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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

Case No. 2019CP041942
Appellant Case No. 2023-001401

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, ... Defendant,

D.R. Horton, Inc., ... Appellant,

v.

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 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 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; 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&Lreyna 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 Gale Contractors Service; Tucker Materials, Inc., A/K/A Gypsum; UTM Enterprises, Inc., Dupree Plumbing Company, Inc.; Willow Tree Landscaping, Inc., …… Third-Party Defendants,

of which Builder Services Group (f/k/a Masco Contractor Services Central Inc. f/k/a Gale Industries, Inc. d/b/a Gale Contractors Services) and IBP Assets, LLC d/b/a Blue Ridge Building Products, are the ……..……. Respondents.

AMENDED RECORD ON APPEAL
VOLUME II

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RECORD ON APPEAL
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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

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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;)

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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

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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**.

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> 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.

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> 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, indemnity 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.

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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), SCRCP. 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."

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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 Action[4]. 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.

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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

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> 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

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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.

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[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.

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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 international 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*).

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[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.

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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.

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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-Part 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

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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.

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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

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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-clams 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,

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> 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).

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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.

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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.

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"[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)
704 East McBee Avenue
Greenville, South Carolina 29601
Telephone: (864) 242-4899
Facsimile: (864) 242-4844
crawford@conlaw.com
imhoff@conlaw.com
Counsel for Defendant D.R. Horton, Inc.

September 7, 2022
Greenville, South Carolina

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CROWN
COMMUNITIES, INC.

SUBCONTRACTOR/VENDOR AGREEMENT

Name of Subcontractor/Vendor: Antonio Jimenez AJ landscaping & Grading LLC

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 0388

City: Simpsonville SC State: SC Zip Code: 29681

This AGREEMENT is entered into this 23 day of Jun -, 20 11, 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 matters 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 laws. 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.

KDC 013413

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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 community 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 misuses, 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 invoice 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 materialmen, 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 overhead 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 Deano or email ramos@crowngc.com 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. _____

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M. For the avoidance of doubt (and in furtherance of the provisions of Section 23), under no circumstances shall retainage be made to Contractor for Purchase Orders/Invoices submitted over 90 days after the closing of the home to which same relates.

7. **INSPECTION BY SUBCONTRACTOR.** Subcontractor shall be responsible for inspecting any "work" of another subcontractor that may affect 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 fit 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' Compensations 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 orders, 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 impaired 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. **HOMEOWNER CHANGES 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

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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 certain 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 consultants 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 concurrent 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 five (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 thereafter to become due to Subcontractor, whether under this agreement or from any other source.

20. **MISCELLANEOUS PROVISIONS.**

(a) Parties Bound. 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 involving this agreement or the work to be performed hereunder shall be exclusively in Gwinnett County, Georgia.

(e) Notice. Any notice or communication must be in writing and given by depositing the same in the United State 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
1371 Dogwood Drive SW
Conyers, GA 30012
Fax #: 678-309-0276

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 remaining 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 here from. 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 AJT
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 herein 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 the exercise of its sole discretion.

21. TERMS.
1. Specific requirements- an addendum to this agreement, which lists the type, price, and other specification 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 by 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 right 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 discussions, information, documentation (including this agreement), ideas, techniques, builder HIT system reports, builder 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 disclosure 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 obtainment of injunctive relief shall not preclude a claim or award for damages or other relief.

EXECUTED THIS THE 23 DAY OF Jun. 20 21

BY: _____ BY: AJ Landscaping & Grading LLC

TITLE: _____ TITLE: Owner

Crown Communities, Inc. Subcontractor

Exhibit A

Initial – Subcontractor/Vendor AJ

Initial – Crown Communities, Inc. _____

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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. _____

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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	GENERAL GUIDELINES
***PERSONAL PROTECTIVE EQUIPMENT**	
Hard hats	Shall be worn on all Crown Communities, Inc. sites
Eye Protection	Is required whenever there are flying particles that could strike the eyes
Proper Footwear/Clothing	Appropriate for the job being done such as carpenters wearing a shoe with a toe that will resist roll penetration and wear gloves, long sleeves and long pants when appropriate
Dust, Mists, Paint, Fibrous Materials	Dust masks or appropriate respiratory equipment shall be used
***EXTERIOR FALL PROTECTION IN USE**	
Roofs	A spotter or safeguard shall be used on roofs with pitch up to 8:12 and leave height is 25 feet or less. Over 8:12 pitch conventional fall protection shall be used
Landings & Decks	If the landing and/or deck is over 6 feet above the adjacent surface there must be a standard guardrail
Steps	No point of access can have a step greater than 19 inches
Open sided platforms	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
Scaffolding	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
Handrails	Stairs with more than 3 risers must be equipped with a handrail located between 30" and 37" above the stairs tread in-line with the riser

Initial – Subcontractor/Vendor AS.
Initial – Crown Communities, Inc. K.L.

