. Richland Cty., 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003) (citations omitted). "Gross negligence is a relative term and means the absence of care that is necessary under the circumstances." Berberich v. Jack, 392 S.C. 278, 287 n.1, 709 S.E.2d 607, 612 (2011) (quoting Doe v. Greenville County Sch. Dist., 375 S.C. 63, 71, 651 S.E.2d 305, 309 (2007)). Recklessness is a "conscious failure to exercise due care" and "implies the doing of a negligent act knowingly[.]" Berberich v. Jack, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011) (quoting Yaun v. Baldrige, 243 S.C. 414, 419, 134 S.E.2d 248, 251 (1964)).

Testimony from the Jeff Hawk, the 30(b)(6) deponent for Therma-Tru, LTD., the door manufacturer, and testimony from Curtis Harrelson, who testified he was hired by ProBuild to install doors, is some evidence that ProBuild may have been grossly negligent and/or reckless in its obligations to install and/or oversee the installation of the doors in Rose Hill. Jeff Hawk was deposed as the 30(b)(6) deponent for Therma-Tru, LTD., the manufacturer for the doors installed

in Rose Hill. Hawk testified that in some of the door photographs he noted missing corner sill pads and, according to Hawk, this can contribute to water damage to a door because the pads are an integral part of keeping water out. (Jeff Hawk Dep. 32:20-33:9, excerpts attached as **Exhibit A**). Curtis Harrelson, with Harrelson Painting, deposed in a similar matter in Rose Hill, testified that the corner sill pads were not always installed but given back to ProBuild. (Curtis Harrelson Dep. 133-136 (Apr. 12, 2022), excerpt attached as **Exhibit A**). Based on this testimony about the failure to install the corner sill pads, there is, at the very least, a question of material fact as to whether ProBuild acted grossly negligent and/or reckless. Therefore, D.R. Horton's claims for gross negligence/recklessness as to the work outside of the permitted time period under the Statute of Repose must survive summary judgment.

C. There Are Factual Disputes Concerning the Work Performed by Subcontractors

1. Galloway-Bell, Inc. a/k/a Galloway-Bell, Inc. II's

Galloway-Bell, Inc. contends that it should be granted summary judgment as against D.R. Horton because the Plaintiff concedes through answers to requests for admission and prior stipulations made before this Court, that batt and blown insulation are not at issue in this litigation. If such a stipulation is submitted on these issues, then it follows that summary judgment as to certain of D.R. Horton's claims against Galloway-Bell for batt and blown insulation would be appropriate. D.R. Horton's indemnity claims would remain viable because Galloway-Bell's obligation to defend was triggered by Plaintiff's claim.

If such a stipulation is not entered, because Plaintiff has changed its allegations throughout the course of this litigation, it would be premature and prejudicial to grant Galloway-Bell's motion if Plaintiff is later permitted to raise allegations about these construction items as these would be fact questions that must be resolved by a fact finder.

2. P&L Enterprises, LLC

P&L Enterprises, LLC (“P&L”) contends that it should be granted summary judgment on allegations of siding defects at the Homes it worked on in Rose Hill. D.R. Horton disputes Plaintiff’s allegations that siding is defective, and it believes that the evidence at trial will show as much. If the Court is willing to grant summary judgment on any of Plaintiff’s claims relating to siding on the specific Homes that P&L worked on, then it follows that summary judgment as to some of D.R. Horton’s claims against P&L would be appropriate. D.R. Horton’s indemnity claims would remain viable because P&L’s obligation to defend was triggered by Plaintiff’s claim.

It is the nature of class actions that only a representative sample of defects (not every individual defect) is analyzed to reach class-wide conclusions. Whitlock looked at one Home on which P&L worked, but not the other. (Whitlock Dep. 1562:9-12, excerpts attached as **Exhibit B**). Plaintiff identified siding defects in its Notice & Opportunity to Cure Letter. Unless Plaintiff has now dismissed all such claims, there remains factual issues for a jury to determine on this issue. Accordingly, there remain factual questions as to whether siding is defective in any Rose Hill Home and specifically as to the P&L Homes. As such, summary judgment should be denied.

3. Cannady Siding & Gutter, Inc.

Cannady Siding & Gutter, Inc. (“Cannady”) contends that it should be granted summary judgment on allegations of siding defects at the 35 Rose Hill Homes it worked on. D.R. Horton disputes Plaintiff’s allegations that siding is defective, and it believes that the evidence at trial will show as much. If the Court is willing to grant summary judgment on any of Plaintiff’s claims relating to siding on the specific Homes that Cannady worked on, then it follows that summary judgment as to some of D.R. Horton’s claims against Cannady would be appropriate. D.R.

Horton's indemnity claims would remain viable because Cannady's obligation to defend was triggered by Plaintiff's claim.

Whitlock testified regarding potential issues with cement siding. (Whitlock Dep. 1559:19-1560:9, **Exhibit B**). Plaintiff also identified siding defects in its Notice & Opportunity to Cure Letter and the Court did not specifically identify which alleged construction defects were included or excluded from class certification. Unless Plaintiff has now dismissed all such siding claims, there remain factual issues for a jury to determine on this issue. Accordingly, there remain factual questions as to whether siding is defective in any Rose Hill Home and specifically as to the Cannady Homes. As such, summary judgment should be denied.

4. P&T Construction, Inc.

P&T Construction, Inc. ("P&T") contends that it should be granted summary judgment on allegations of siding defects at the approximately 160 Rose Hill Homes it worked on. D.R. Horton disputes Plaintiff's allegations that siding is defective, and it believes that the evidence at trial will show as much. If the Court is willing to grant summary judgment on any of Plaintiff's claims relating to siding on the specific Homes that P&T worked on, then it follows that summary judgment as to some of D.R. Horton's claims against P&T would be appropriate. D.R. Horton's indemnity claims would remain viable because P&T's obligation to defend was triggered by Plaintiff's claim.

Whitlock testified regarding potential issues with siding even though it was not currently in his scope of repair estimate. (Whitlock Dep. 79:14-80:16, **Exhibit B**). Plaintiff identified siding defects in its Notice & Opportunity to Cure Letter and the Court did not specifically identify which alleged construction defects were included or excluded from class certification. Unless Plaintiff has now dismissed all such siding claims, there remain factual issues for a jury to determine on

this issue. Accordingly, until Plaintiff stipulates to a dismissal of siding claims, there remain factual questions as to whether siding is defective in any Rose Hill Home and specifically as to the P&T Homes. As such, summary judgment should be denied.

5. M&M Foundations, LLC

M&M Foundations, LLC (“M&M”) contends that it should be granted summary judgment on allegations of foundation defects at the approximately twelve Rose Hill Homes it worked on. D.R. Horton disputes Plaintiff’s allegations that foundations are defective, and it believes that the evidence at trial will show as much. If the Court is willing to grant summary judgment on any of Plaintiff’s claims relating to foundations on the specific Homes that M&M worked on, then it follows that summary judgment as to some of D.R. Horton’s claims against M&M would be appropriate. D.R. Horton’s indemnity claims would remain viable because M&M’s obligation to defend was triggered by Plaintiff’s claim.

Whitlock testified to potential issues with foundation and included foundation in his scope of repair estimate. (Whitlock Dep. 88:18-89:4, **Exhibit B**). Plaintiff identified foundation defects in its Notice & Opportunity to Cure Letter and the Court did not specifically identify which alleged construction defects were included or excluded from class certification. Unless Plaintiff has now dismissed all such foundation related claims, there remain factual issues for a jury to determine on this issue. Accordingly, until Plaintiff stipulates to a dismissal of foundation claims, there remain factual questions as to whether foundations are defective in any Rose Hill Home and specifically as to the M&M Homes. As such, summary judgment should be denied.

6. BKF Builders, Inc.

BKF Builders, Inc. (“BKF”) contends that it should be granted summary judgment on its drywall and painting work on approximately twelve Rose Hill Homes. There are genuine issues of

material fact as to whether the scope of work for drywall and painting contractors included installation or re-installation of the corner sill pads on the doors. Jeff Hawk was deposed as the 30(b)(6) deponent for Therma-Tru, LTD., the manufacturer for the doors installed in Rose Hill. Hawk testified that in some of the door photographs he noted missing corner sill pads and, according to Hawk, this can contribute to water damage to a door because the pads are an integral part of keeping water out. (Jeff Hawk Dep. 32:20-33:9, excerpts attached as **Exhibit A**). Hawk was unable to identify which contractor is responsible for installation of the pads, but he was not able to rule out that they should be installed after the jams are painted. (Hawk Dep. 184:18-185:6, **Exhibit A**). Curtis Harrelson, with Harrelson Painting, deposed in a similar matter in Rose Hill, testified that the corner sill pads were not always installed but given back to ProBuild. (Curtis Harrelson Dep. 133-136 (Apr. 12, 2022), excerpt attached as **Exhibit C**). Whether BKF or another contractor was responsible for this issue is a genuine issue of material fact.

Because BKF's scope of work could have contributed to door deterioration, it would be inappropriate to grant BKF summary judgment. There remain factual questions as to whether BKF's work contributed to door deterioration in any Rose Hill Home. As such, summary judgment should be denied.

7. **IBP Asset, LLC d/b/a Blue Ridge Building Products**

IBP Asset, LLC d/b/a Blue Ridge Building Products ("Blue Ridge") contends that it should be granted summary judgment as against D.R. Horton because the Plaintiff conceded at a previous hearing that installation of gutters and attic insulation were not part of the class claims. However, Plaintiff has never stipulated to this fact and instead raised the concern of potential water leak through doorknobs. (Blue Ridge Mem. Supp. 2). If Plaintiff is willing to stipulate that Blue Ridge's work is not at issue, then it follows that summary judgment as to certain of D.R. Horton's claims

against Blue Ridge would be appropriate. D.R. Horton's indemnity claims would remain viable because Blue Ridge's obligation to defend was triggered by Plaintiff's claim.

If such a stipulation is not entered, because Plaintiff has changed its allegations throughout the course of this litigation, it would be premature and prejudicial to grant Blue Ridge's motion if Plaintiff is later permitted to raise allegations about these construction items as these would be fact questions that must be resolved by a fact finder.

8. Builders Services Group, Inc. d/b/a Gale Contractor Services

Builders Service Group, Inc. d/b/a Gale Contractor Services ("Gale") installed garage doors, gutters, downspouts, and batt and blown insulation. Gale contends that it should be granted summary judgment as against D.R. Horton because the Plaintiff confirmed at a previous status conference that gutters, downspouts, and insulation were not part of the class claims. If such a stipulation is submitted on these issues, then it follows that summary judgment as to certain of D.R. Horton's claims against Gale may be appropriate. D.R. Horton's indemnity claims would remain viable because Gale's obligation to defend was triggered by Plaintiff's claim.

If such a stipulation is not entered, because Plaintiff has changed its allegations throughout the course of this litigation, it would be premature and prejudicial to grant Gale's motion if Plaintiff is later permitted to raise allegations about these construction items as these would be fact questions that must be resolved by a fact finder. In fact, Gale itself points to a factual dispute with Plaintiff over potential damages connected with these construction conditions. (Gale Mem. 14). Accordingly, summary judgment should be denied.

D. Alleged Defective Plans Not Grounds for Summary Judgment

Third-Party Defendants Galloway, P&L, and M&M, each argue that summary judgment should be granted because they are not responsible for consequences of defects in plans and

specifications. These parties have not presented evidence that their scope of work in the plans were improper. D.R. Horton's expert, Moore, testified that there is no information that the plans and specifications for Rose Hill were not adequate. (Moore Dep. 288:9-18, excerpt attached as **Exhibit D**). Additionally, Moore concluded that even if the plans were not adequate, the subcontractor has a duty to follow up with the builder for any specific questions. (Moore Dep. 288:24-289:1, **Exhibit D**).

D.R. Horton's expert, Moore, testified that DRH, as a general contractor, has some duty to inspect the work of its subcontractors during construction which can be met by a walk through. (Moore Dep. 498:24-499:11, **Exhibit D**). Moore further stated that the subcontractors must perform their scope of work in accordance with building codes and their Independent Contractor Agreements. Subcontractors cannot blame DRH for failing to look at the work and catch it. (Moore Dep. 660:1-13, **Exhibit D**). The ICA's provide that these subcontractors were responsible for reviewing the plans and specifications and complying with applicable building codes. To the extent any plans or specifications deviated from building codes, these contractors were responsible for bringing any such discrepancy to D.R. Horton's attention.

6. PERFORMANCE STANDARDS.

6.1 Applicable Standards. Contractor shall perform all Work in a good and workmanlike manner in accordance with the plans and specifications of Owner, according to industry standard practices, and warrants that the Work will meet or exceed FHA minimum property standards, VA requirements, all laws (statutory or common) and regulations, and any applicable building code requirements.

(Version 1 of ICA, attached as Ex. 1 to Mem. Opp'n Third-Party Defendants' Mot. Summary Judgment).

Because there are questions of fact as to whether any such plans or specifications were defective, whether these contractors failed to follow applicable building codes, and whether any

such alleged defects or deviations from building codes caused damages, summary judgment should be denied.

E. The Economic Loss Rule Does Not Apply

1. M&M Foundations, LLC

M&M argues that the economic loss rule applies to “some or all of D.R. Horton’s damages and as such the negligence cause of action should be dismissed.” M&M’s Memo in Support of its Motion for Summary Judgment as to D.R. Horton states that “[t]he economic loss rule prohibits any liability for damages when the damage is to the product itself and no economic loss result (sic) from it.” This argument is a misstatement of how the economic loss rule works under South Carolina law. M&M cites Beachwalk Villas Condominium Ass’n v. Martin, 305 S.C. 144, 406 S.E.2d 372 (1991) as the authority for its argument. The economic loss rule has evolved since 1991 and is not stated as M&M suggests in the later cases.

The Court made it clear in Sapp v. Ford Motor Company, 386 S.C. 143, 687 S.E.2d 47 (2009), that purely "economic loss" may be recoverable under a variety of tort theories. The question is not whether the damages are physical or economic; rather, the question of whether the plaintiff may maintain an action in tort for purely economic loss turns on the determination of the source of the duty plaintiff claims the defendant owed. 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 contractual duties between the parties, however, may support a tort action. State Ports Auth. v. Booz-Allen, 289 S.C. 373, 346 S.E.2d 324 (1986). Those duties include complying with applicable building codes and industry standards in residential building. Kennedy v. Columbia Lumber & Mfg. Co., 299 S.C. 335. Ultimately, the

Sapp Court reaffirmed the holding in *Kennedy*, recognizing an exception to the economic loss rule in the residential real estate construction context. *Sapp*, 386 S.C. 150, 687 S.E.2d at 51.

In the present case, M&M provided basement wall foundation work to the project. In the Plaintiff's Notice to Cure, attached hereto as **Exhibit E**, the Plaintiff alleged defects in that work. Accordingly, D.R. Horton alleged claims for contractual indemnity, equitable indemnity, breach of contract, breach of express warranties, and negligence/gross negligence/recklessness against M&M. M&M has a duty to perform its work in a good and workmanlike manner, and in compliance with applicable codes and industry standards. *Terlinde v Neely*, 275 S.C. 395, 397, 271 S.E.2d 768, 769 (1980) Therefore, the economic loss doctrine does not bar D.R. Horton's claims.

2. P&L Enterprises, LLC

P&L argues that the economic loss rule applies to "some or all of D.R. Horton's damages and as such the negligence cause of action should be dismissed." P&L's Memo in Support of its Motion for Summary Judgment as to D.R. Horton states that "[t]he economic loss rule prohibits any liability for damages when the damage is to the product itself and no economic loss result (sic) from it." This argument is a misstatement of how the economic loss rule works under South Carolina law. Plaintiff cites *Beachwalk Villas Condominium Ass'n v. Martin*, 305 S.C. 144, 406 S.E.2d 372 (1991) as the authority for its argument. The economic loss rule has evolved since 1991 and is not stated as P&L suggests in the later cases.

The Court made it clear in *Sapp v. Ford Motor Company*, 386 S.C. 143, 687 S.E.2d 47 (2009), the purely "economic loss" may be recoverable under a variety of tort theories. The question is not whether the damages are physical or economic. Rather, the question of whether the plaintiff may maintain an action in tort for purely economic loss turns on the determination of the

source of the duty plaintiff claims the defendant owed. 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 contractual duties between the parties, however, may support a tort action. State Ports Auth. v. Booz-Allen, 289 S.C. 373, 346 S.E.2d 324 (1986). Those duties include complying with applicable building codes and industry standards in residential building. Kennedy v. Columbia Lumber & Mfg. Co., 299 S.C. 335. Ultimately, the *Sapp* Court reaffirmed the holding in *Kennedy*, recognizing an exception to the economic loss rule in the residential real estate construction context. *Sapp*, 386 S.C. 150, 687 S.E.2d at 51.