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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 risers 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"x36" 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 36" above the floor there must be a standard guard rail located at 42" high *If the sill height is between 4" and 12" above the floor there must be a 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 homemade repairs and all braces installed by the manufacturer are in place and undamaged
Proper Use	Used according to manufacturers safe use instructions. Example: step ladders must be opened and resting on all four feet
TRENCHING AND EXCAVATION	
Protective System	If the excavation is 5 feet or deeper than a protective system must be used: protective systems include: Sloping, 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. _____

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***EXTENSION CORDS**	
Condition	No breaks in the insulation or splices in the cord
Proper Ground	Equipped with ground prong
GFI Protected	All extension cords must be provided with a GFCI as close to the power source as possible, or be covered by a written assured equipment grounding program
***LP TANKS**	
Stored & Secured	All LP tanks must be stored on a firm 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 and output be within 25 feet of any building or structure
***GROUND FAULT PROTECTION**	
GFCI temp poles	All temporary power poles must provide GFCI protection GFCI breaker must be checked before using to insure they are working Workers are not to use t-poles tripped to outside If the generator is over 5kW it must be grounded
Generator GFCI protected	
***GENERATORS, COMPRESSORS AND MIXERS**	
Condition	Must be in good working order with no broken, missing or modified components
Guards	All moving parts, rollers, blades, gears, pulleys and pinch points are to be guarded
Cords & Hoses	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 Stacked in a manner that would resist falling over
Work Areas/Passageways	Clear of debris, form 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 AJ
Initial – Crown Communities, Inc. _____

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Exhibit D-1

Job Site Requirements

Initial – Subcontractor/Vendor AJ
Initial – Crown Communities, Inc. K.I.

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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 one (1) year *from the date of closing* of the house or as outlined in our printed United Home Insurance Company Limited Warranty booklet for specific items 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 subdivision regardless of whether it was his/her 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 handing walk-throughs.

4. To minimize 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 two days notice to work within this schedule. If possible, if the work area is unclear, the Trade Partner shall use this week to coordinate the task at hand with Area Warranty Manager before attempting the work. Because of the complexity of scheduling the Homeowner and different trades in the proper sequence, the Trade Partner will be expected to meet this schedule. Crown Communities, Inc. will compensate Homeowner(s) caused by missed appointments out of monies due the Trade Partner from original 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 servicing 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 closing the job site upon completion of their work. Failure to do so will result in a back charge to the Trade Partner for cleaning services.

Initial – Subcontractor/Vendor AJ
Initial – Crown Communities, Inc. KL

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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 & Grading LLC

By: Antonio Jimenez

Date: 6/23/11

Builder: _____

an entity of Crown Communities, Inc.

By: [signature]

Date: _____

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D·R·HORTON DHI NYSE
America's Builder

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: alhas@alpha-omegainc.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 P. Giordano Jr.
Title: PURCHASING Division President

Contractor:
By: ALPHA OMEGA CONSTRUCTION GROUP, INC
Name: Chris
Title: OPERATIONS DIRECTOR

INITIALS: OWNER _____ CONTRACTOR CS.
2/25/10

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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 _____.

(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

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 Contract 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, PENALITES, 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 that $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 that $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 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.

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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 facia board exceeds ¼".