In the present case, P&L provided siding to the project. In the Plaintiff's Notice to Cure, attached hereto as **Exhibit E**, the Plaintiff alleged defects in siding. Accordingly, D.R. Horton alleged claims for contractual indemnity, equitable indemnity, breach of contract, breach of express warranties, and negligence/gross negligence/recklessness against P&L. P&L has a duty to perform its work in a good and workmanlike manner, and in compliance with applicable codes and industry standards. Terlinde v. Neely, 275 S.C. 395, 397, 271 S.E.2d 768, 769 (1980). Therefore, the economic loss doctrine does not bar D.R. Horton's claims.¹⁰

F. BKF Has a Contract With DRH

BKF Builders, Inc. argues that it should be granted summary judgment on DRH's claims because there is no written contract between DRH and BKF. This is incorrect. Brian Fowler, owner of BKF signed an independent contractor agreement on or about March 2014, and added DRH as an additional insured on its insurance policies. BKF ICA, attached as **Exhibit F**).

¹⁰ Galloway-Bell, Inc. II raise the economic loss rule in its motion but did not brief this issue. Because Galloway-Bell did not specifically brief this issue as it relates to its work at Rose Hill, DRH requests the ability to submit supplemental briefing should Galloway be permitted to argue grounds for economic loss rule that were not raised in its briefing.

Accordingly, BKF has the same contractual obligations to DRH as the other third-party defendants and BKF's motion for summary judgment on these grounds should be denied.

CONCLUSION

Based on the foregoing, the Third-Party Defendants have not met their burden of proof, and therefore, their motions for summary judgment as to D.R. Horton's Crossclaims must be denied.

WHEREFORE, Defendant D.R. Horton shall, and hereby does, move the Court for an Order denying these Third-Party Defendants' Motions for Summary Judgment on D.R. Horton's Crossclaims.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

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Counsel for Defendant D.R. Horton, Inc.

July 19, 2023
Greenville, South Carolina

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 ANDERSON COUNTY

4 DEPOSITION OF JEFF HAWK
5 30(b)(6) THERMA-TRU, LTD.
6 MAY 30, 2023

7 NATALIE ZITEK, Individually and on behalf of all
8 others similarly situated,

9 Plaintiff,

10 vs. CASE NO. 2019-CP-04-01942

11 D.R. HORTON, INC.,

12 Defendant.

13 D.R. HORTON, INC.,

14 Third-Party Plaintiff,

15 vs.

16 AJ LANDSCAPING & GRADING, LLC a/k/a A J
17 LANDSCAPING & GRADING, LLC, et al.,

18 Third-Party Defendants,

19 PROBUILD COMPANY, LLC, et al.,

20 Fourth-Party Plaintiffs,

21 vs.

22 HARRELSON PAINTING, LLC, et al.,

23 Fourth-Party Defendants,

24 NICHOLAS SOTA a/k/a NICOLAS SOTO, Individually
25 and d/b/a SOTA HVAC,

 Fifth-Party Plaintiff,

 vs.

TORIBIO ISLAS AND ALEJANDRO SOTO,

 Fifth-Party Defendants.

1 Q. You said you've seen some pictures of
2 the doors at Rose Hill; is that right?

3 A. Yes, sir.

4 Q. I'll pull one up. After your review of
5 those pictures -- well, let me ask you this. How
6 many did you see?

7 A. I didn't keep count. I don't know. I
8 saw a few.

9 Q. But fewer than 10?

10 A. I would say maybe around 10.

11 Q. Okay. And what did you see as the main
12 issue with the doors?

13 MR. JONES: Object to the form.
14 You can answer.

15 A. So what I saw was there was rot on the
16 frame, that there were corner sill pads missing.
17 I didn't necessarily see anything that failed as
18 it relates to a Therma-Tru component in that
19 door.

20 Q. Do you know why the frames are rotting?

21 A. It appeared that it was due to
22 maintenance and incomplete installation.

23 Q. What was the incomplete installation?

24 A. It was missing the corner sill pads.

25 Q. What are the corner sill pads for?

1 A. Corner sill pads are basically designed
2 to connect your weatherstripping to your sill
3 cap. So your sill cap is in one plane. Your
4 weatherstripping is in another plane. They're
5 not married up in parallel. They're offset. The
6 corner sill pad basically connects the
7 weatherstripping over to the sill cap so it
8 completes the sill. It's very much an integral
9 part of the door system to keep water out.

10 Q. If those -- you called it sill caps, I
11 think. If those sill caps are missing, is the
12 door more prone to leak and rot?

13 A. Sill pad. There's a sill cap and
14 there's a sill pad. The sill pad, P-A-D, is the
15 component that I saw that was missing. The sill
16 cap would be the part that would go from one jamb
17 to the other across the top of the sill or
18 threshold.

19 What was the question, please?

20 Q. Give me one minute. So what I meant to
21 ask was what does the sill pad do?

22 A. That was what I was explaining a minute
23 ago. I can re-explain it.

24 Q. Yeah. Please do. I'm having trouble
25 following you.

1 Q. Okay. Turning a minute to the pads,
2 have you ever run into the situation where the
3 pads aren't put on until after the frames are
4 painted or the jamb is painted to keep the
5 painter from either painting over the pad or
6 pulling it off to paint?

7 A. Yes, sir.

8 Q. Do you know what happened in this
9 particular case to result in pads not being
10 present in some of the doors you looked at?

11 A. Only through -- only through what has
12 been shared with me.

13 Q. And who shared that with you? If you or
14 your lawyer talked about it, I don't want to know
15 about it, but if you have it from any other
16 source, please tell us what was shared with you.

17 A. Not from any other source.

18 Q. You don't have any personal knowledge of
19 why the pads aren't there, I take it.

20 A. No, sir, because as of two weeks ago, I
21 was unaware that there was even an issue here in
22 the subdivision.

23 Q. Got it. Do you know -- assuming that
24 the pads were to go on after the jambs were
25 painted, do you know who was responsible for

1 making sure they got put on at that point?

2 A. No. I can only speculate whoever's
3 involved with the punchlist, you know, walking
4 the home making sure screens are in the windows
5 and, you know, corner sill pads are placed on the
6 door.

7 Q. So it sounds like you think that should
8 be one of the punchlist items to make sure it got
9 done.

10 A. It could be. Again, it varies. I've
11 seen a variety of ways people do it, and all
12 builders do it differently, and they have their
13 own standard operating procedures. So I don't
14 know what this in particular builder's SOPs are
15 as it relates to that.

16 MR. DUBOSE: Okay. Very good.
17 Thank you. I don't have anything further.

18 THE WITNESS: Thank you, sir.

19 EXAMINATION

20 BY MR. PRITCHARD:

21 Q. Hey, Mr. Hawk. My name is Thomas
22 Pritchard, and I represent Huttig. How are you
23 today, sir?

24 A. I'm okay, sir. How are you?

25 Q. Fine. I don't have too many questions

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 ANDERSON COUNTY

4 DEPOSITION OF A. RHETT WHITLOCK, PhD, PE
5 VOLUME 1, NOVEMBER 17, 2022

6 NATALIE ZITEK, Individually and on behalf of all
7 others similarly situated,

8 Plaintiff,

9 vs. CASE NO. 2019-CP-04-01942

10 D.R. HORTON, INC.,

11 Defendant.

12

D.R. HORTON, INC.,

13 Third-Party Plaintiff,

14 vs.

15 AJ LANDSCAPING & GRADING, LLC a/k/a A J
16 LANDSCAPING & GRADING, LLC, et al.,

17 Third-Party Defendants,

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PROBUILD COMPANY, LLC, et al.,

19 Fourth-Party Plaintiffs,

20 vs.

21 HARRELSON PAINTING, LLC, et al.,

22 Fourth-Party Defendants,

23

NICHOLAS SOTA a/k/a NICOLAS SOTO, Individually
24 and d/b/a SOTA HVAC,

25 Fifth-Party Plaintiff,

 vs.

TORIBIO ISLAS AND ALEJANDRO SOTO,

Fifth-Party Defendants.

1 surfaces, glass windows.

2 Q. In your opinion, is it a defective
3 product or is it just something that happens
4 sometimes?

5 A. Well, it does happen sometimes. I don't
6 know if there's a vinyl that can withstand it or
7 not. There may be a vinyl formulation that
8 doesn't have that problem. I don't know.

9 Q. Well, let me ask you this. For this
10 case have you developed an opinion that there is
11 either a design or manufacturing defect with the
12 vinyl exterior cladding in Rose Hill?

13 A. Not with the material, no.

14 Q. Do you have any criticisms of the vinyl,
15 either installation or product, that you're
16 prepared to testify about in this case?