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: EDMOND G JEANFREAU, JR
Date: 2-17-2010	Date: 2/23/10

Revised 7/27/2004 Page 1 of 1 Initial _____

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D·R·HORTON NYSE
America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

B270000

NAME OF CONTRACTOR Atlanta Flooring Design Ctrs Inc ("Contractor")
___ Sole Proprietorship ___ Partnership X Corporation ___ L.L.C ___ Other (ATTACH W-9)
Social Security No. or Tax ID No.: 58/6021134
Name of Owner(s)/Officer(s): Danny Phillips
Address for All Notices: 3065 Swiftwater Park Dr Bldg 2
City: Suwanee State: GA Zip Code: 30024
Telephone: 770 476-8300 Fax: 770-476-0308 E-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 DR Horton Inc + DR Horton Inc-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. §§ 29-6-30 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, 15 Atlanta Flooring Design Ctrs Inc

Owner:
By:
Name:
Title: ~~Division President~~ CFO

Contractor:
By: Cindy K Craig
Name: Cindy K Craig
Title: Contract Mgr

INITIALS: OWNER ___, CONTRACTOR CKC

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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 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

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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,

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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 HERRIN 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.

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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

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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 offset 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 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.

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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

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D·R·HORTON America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Carye Mechanicals II, INC ("Contractor")

___ Sole Proprietorship ___Partnership X Corporation ___ L L C ___ Other **(ATTACH W-9)**

Social Security No or Tax ID No 20-5211569

Name of Owner(s)/Officer(s): MATT WALKER

Division Name _____ Area Name _____ ___ Assigned Vendor No. ___

Address for All Notices 5910 Stockade Dr NE

City Monroe State NC Zip Code: 28110

Telephone ( ) 704 882-4533 Fax. ( ) 704-882-4531 E-Mail Address. MWalker@carye mechanicals.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, 2019, 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, 2019

Owner:	Contractor:
By Raymond D. Jeanfreau Jr	By
Name: ED JEANFREAU	Name MATT WALKER
Title PURCHASING Division President	Title PRES.

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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 (1) 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 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 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 Contract 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, PENALITES, 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 that $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 that $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 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 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.

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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 9supplied 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" sngle 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.

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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:

Carryl Mechanicals II

By: _____

Date: Jan 14, 2010

Builder
D.R. Horton, Inc.

By: Edmond G. Jeanfreau Jr

Date: 1/20/10

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D·R·HORTON NYSE
America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Five Star Foundation LLC ("**Contractor**")

___ Sole Proprietorship ___Partnership ___ Corporation X L.L.C ___ Other (ATTACH W-9)

Social Security No. or Tax ID No.: 88-2445381

Name of Owner(s)/Officer(s): Brian Foccier

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: (864) 877-3265; Fax: (864) 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 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 (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, 20 21.

Owner: DocuSigned by:	Contractor:
By: Jason Powell	By:
Name: Jason Powell	Name: Brian Foccier
Title: Division President	Title: Owner

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DocuSign Envelope ID: 7C066C7F-895D-43E4-9338-02097CADC79F 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

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of any 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-43E4-9338-02097CADC79F 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-43E4-9338-02097CADC79F 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 PEROMED 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.

INITIALS: OWNER JP DS, CONTRACTOR BF.

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DocuSign Envelope ID: 7C066C7F-895D-43E4-9338-02097CADC79F 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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INITIALS: OWNER JP, CONTRACTOR BF

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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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INITIALS: OWNER JP, CONTRACTOR BF.

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DocuSign Envelope ID: 7C066C7F-895D-43E4-9338-02097CADC79F)wner 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.

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INITIALS: OWNER JP, CONTRACTOR BF.

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DocuSign Envelope ID: 7C066C7F-895D-43E4-9338-02097CADC79F : 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 (DS), CONTRACTOR BF.

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 aterial or proprietary property or documents to Owner.

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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DS

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.: 20-0454569
Name of Owner(s)/Officer(s): D. TODD LAWSON (District Sales Manager)
Division Name: Greensboro Area Name: District 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 [redacted] Inc. General Shale Brick Inc. (hereinafter "Owner") and Contractor.

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 Contractors 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 ALLISON
Title: ~~Division President~~ DIVISION CFO

Contractor:
By: General Shale Brick Inc.
Name: D. Todd Lawson
Title: District Sales Manager

INITIALS: Owner: [initials] Contractor: DTL

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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, VA 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., 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.

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: _____

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 for 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 or obligations of Contractor provided by law or otherwise and is not in limitation of periods of applicable statutes of limitation.

9. LIENS AND RETANAGE.

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, 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: _____

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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 Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Prior to the subcontractor's commencement of the Work, Contractor shall obtain a signed agreement from such third party indemnifying Indemnitee 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 Indemnitee from all losses arising from any materials or labor incorporated into the Work not caused solely by the negligence or intentional acts of Indemnitee. 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 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 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 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 that $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: _____ Contractor: _____

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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; (vi) 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, 9 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 arbitrators 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: _____ Contractor: DTR

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EXHIBIT A

SCOPE OF WORK

(Buick MFG)

INITIALS: OWNER _____, CONTRACTOR _____

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of any governmental authority, (v) Contractor has, and each Contractor's employees, agents or permitted subcontractors shall have, the requisite skill, 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: _____

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139609

D·R·HORTON
America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR IBP Asset, LLC dba: BlueRidge Building Products ("Contractor")

____ Sole Proprietorship ____Partnership ____ Corporation ☒ LLC ____ Other (ATTACH W-9)

Social Security No. or Tax ID No 31-1795875

Name of Owner(s)/Officer(s) See Attached List

Division Name: _____ Area Name _____ Assigned Vendor No. _____

Address for All Notices PO Box 587

City Greer, State S.C Zip Code 29652

Telephone 864-895-9138 864-877-7449 E-Mail Address ron.bates@installed.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.R. Horton Inc. its affiliates & subsidiaries ("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 January, 2010

Owner:	Contractor: IBP Asset, LLC dba: BlueRidge Building Products
By D.R. Horton, Inc	By
Name Ed Jennerjahn Jr	Name Dan Albert
Title Purchasing Division President	Title Regional manager

INITIALS: OWNER _____, CONTRACTOR DA.

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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 OA.

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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.

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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 Contract 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, PENALITES, 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 that $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 that $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 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.

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D·R·HORTON
America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Kings landscaping LLC ("Contractor")

___ Sole Proprietorship ___ Partnership ___ Corporation ___ L.L.C X ___ Other (ATTACH W-9)

Social Security No. or Tax ID No.: 910 74 0311 2016 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: (864 304 0386 Fax: ( ) _____ E-Mail Address: Kingslandscaping1sc@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 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

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA, IF ANY.

Executed this 5th day of October, 2016

Owner:
By:
Name: [illegible]
Title: Division President

Contractor:
By:
Name: Antonio Jimenez & Maria Jimenez
Title: Owner

INITIALS: OWNER _____, CONTRACTOR AJ & MJ

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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

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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 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.

INITIALS: OWNER _____, CONTRACTOR AU & MJ

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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 AW MJ

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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 AJ + MJ

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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 offset 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 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 _____ CONTRACTOR _____

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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 and 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

INITIALS: OWNER _____ CONTRACTOR AJ + MJ

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D·R·HORTON® DHI LISTED NYSE
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 CONTINOUSLY 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.**

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D·R·HORTON America's Builder

GEORGIA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Lade-Danlar (supplier) ("Contractor") = supplier WM

____ 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: 770 939-6244 Fax: 770 939-7516 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. WM

1. SCOPE OF WORK. This Agreement is entered ou a blanket basis. The terms of this Agreement shall govern all current and fumre 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 nnless 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 Schednle, does not gnarantee any quanrity 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. WM

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. – Price agreement between Progress Ltg and D.R. Horton Corporate.

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 honse 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 Coutractor's invoice (or Purchase Orders, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constimte 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 snbcontractors 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: _____
Name: WAYLAND Y BOOZER
Title: DIRECTOR OF OPERATIONS

INITIALS: OWNER _____, ~~CONTRACTOR~~ Supplier WM.

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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

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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 + 8.2 supplier will honor all manufacturer's warranties on materials supplied by Lade-Danlar.

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.

INITIALS: OWNER _____, CONTRACTOR ~~CONTRACTOR~~ Supplier (MD).

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 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 exteut 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 suhmit to binding arbitration on the terms set forth iu Section 13 of this Agreemeut. For all purposes, iucluding 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 uuder this Agreement shall be deemed also to be the obligation of the subcoutractors 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

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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 offset 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~~ Supplier.

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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. ——> see modifications noted and initialed (MD)

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~~ supplier (MD).

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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 resnlt 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 linited to any work by a subcontractor. Contractor sball 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 prolubitions 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 tenns 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 Owuer.