17 A. Well, as I said, the air barrier and
18 associated flashings and tape that's missing, I
19 have criticisms of that. If it were installed by
20 the vinyl siding person, then that would be an
21 installation issue related to the vinyl
22 installation.

23 Q. Are you calling for a declad of the
24 vinyl houses?

25 A. No.

1 Q. Why not?

2 A. I don't think that the cost of putting
3 on new vinyl is justified by the defect in the
4 air barrier behind it.

5 Q. Again, I don't mean to beat a dead
6 horse, but let me go back. I understand some of
7 it is warping, the vinyl. But is that -- is that
8 something you intend to testify about in this
9 case and/or ask the jury to award damages to
10 remove and replace it?

11 A. I have no anticipation that I will be
12 doing that. If you ask me questions during
13 trial, I'll answer them.

14 Q. Yeah. But it's not in your report or
15 your scope of repair or your pricing, is it?

16 A. No.

17 Q. No. All right. So this next photograph
18 is 1102. This shows the berm behind 158
19 Haverhill; is that right?

20 A. Yes.

21 Q. Dr. Whitlock, this berm and the issue
22 around it, I believe, is Andy Sherard's area of
23 expertise and testimony, I think. Do you have
24 testimony about the exterior grading and exterior
25 water issues in this case?

1 people's feet? What's the issue here? Cracks in
2 the concrete?

3 A. Cracked concrete.

4 Q. Do you have an opinion about why the
5 concrete cracked at 3 Chatham in the garage?

6 A. I believe that's a combination of normal
7 concrete shrinkage, drying shrinkage and slab
8 movement, settlement.

9 Q. Is it -- well, let me ask you this. Are
10 you going to testify about a construction defect
11 that created that crack in the slab and the
12 garage at 3 Chatham?

13 A. At this point, I don't think I am. I do
14 know that some recent information came in -- or
15 relatively recent -- about the construction of
16 the fill areas of this project that cast some
17 doubt on it being installed properly.

18 Q. Yeah. We'll probably talk about that
19 later. As you sit here today, have you developed
20 an opinion -- can you say to a reasonable degree
21 of engineering certainty that there is
22 differential or unaccepted settling at any of the
23 homes causing foundation or slab cracking?

24 A. I have seen that on some homes. There
25 are homes that have some fairly large cracks, and

1 they correlate to areas of significant fill.

2 Q. In the slab or in the driveway or where
3 did you see those cracks?

4 A. Slabs and driveways and foundations.

5 Q. Do you have a list of those homes for
6 us?

7 A. I've got photographs, but I didn't do a
8 list of homes that have large cracks.

9 Q. Are you prepared to testify about which
10 homes have settling, compaction, concrete
11 foundation slab issues?

12 A. I can do that, but I haven't done that.

13 Q. Well, let me ask you this. Are you
14 finished with your inspections and developing
15 your opinions?

16 A. As far as I know, I am.

17 Q. And when you say as far as you know you
18 are, is that because you haven't been asked to do
19 more or there's nothing else you can do?

20 A. I have not been asked to do more in this
21 regard.

22 Q. Can you testify to a reasonable degree
23 of engineering certainty that there are
24 foundation, slab, fill issues at Rose Hill?

25 A. Yes.

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 ANDERSON COUNTY

4 DEPOSITION OF RHETT WHITLOCK, PhD, PE
5 VOLUME 6, APRIL 11, 2023

6 NATALIE ZITEK, Individually and on behalf of all
7 others similarly situated,

8 Plaintiff,

9 vs. CASE NO. 2019-CP-04-01942

10 D.R. HORTON, INC.,

11 Defendant.

12 _____
13 D.R. HORTON, INC.,

14 Third-Party Plaintiff,

15 vs.

16 AJ LANDSCAPING & GRADING, LLC a/k/a A J
17 LANDSCAPING & GRADING, LLC, et al.,

18 Third-Party Defendants,

19 _____
20 PROBUILD COMPANY, LLC, et al.,

21 Fourth-Party Plaintiffs,

22 vs.

23 HARRELSON PAINTING, LLC, et al.,

24 Fourth-Party Defendants,

25 _____
26 NICHOLAS SOTA a/k/a NICOLAS SOTO, Individually
27 and d/b/a SOTA HVAC,

28 Fifth-Party Plaintiff,

29 vs.

30 TORIBIO ISLAS AND ALEJANDRO SOTO,

31 Fifth-Party Defendants.

1 MR. LUCEY: Anybody else? Last
2 chance on insulation before we move to siding.
3 Once, twice. Insulation is completed 9:14.
4 Emily, who's taking the lead on siding.

5 MS. SHEETS: You have me all day,
6 Justin.

7 EXAMINATION

8 BY MS. SHEETS:

9 Q. Dr. Whitlock, we are going to move on to
10 siding. The good news is my client, P&L, only
11 did a couple of houses, and you only looked at
12 one. But this is a big neighborhood, so I
13 imagine that I will be pretty brief here, but
14 there will be others after that.

15 So on the siding, have you discussed any
16 siding issues with Natalie Zitek?

17 A. I don't remember discussing siding with
18 her.

19 Q. Have you discussed any siding issues
20 with plaintiffs' counsel?

21 A. I have.

22 Q. What are those discussions?

23 A. When I first visited the site, I noticed
24 that there were areas where the siding appeared
25 to be loose. There was siding that looked like

1 it was fried by the sun, vinyl siding. There was
2 cement -- fiber cement siding that wasn't
3 flashed.

4 Q. Okay.

5 A. There was poor or no caulking at the
6 terminations of the siding at trim. Issues like
7 that I saw here and there. I didn't see those
8 issues everywhere, but I saw them in quite a few
9 homes.

10 Q. Looking at Exhibit Number 34, and
11 particularly the properties that you performed
12 testing on, which are circled with a blue circle,
13 did you look at siding on each of those homes if
14 it existed?

15 A. I looked at the siding, and I
16 photographed the siding, but I didn't test the
17 siding.

18 Q. You didn't remove it to see what was
19 underneath?

20 A. I didn't remove the siding to see how
21 the siding was installed.

22 Q. Did you observe anyone else do that?

23 A. ABS did some of that in their most
24 recent destructive testing.

25 Q. Did any of ABS's testing change any of

1 anything in my repair scope for siding, except to
2 remove siding to get to windows, for example.

3 Q. Do you recall in your observations
4 either with your own team or following ABS's team
5 around, whether you had any criticisms of any
6 trimwork installed around garage door frames?

7 A. I don't recall having any criticisms of
8 that.

9 Q. Can you tell me if you have visually
10 observed 119 Sturbridge as it relates to siding.

11 A. I don't recall specifically looking at
12 the siding there. I might have.

13 Q. I'll represent to you that after
14 scouring all 24 of these boxes that are sitting
15 here behind me in this room today, that I have
16 not found any photographic evidence that you
17 looked at siding on 119 Sturbridge Court. As you
18 sit here today, do you have any information that
19 tells me that I'm wrong about that?

20 A. Not from my memory, and the only way I
21 could confirm that is to go through my
22 photographs.

23 Q. Dr. Whitlock, I'm going to hand you a
24 large binder. For the record, these are your
25 photographs, which were originally Bates labeled

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

4 30(b)(6)DEPOSITION OF HARRELSON PAINTING
5 CURTIS HARRELSON (BY VIDEOCONFERENCE)
6 APRIL 18, 2022

7 MADELINE JEAN SMITH, DR HORTON, INC.; A GRADE
8 ABOVE OTHERS, LLC; ANDRADE'S CLEAN UP, INC.; AJ
9 LANDSCAPING & GRADING, LLC a/k/a A J LANDSCAPING
10 & GRADING, LLC; BRAVO CARPENTERS, INC.; BMC EAST,
11 LLC f/k/a STOCK BUILDING SUPPLY, LLC; BUILDER
12 SERVICES GROUP, INC. f/k/a MASCO CONTRACTOR
13 SERVICES CENTRAL INC. f/k/a GALE INDUSTRIES, INC.
14 d/b/a GALE CONTRACTOR SERVICES; BUILDERS
15 FIRSTSOURCE SOUTHEAST GROUP, LLC; CARYL
16 MECHANICALS II, INC.; GENERAL SHALE BRICK, INC.
17 a/k/a GENERAL SHALE BRICK or GENERAL SHALE; JLS
18 MASONRY, INC.; LONG HEATING & AIR CONDITIONING,
19 INC.; MANALE LANDSCAPING, LLC; MJ COWBOYS, LLC
20 AND ITS SUCCESSORS MAURICIO REYNA AND/OR JOSE
21 SANCHEZ; OLD CFC, LLC f/k/a COLEMAN FLOOR
22 COMPANY; P & T CONSTRUCTION, INC. a/k/a P&T
23 CONSTRUCTION, INC; PROBUILD COMPANY, LLC a/k/a
24 PROBUILD HOLDINGS, INC.; SANDLAPPER CONCRETE,
25 LLC; TOPBUILD HOME SERVICES, INC. f/k/a MASCO
 HOME SERVICES, INC; and JOHN DOE #19-25,
 Plaintiffs,

vs.

CASE NO. 2019-CP-04-01486

DR HORTON, INC.; A GRADE ABOVE OTHERS, LLC;
ANDRADE'S CLEAN UP, INC.; AJ LANDSCAPING &
GRADING, LLC a/k/a A J LANDSCAPING & GRADING,
LLC; BRAVO CARPENTERS, INC.; BMC EAST, LLC f/k/a
STOCK BUILDING SUPPLY, LLC; BUILDER SERVICES
GROUP, INC. f/k/a MASCO CONTRACTOR SERVICES
CENTRAL INC. f/k/a GALE INDUSTRIES, INC. d/b/a
GALE CONTRACTOR SERVICES; BUILDERS FIRSTSOURCE
SOUTHEAST GROUP, LLC; CARYL MECHANICALS II, INC.;
GENERAL SHALE BRICK, INC. a/k/a GENERAL SHALE
BRICK or GENERAL SHALE; JLS MASONRY, INC.; LONG
HEATING & AIR CONDITIONING, INC.; MANALE
LANDSCAPING, LLC; MJ COWBOYS, LLC and its
successors MAURICIO REYNA and/or JOSE SANCHEZ;

(Caption continued on following page)

1 about half an inch, correct?

2 A. Correct.

3 Q. And you cut it at each end, correct?

4 A. Cut it at the corner, yeah.

5 Q. Because when the tape gets to the jamb,
6 it can't -- it can no longer wrap into the
7 opening, it goes up the jamb, correct?

8 A. That's correct.

9 Q. Is any effort made to splice or bridge
10 the gap between the two pieces of tape at the end
11 where it's cut?

12 A. No.

13 Q. Were any of these Therma-Tru doors, if
14 they were Therma-Tru, supplied with some sort of
15 water-resistant pads of some kind to be installed
16 at the lower portions of the jambs, where the
17 jambs meet the thresholds, to assist with water
18 resistance?

19 A. There -- sometimes they did come with
20 bumper pads. Typically that was done -- the
21 installer did not do it because we typically did
22 it -- we typically installed the doors where it
23 didn't need it. But during the course of that
24 build, things may shift, whatever, they would use
25 those bumper pads to put in behind there in order

1 to make that seal even tighter.

2 Q. And who would put those in behind you?

3 A. Again, this is -- this is all off of
4 memory. And what I remember is they would have a
5 service guy go out. He would install screens, at
6 that point right when the house was closing. He
7 would make sure -- and you would have to find out
8 from them what their process was because I don't
9 know -- remember what exactly the process,
10 because I didn't do that process.

11 I just know that they had -- service
12 guys went out and screened the house out, checked
13 the doors and did a couple other things. And one
14 of them might have been, you know, adjust
15 thresholds that needed it or put the bumper pads
16 on there, because I would have -- sometimes I
17 would have to give them some bumper pads that I
18 would get off the door.

19 Q. And do you happen to recall the name of
20 any of these DR Horton service guys that would
21 close out the --

22 A. They were ProBuild service guys.

23 Q. Okay.

24 A. ProBuild did the -- I'm sorry.

25 Q. Do you recall any of their names?

1 A. No. They were two Russian or Ukrainian
2 guys.

3 Q. And I take it if they're sending service
4 guys out to close out the house, that they're
5 providing turnkey services to DR Horton?

6 A. I don't know. I mean I don't know their
7 process. You know, what do you mean by turnkey?
8 I don't get that.

9 Q. You don't know if your portion of the
10 install was part of a larger scope of work that
11 ProBuild was providing to DR Horton?

12 A. Right. I have no idea. Like I said, I
13 think I said earlier, I don't know what their
14 contract with ProBuild and DR Horton was. I just
15 know what my job was.

16 Q. Assuming that you didn't think you
17 needed the pads when you did your first install,
18 what was your practice? Was it -- was it to
19 leave the pads taped to the inside of the door,
20 leave the pads on the kitchen counter, to hand
21 the pads back to ProBuild when you got done with
22 the job? What did you do?

23 A. No. They typically came stapled to the
24 area in which you have to install -- where you
25 would have to install doors. So you had to

1 remove them.

2 So I would take them off. And normally
3 they would come with like two security screws
4 which went in the hinge to secure the door which
5 were two long, 3-inch screws, and the bumper
6 pads. And we would typically put the bumper pads
7 on the truck. And at one point we had a bucket
8 full of them, and we gave them back to ProBuild
9 so that they could do what they needed to do with
10 it. Or we would use a couple here and there if
11 we came across a door that needed it. So
12 that's -- yeah, that's --

13 Q. And tell us in simple terms if you
14 would, please, what final adjustments that you
15 believe you were making to the doors that would
16 make it so that the pads, the bumper pads were no
17 longer needed.

18 A. Well, during -- during our installation
19 we tried to make our doors -- well, first of
20 all -- tight up against the wall, secured, and
21 then make sure the reveals are good all the way
22 around.

23 Q. Okay. Sir, I'm going -- I've got two
24 more small areas to ask you about and then we're
25 going to check in and see if Silver Line's

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

DEPOSITION OF L. STEVEN MOORE, PE
VOLUME 1 MAY 9, 2023

NATALIE ZITEK, Individually and on behalf of all
others similarly situated,

Plaintiff,

vs. CASE NO. 2019-CP-04-01942

D.R. HORTON, INC.,

Defendant.

D.R. HORTON, INC.,

Third-Party Plaintiff,

vs.

AJ LANDSCAPING & GRADING, LLC a/k/a A J
LANDSCAPING & GRADING, LLC, et al.,

Third-Party Defendants,

PROBUILD COMPANY, LLC, et al.,

Fourth-Party Plaintiffs,

vs.

HARRELSON PAINTING, LLC, et al.,

Fourth-Party Defendants,

NICHOLAS SOTA a/k/a NICOLAS SOTO, Individually
and d/b/a SOTA HVAC,

Fifth-Party Plaintiff,

vs.

TORIBIO ISLAS AND ALEJANDRO SOTO,

Fifth-Party Defendants.

1 If there's questions about it, then they should
2 ask for it.

3 Q. The owner provides the drawings,
4 correct?

5 A. Correct.

6 Q. And in this case the owner and the
7 general contractor are the same entity, correct?

8 A. Correct.

9 Q. So in this case in the first instance it
10 was the owner/general contractor's responsibility
11 to make sure that the plans and specifications
12 for the buildout of Rose Hill had adequate
13 information and details for the buildout to occur
14 properly, correct?

15 MR. IMHOFF: Object to the form.

16 A. Correct. And we have no information
17 that they weren't adequate. We just don't have
18 copies of them.

19 Q. We just don't have copies of the
20 allegedly adequate specifications and details.
21 Is that what you're telling me, sir?

22 MR. IMHOFF: Object to the form.

23 Q. Is that what I heard?

24 A. Yes. If there was not adequate, then
25 the subcontractor should have followed up with

1 the builder for any questions.

2 MR. LUCEY: Mark the record for
3 production of the Fillmore drawings that the
4 witness has that has engineering in it and marked
5 for South Carolina.

6 (This page contains Requested
7 Information.)

8 Q. Sir, when we started talking about
9 engineered -- two-story brick veneer, we were
10 actually about halfway or more through Laura's
11 list, 127.23. And her list seems to be missing
12 the code provision requiring the separation of
13 foundation -- the code requirement requiring the
14 separation of foundation-supported brick veneer
15 and wood-supported brick veneer in her list. Do
16 you see that?

17 A. Yes.

18 Q. So let's add that for her. What section
19 of the code would we go to to get that separation
20 requirement?

21 A. We're going to do what to this list now?

22 Q. Add the code requirement that
23 brick-supported -- excuse me --
24 foundation-supported brick facade be separated
25 from wood-supported brick facade.

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 ANDERSON COUNTY

4 DEPOSITION OF L. STEVEN MOORE, PE
5 VOLUME 2, MAY 10, 2023

6 NATALIE ZITEK, Individually and on behalf of all
7 others similarly situated,

8 Plaintiff,

9 vs. CASE NO. 2019-CP-04-01942

10 D.R. HORTON, INC.,

11 Defendant.

12

D.R. HORTON, INC.,

13 Third-Party Plaintiff,

14 vs.

15 AJ LANDSCAPING & GRADING, LLC a/k/a A J
16 LANDSCAPING & GRADING, LLC, et al.,

17 Third-Party Defendants,

18

PROBUILD COMPANY, LLC, et al.,

19 Fourth-Party Plaintiffs,

20 vs.

21 HARRELSON PAINTING, LLC, et al.,

22 Fourth-Party Defendants,

23

NICHOLAS SOTA a/k/a NICOLAS SOTO, Individually
24 and d/b/a SOTA HVAC,

25 Fifth-Party Plaintiff,

 vs.

 TORIBIO ISLAS AND ALEJANDRO SOTO,

 Fifth-Party Defendants.

1 work goes on. You agree with that?

2 MR. IMHOFF: Object to the form.

3 A. Absolutely not. They never supervise
4 the work of the subcontractors. That was your --
5 that never happens.

6 Q. Would you agree that they have a duty to
7 inspect the work of their subcontractors to a
8 certain level during construction?

9 MR. IMHOFF: Object to the form.

10 A. Have a duty and an opportunity but not a
11 total requirement.

12 Q. But DR Horton does have a duty to
13 inspect the work of its subcontractors at certain
14 increments during construction to make sure it
15 complies with the building code at some level.
16 You'd agree with that?

17 A. They have the right to inspect it as
18 they wish at some levels.

19 Q. They don't have any duty to inspect.

20 A. I think the requirements state some
21 duty. It's defined a specific point, and I don't
22 know that we have any specific points that DR
23 Horton has to absolutely go look at that house.

24 Q. But you'd agree with me that DR Horton
25 has a duty at some level to inspect the work of

1 its subcontractors during construction to ensure
2 it complies with the building code?

3 MR. IMHOFF: Object to the form.

4 A. They have a -- they have some duty they
5 can walk through. The level of inspection
6 varies.

7 Q. But they have some duty to do it. You'd
8 agree with that.

9 A. At certain times, sure. They have the
10 opportunity to walk through. It doesn't relieve
11 the subcontractors from performing their work.

12 Q. Do you have any opinions pertaining to
13 the Rhett Whitlock repairs estimate?

14 MR. LUCEY: Objection.

15 A. No. I mean I've looked at it. It's--
16 the last one I saw was some \$37.9 million. You
17 know, it seems like that they're going to
18 basically rebuild every house out there.

19 Q. Do you the Dr. Whitlock repairs estimate
20 is reasonable?

21 A. No.

22 MR. LUCEY: Objection.

23 A. No.

24 Q. Do you think it's excessively inflated?

25 MR. LUCEY: Objection.

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 ANDERSON COUNTY

4 DEPOSITION OF L. STEVEN MOORE, PE
5 VOLUME 3, MAY 11, 2023

6 NATALIE ZITEK, Individually and on behalf of all
7 others similarly situated,

8 Plaintiff,

9 vs. CASE NO. 2019-CP-04-01942

10 D.R. HORTON, INC.,

11 Defendant.

12 _____
13 D.R. HORTON, INC.,

14 Third-Party Plaintiff,

15 vs.

16 AJ LANDSCAPING & GRADING, LLC a/k/a A J
17 LANDSCAPING & GRADING, LLC, et al.,

18 Third-Party Defendants,

19 _____
20 PROBUILD COMPANY, LLC, et al.,

21 Fourth-Party Plaintiffs,

22 vs.

23 HARRELSON PAINTING, LLC, et al.,

24 Fourth-Party Defendants,

25 _____
26 NICHOLAS SOTA a/k/a NICOLAS SOTO, Individually
27 and d/b/a SOTA HVAC,

28 Fifth-Party Plaintiff,

29 vs.

30 TORIBIO ISLAS AND ALEJANDRO SOTO,

31 Fifth-Party Defendants.

1 Q. Okay. Regardless of whether D.R. Horton
2 was able to inspect the work of all
3 subcontractors at D.R. Horton, do you agree that
4 they share responsibility for the work performed
5 by those subcontractors?

6 A. They are the general contractor. They
7 are ultimately responsible for the entire job,
8 but that does not relieve the subcontractors from
9 performing their scope of work in accordance with
10 the building code and their ICAs. You can't lay
11 it off on Horton if you did your job wrong. You
12 can't blame Horton for failing to go look at it
13 and catch it.

14 Q. Okay. And you've testified a couple
15 times about different subcontractors' scopes of
16 work. Are you going to offer any opinions about
17 what each subcontractor's specific scope of work
18 included?

19 A. No.

20 Q. Okay.

21 A. I'm talking in general terms.

22 Q. Yesterday you also testified about
23 subcontractors having a duty at Rose Hill. Do
24 you recall that line of testimony?

25 A. I would suspect it's the same time I was

JUSTIN O'TOOLE LUCEY, PA

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Dabny Lynn

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Phone: 843.849.8400 · Fax: 843.849.8406 · www.lucey-law.com

Anna S. McCann
Lauren M. Milton
Sohayla R. Townes
Collin H. Fuller

December 11, 2019

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

D.R. Horton, Inc.
c/o C T Corporation System
2 Office Park Court Suite 103
Columbia, South Carolina 29223

RE: *Rose Hill Subdivision in Anderson County, South Carolina*
Notice and Opportunity to Cure Improper Construction Conditions and Resulting Damages

To Whom It May Concern:

This letter is to notify D.R. Horton, Inc. that Natalie and Paul Zitek as well as other owners of D.R. Horton homes within the Rose Hill subdivision in Anderson County, South Carolina ("Rose Hill") intend to proceed with litigation should D.R. Horton, Inc. fail to cure the following improper construction conditions and resulting damages existing at their homes within thirty (30) days from the date of this letter:

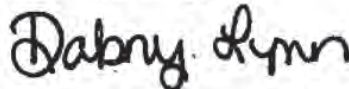
1. Brick: Insufficient/improperly installed brick veneer and resulting cracking, separation, water damage, efflorescence, and cost to repair;
2. Stone: Insufficient/improperly installed stone veneer and resulting loose embedment, cracking, separation, water damage and cost to repair;
3. Doors: Insufficient/improperly installed front and patio doors, deteriorating trim, resulting water damage/leakage, and cost to repair;
4. Floors: Insufficient/improperly installed flooring and resulting buckling, cracking, separation, bumpiness, water damage, and cost to repair;
5. General Wall: Insufficient/improperly installed framing, missing/inadequate insulation at exterior walls, drywall cracking, increased utility bills, and cost to repair;
6. Roof: Insufficient/improperly installed roofs, deteriorating sheathing and roof decking, resulting water damage/leakage, blow-offs, and cost to repair;
7. Windows: Insufficient/improperly installed windows, resulting water damage/leakage, cracking, separation, and cost to repair;

Notice and Opportunity to Cure
December 11, 2019
Page 2

8. Vinyl Siding: Insufficient/improperly installed vinyl siding, resulting waviness, water damage, and cost to repair;
9. Hardi Siding: Insufficient/improperly installed Hardi siding, resulting cracking, water damage, efflorescence, and cost to repair;
10. Concrete/Soil: Insufficiently supported concrete/inadequate soil, resulting cracking, water damage, and cost to repair;
11. Grading/Drainage: Insufficient/improperly installed grading and/or drainage, resulting water damage, ponding, unevenness, landscaping difficulties, and cost to repair;
12. MEP: Inadequate free air space, improper duct work, insufficient insulation in attics, plumbing/HVAC leaks, insufficient PEX piping, non-galvanized piping, holes in roof sheathing at plumbing penetrations, inadequate outlets, insufficient amperage, power surges, and resulting cracking, water damage/leakage, cost to repair, and increased utility bills; and
13. Poor Work: Sloppy workmanship throughout Rose Hill homes and resulting cost to repair.

Time is of the essence and extensions will not be granted. Thereafter, the Rose Hill homeowners will proceed with serving litigation. Please contact us directly if you have any questions or concerns regarding this Notice and Opportunity to Cure.

Sincerely,



Dabny Lynn
Sohayla Townes

DL/dl



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR BKF Builders ("Contractor")
☒ Sole Proprietorship ☐ Partnership ☐ Corporation ☐ L.L.C. ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No.: 57-1103379
 Name of Owner(s)/Officer(s): Brian Fowler
 Division Name: _____ Area Name: _____ Assigned Vendor No.: _____
 Address for All Notices: 9800 Boulevard Road Suite 3
 City: Greer State: SC Zip Code: 29615
 Telephone: (Cell) 297-7220 Fax: (BA) 281-6665 E-Mail Address: brian@bkfbuilder.com
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 28th day of February, 2014, between
DR Horton INC. ("Owner") and Contractor.

1. **SCOPE OF WORK.** This Agreement is entered on a blanket basis. The terms of this Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement shall include all work performed and materials supplied by Contractor, directly or indirectly, to Owner, including but not limited to the labor, services and/or materials, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized by written purchase order, or similar document by Owner's authorized field personnel (the "Work"). The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing shall not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to, or in place of, Contractor.

2. **INDEPENDENT CONTRACTOR STATUS.** Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, method and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further shall provide written notification to all of its present and future employees of Contractor's provision for Workers Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. **CONTRACT PRICE.**

3.1 **Pricing Schedule.** The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 **Taxes.** Contractor shall be solely responsible for and will pay all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 **Price Increases.** NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNTIL CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule implementing a price increase, the superseded Pricing Schedule shall remain in effect for Purchase Orders, as defined herein, issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. **PAYMENT.**

4.1 **Invoices.** Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing from Owner to a purchaser of the house incorporating the Work. To the extent permitted by law, Contractor waives its right to payment for any Work not invoiced in a timely manner. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order, as defined herein.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO CONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN. CONTRACTOR AGREES THAT OWNER DOES AND WILL NOT OWE INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF ANY DELAYED PAYMENT.

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA, IF ANY.

Executed this 6th day of MARCH, 2014.

Owner:	Contractor:
By: <u>MARCE MARTIN</u>	By: <u>BKF Builders</u>
Name: <u>MARCE MARTIN</u>	Name: <u>Brian Fowler</u>
Title: <u>CEO</u>	Title: <u>Owner</u>

INITIALS: OWNER MM, CONTRACTOR BKF

4.2 Contractor Payments. No payment shall be due under this Agreement until Contractor's invoice (or Purchase Order, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed by Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Unless otherwise agreed by Owner and Contractor, payment to Contractor shall be made by check. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties; and these joint payments shall satisfy amounts owed by Owner to Contractor, whether or not all parties endorse the checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the contract price shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of or resulting from the Work and shall not release Contractor from any obligations under this Agreement, including but not limited to liability for warranties, warranty service, or any other liability for alleged defects in the Work. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or customers or assigns shall constitute an acceptance of the Work or materials not in compliance with this Agreement, or be used in any way as evidence of acceptance by Owner.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.2 Authorization and Commencement of the Work. Authorization for any Work shall be in writing, either pursuant to a written purchase order, work invoice, or similar document ("Purchase Order"). Contractor shall have no authority to commence the Work at any specific job location until Owner has issued instructions to proceed. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.3 Changes in Construction Schedule. Owner shall have the right to make changes to the schedule of Work at Owner's sole discretion, and Contractor shall comply with such changes. Contractor shall not be entitled to any additional compensation for such schedule changes.

6. PERFORMANCE OF THE WORK.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FHA minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all laws (statutory and common law), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements). In the event of conflicting provisions, specifications will take precedence over the drawings; the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive; later modifications or changes will supersede or take precedence over earlier provisions. Subcontractor shall immediately notify Contractor in writing of any allegedly conflicting provisions.

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall have absolute authority to act, in all respects, on behalf of and for Contractor.

6.3 Contractors' Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized employee of Owner and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, and that the plans and specifications are clear and unambiguous, and that Contractor has accepted and agreed to be bound by all such requirements.

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, rules, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "Requirements"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS** from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, verdicts, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, regardless of any alleged fault of Owner. In addition, Contractor shall not discriminate illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform warranty or repair work after a house is occupied.

6.5 Observation, Inspection and Testing. Owner and any government agency inspector ("Inspector") shall have the right, but not the obligation, to observe, inspect or test the Work at any time during or after construction, but that observation, inspection or testing is solely for the benefit of Owner and is not for Contractor's benefit. Contractor shall cooperate with Owner and Inspector during any such inspection. The failure by Owner or Inspector to note defects in the Work during an inspection shall not waive or vary any of Contractor's obligations, representations or warranties related to the Work.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses, approvals, and as-built drawings necessary for, or applicable to, the performance of the Work. Contractor shall provide copies to Owner immediately upon request.

6.8 Change Orders. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes. Contractor shall comply with any Change Order requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such

INITIALS: OWNER CONTRACTOR

rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not limited to trash, unused building materials, garbage, refuse or rubbish ("Waste"), caused by its operations and shall remove all of Contractor's materials at the conclusion of the Work. If materials are furnished by Owner, Contractor shall move all usable materials at the conclusion of the Work to a location designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon demand by Owner and may be deducted by Owner from any sums owed to Contractor.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

7.2 Safety Laws. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations ("Safety Laws"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of, or noncompliance with, the Safety Law, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation or noncompliance by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, of the Safety Law, or safety citation, regardless of any alleged fault of Owner. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and, if required by law, provide written notice to Owner of the contact person responsible for Contractor's safety compliance.

7.3 Hazardous Materials. Contractor shall not permit any Hazardous Substances, defined below, to be brought onto or stored at any job site or used in the construction of the Work, except for commonly used construction materials, provided however, that all such material shall be handled in full compliance with all laws, ordinances and regulations. All notices required to be given with respect to such products shall be given by Contractor. Contractor shall not release or dispose, nor allow any other person to release or dispose, of Hazardous Substances or waste at any job site or into the soil, drains, surface or ground water, or air. "Hazardous Substances" means any substance or material which any state, federal or local governmental authority determines or designates as capable of posing a risk of injury to health, safety, property or the environment.

7.4 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, agents, subcontractors or suppliers at a job location, or performance of the Work by any person under the influence of alcohol or drugs. "Drugs" shall include any substance, whether or not illegal, which upon exposure, ingestion, inhalation, injection or by any other introduction, may impair one's ability to safely perform the Work.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. For the longer of ten years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work shall conform to the specifications of this Agreement (including but not limited to the standards referenced in Subsection 6.1), shall be free from any defects or deficiencies in workmanship or materials, shall comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, shall meet or exceed the FHA/VA minimum property standards, and shall comply with the Home Owners' Warranty, defined below and its applicable warranty standards (which Contractor has read and understands). All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects. Contractor shall be liable to make good or promptly repair all Work not complying with the standards set forth in this Section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Subsection 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, any initial home purchaser of property subject to the Work: (i) for a period of ten (10) years all structural elements, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers; (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home; and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; and (iii) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (a) any statutory warranty or (b) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner, including but not limited to the Residential Warranty Corporation Program (a "Home Owners' Warranty"). Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Home Owners Warranty that is longer than the warranty periods stated above; provided, however, failure to give that notice will not affect the extension of the warranty period to the applicable warranty period under the Home Owners Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform warranty services thereafter.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product information, and guarantees by manufacturers on components of the Work, including any appliances or equipment, and shall furnish all certificates required by any third parties such as any municipality, the VA, or the FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and shall not limit or reduce any applicable statutes of limitation.

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon

INITIALS: OWNER M, CONTRACTOR JK

receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. TO THE EXTENT PERMITTED BY LAW, CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS OR SIMILAR CLAIMS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Work is located.

9.3 Lien Claim Indemnity. If any liens, affidavits of claim, stop payment notices, or its pendants arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such lien, affidavit, stop payment notice, or its pendants to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such liens, affidavit, stop payment notice, or its pendants, and further agrees immediately upon Owners' request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge that lien, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any home purchaser in discharging the lien, affidavit, stop payment notice, or its pendants whichever remedy Owner elects in its sole and absolute discretion. The provisions of this paragraph shall be in addition to any rights Owner may have under applicable law with respect to such liens, affidavits, stop payment notices, or its pendants.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS, AGENTS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF AND ATTORNEYS' FEES), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (2) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR OR BY CONTRACTOR'S AGENTS OR EMPLOYEES, OR BY SUPPLIERS OR SUBCONTRACTORS OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES; (3) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, OR SUBCONTRACTORS, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR (4) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF INDEMNITEE, RELATED IN ANY WAY TO THE WORK, EXCEPTING ONLY LIABILITY OR CLAIMS ARISING OUT OF BODILY INJURY TO PERSONS, DEATH, OR DAMAGE TO PROPERTY PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY INDEMNITEE AGAINST LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

10.3 NO BAILMENT. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, ALL SUBCONTRACTORS, AND SUPPLIERS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS, MATERIALS, OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS, MATERIALS OR EQUIPMENT.

10.4 Subcontractors and Suppliers Indemnity Obligations. Contractor shall require each of its subcontractors to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth in Section 13 of this Agreement. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the acts and omissions of any subcontractor or supplier who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed also to be the obligation of the subcontractors or suppliers to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with products-completed operations coverage, which contains a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit of no less than Two Million Dollars (\$2,000,000.00) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products-completed operations including materials designed, furnished, and/or

INITIALS: OWNER AM CONTRACTOR 3/6

modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (s, c, u) exposures. The CGL Policy shall not exclude from coverage the type of, or nature of, the Work or limit the type of structure on which the Work is to be performed. The CGL policy shall not contain a deductible or self-insured retention of more than \$25,000.00. Contractor shall continuously maintain a CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work.

11.2 Other Insurance. Contractor agrees to carry (a) Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law; (b) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (c) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person for bodily injury and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner as a named, Additional Insured, specifically identifying Owner, on the CGL Policy and policies required above covering both ongoing operations and completed operations (equivalent in scope to form CG 2010 1185 or, if unavailable, both forms CG 2010 1004 and CG 2037 1001). Coverage obtained by Contractor with Owner as an additional insured shall be primary, with any insurance of Owner being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, nonrenewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work; (iii) provide for a waiver of subrogation; (iv) indicate that coverage applies in the state where the Work is being performed; and (v) be with a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the required policies, as requested by Owner.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER BY OWNER POLICY WITH RESPECT TO PARTICULAR TRADE CATEGORIES IN ITS SOLE AND ABSOLUTE DISCRETION IN EFFECT AT THE TIME WORK IS PERFORMED) TO COMPENSATE OWNER REASONABLY FOR ANY ADDITIONAL COSTS OF ITS WORKERS COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS AGREEMENT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Owner as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

11.7 Subrogation. Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including but not limited to claims relating to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Owner or any Indemnities, and any of their consultants, subcontractors, agents, employees and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise; (b) did not pay the insurance premium directly or indirectly; and (c) whether or not such individual or entity has an insurable interest in the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or if another contractor's work, or other property, is damaged by an act or omission of Contractor, its employees, agents, suppliers, or subcontractors, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location or as a result of Contractor's acts or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or (viii) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may set off from amounts owing to Contractor hereunder any amounts owing by Contractor to Owner's parent company, any subsidiary or affiliate, under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations,

INITIALS: OWNER  CONTRACTOR 

rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking other relief.

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("FAA"). All demands for arbitration shall be made before the expiration of the applicable statutes of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified or corrected only as permitted by the FAA.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator(s) mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes against Owner, is for \$1,000,000 or more, but only one arbitrator shall be appointed if the Dispute is for less than \$1,000,000. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days after the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

13.5 Rules. To the extent not in conflict with the FAA, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) can be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner. If multiple lawsuits or arbitrations are commenced, Owner in its sole discretion may consolidate them into a single proceeding. Notwithstanding any other provision of this Section 13, if Owner determines in its sole discretion that a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect unilaterally to waive mediation or arbitration and to litigate the Dispute in court with Contractor.

14. TERMINATION.

14.1 Termination by Owner. This Agreement shall remain in full force and effect until terminated in writing by Owner by mailing notice to Contractor. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) days written notice to Owner before the effective date of any termination by Contractor, and shall perform fully under this Agreement during that notice period.

14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the persons executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement; (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement; (iii) this Agreement is or will be (when executed) a binding obligations of Contractor, enforceable in accordance with its terms; (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority; (v) Contractor has, and each Contractor's employees, agents or subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement; (vi) Contractor is in compliance with all governmental requirements to which it is subject; and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to amend and supersede all prior Independent Contractor Agreements (other than any Master National Independent Contractor Agreement) or other prior understandings or written or oral agreements, specifically including but not limited to all prior pre-printed standard contractor/subcontractor agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods or services or both by Contractor relating to the subject matter herein. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work and shall be deemed subject to the terms of this Agreement. Any future Pricing Schedules or Purchase Orders entered into hereafter shall also be deemed to be subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices and quantities of sale only. Nothing in any subsequent agreement or document, unless a new Independent Contractor Agreement, shall alter the terms set forth in this Agreement. To the extent possible, this Agreement shall be deemed to supplement the terms of any other agreement or document, unless a new Independent Contractor Agreement. In the event of any conflict between this Agreement and other such documents, this Agreement shall be deemed to control and prevail. Except as otherwise provided in this Agreement, no amendment or supplement to this Agreement shall be valid or binding unless in writing and signed by both Owner and Contractor. Notwithstanding anything in this Subsection to the contrary, this Agreement shall not amend or supersede any Master National Independent Contractor Agreement, but shall supplement its terms. In the event of a conflict, to the extent permitted by

INITIALS: OWNER CONTRACTOR

law, the Master National Independent Contractor Agreement shall control.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights, responsibilities, and obligations under this Agreement are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Any attempted assignment shall be null and void. This restriction includes, without limitation, the delegation or subcontracting of any Work or any amounts which may become due to Contractor as a result of the Work. Contractor shall remain fully liable under this Agreement regardless of any consent by Owner to any assignment or delegation of duties by Contractor. Contractor shall ensure that any subcontractor receives a copy of this Agreement and agrees in writing to be fully responsible for all obligations of Contractor under this Agreement, including but not limited to the insurance and indemnity provisions. Contractor shall also ensure that Owner is an intended third party beneficiary of any subcontractor agreement by including a specific provision to that effect. Contractor shall be responsible for enforcing any warranties given by its subcontractors, suppliers or manufacturers. Nothing contained herein, however, shall create any contractual relationship between Owner and any subcontractor, nor create any obligation on the part of Owner to make payment of any sums to any subcontractor. Subject to the restrictions and prohibitions on assignment set forth in this Subsection, the terms of this Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns. Owner may freely assign this Agreement, in whole or in part.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No act or conduct other than a specific, written waiver of a right shall be deemed a waiver by Owner. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

18. NOTICES. All notices required or permitted pursuant to this Agreement or otherwise shall be in writing and shall be delivered as follows: to Contractor at Contractor's business address as shown on page one (1) of this Agreement; to Owner through Owner's official Registered Agent for service of legal process in the state where the Work is performed at that Registered Agent's registered office. Notices may be given by personal delivery, facsimile, commercial overnight delivery service, personal delivery or ordinary mail and shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by commercial overnight delivery service, and upon confirmation if sent by facsimile transmission or by personal delivery. Rejection, refusal to accept or the inability to deliver because of changed address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or subsections.

SOUTH CAROLINA VERSION (REV. 12 APRIL 2013)

Sheetrock
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INITIALS: OWNER m , CONTRACTOR ZC

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE NO.: 2019-CP-04-01942
	)	
Natalie Zitek, individually and on behalf of all	)	
others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
D.R. Horton, Inc., et al.,	)	
	)	
Defendants.	)	
	)	PLAINTIFF'S STIPULATION AS TO
	)	LIMITATION ON CLAIMS
D.R. Horton, Inc.,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
AJ Landscaping & Grading, LLC a/k/a A J	)	
Landscaping & Grading, LLC, et al.	)	
	)	
Third-Party Defendants.	)	
	)	
	)	
ProBuild Company, LLC; et al.,	)	
	)	
Fourth-Party Plaintiffs,	)	
	)	
v.	)	
	)	
Harrelson Painting, LLC, et al.,	)	
	)	
Fourth-Party Defendants.	)	
	)	
	)	
Nicholas Soto a/k/a Nicolas Soto, Individually	)	
and d/b/a Soto HVAC,	)	
	)	
Fifth-Party Plaintiffs,	)	
	)	
v.	)	
	)	
Toribio Islas and Alejandro Soto,	)	
	)	
Fifth-Party Defendants.	)	
	)	

Plaintiff Natalie Zitek, by and through her undersigned counsel, hereby stipulate that she and the Class are not making defective construction claims for the below components in this case:

1. Batt and blown insulation;
2. Gutters and downspouts, garage doors, and garage door openers;
3. Improperly installed front doors and front door hardware;
4. Improperly installed roofs, except as to the intersections with other components;
5. Improperly installed hardi and vinyl siding, except as to the failure to check or repair the substrate, including WRB, prior to installation;
6. Improperly installed wall framing, except as it relates to truss lift, window/doors, and squeaky floors; and,
7. MEP issues (which are settled);

Provided, however, work relating to the foregoing may be required because of defective work by other parties. Nothing herein shall in any way limit the type or content of evidence put on by Plaintiff.

Dated this 20th day of July, 2023.

WE SO STIPULATE

JUSTIN O'TOOLE LUCEY, P.A.

s/ Justin Lucey

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