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. Iimnediately 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 bnsiness 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 inail, 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 chauged address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Uuless the context requires a contrary construetion, the singular shall iuclude 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, linit, or otherwise affect that which is set forth in any of its paragraphs, sections or subsections.

INITIALS: OWNER _____, CONTRACTOR MA.

Supplier

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D·R·HORTON NYSE DHI
America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Landshapers, LLC ("Contractor")

___ Sole Proprietorship ___Partnership ___ Corporation X 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: ( ) 864-414-0636 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. §§ 29-6-30 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

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA, IF ANY.

Executed this 1st day of December 2015

Owner:
By: _____
Name: Shawn Knight
Title: Division President

Contractor:
By: Landshapers, LLC
Name: Mark C. Walker
Title: Owner

INITIALS: OWNER _____, CONTRACTOR MCW

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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 _____

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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 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.

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 MCW

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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 _____

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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 offset 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 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 _____, CONTRACTOR _____

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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 _____, CONTRACTOR MEW

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D·R·HORTON America's Builder DHI NYSE

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 SCS Assigned Vendor No: 1343998-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. GARONER
Name: DIVISION PRESIDENT
Title: Division President

Contractor:
By LONG HEATING & AIR CONDITIONING, INC.
Name ANDY LONG
Title PRESIDENT

INITIALS: OWNER BJ 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 Contract 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, PENALITES, 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 that $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 that $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.

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D.R. HORTON America's Builder

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 - 222 7876

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
Name Raymond B Jeanfreau Jr
Title Purchasing Division President

Contractor
By
Name Damon Manale
Title Owner

INITIALS. OWNER _____, CONTRACTOR _____

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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 _____

(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

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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 Contract 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, PENALITES, 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 that $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 that $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 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.

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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.

- 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.

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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:
Manale Landscaping, LLC
PO Box 62951 North Charleston, SC 29419

Agreed and Accepted by:

Its: Owner
Date: 1-28-2010

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D·R·HORTON DHI NYSE
America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR P & T Construction Inc. ("Contractor")

___ Sole Proprietorship ___ Partnership V Corporation ___ L L C ___ Other (ATTACH W-9)

Social Security No. or Tax ID No # 56-2166241

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 704 455-1422 Fax 704 455-1423 E-Mail Address pnk-jn@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. 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 12th day of March, 10

Owner:	Contractor:
By DHI	By
Name: EDMOND G. JEANFREAU, JR	Name Kyung Lee
Title: PURCHASING Division President	Title Owner

INITIALS: OWNER _____, CONTRACTOR _____.

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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 _____

(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 Contract 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, PENALITES, 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 that $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 that $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.

INITIALS: OWNER _____, 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 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.

INITIALS: OWNER _____, CONTRACTOR _____.

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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:	By: EDMOND G JEANFREAU, JR
Date: 3/12/10	Date: 3/13/10

 Initial

KDC 013341

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2019-CP-04-01942

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-Vaughn 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.; 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.;

IBP ASSET, LLC d/b/a BLUE RIDGE BUILDING PRODUCTS' MOTION TO RECONSIDER

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Greener Pastures, Inc., a/k/a Greener Pastures of Aiken, LLC; 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 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 Cypsum; UTM Enterprises, Inc.; Dupree Plumbing Company, Inc.; and Willow Tree Landscaping, Inc.;

Third-Party Defendants.

PLEASE TAKE NOTICE that Third-Party Defendant IBP Asset, LLC d/b/a Blue Ridge Building Production (hereinafter referred to as "Blue Ridge") moves this Honorable Court to reconsider its Order dated February 15, 2023 pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

As a bit of background, Blue Ridge has filed two motions with the Court: a Motion to Make a More Definite Statement on July 21, 2021 and a Motion for Summary Judgment on August 1, 2022.[1] Blue Ridge's Motion to Make a More Definite Statement was never set for a hearing and has never been argued in front of the Court; this motion was resolved by virtue of

[1] Which was supported by a Memorandum on September 2, 2022.

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DR Horton, Inc.'s Amended Third-Party Complaint and does not require a ruling. Blue Ridge's Motion for Summary Judgment was set for a hearing on September 8, 2022 and argued in front of the Court on the same date.

The Court's Order dated February 15, 2023 rules on Blue Ridge's Motion to Make a More Definite Statement, but not on Blue Ridge's Motion for Summary Judgment. Accordingly, Blue Ridge's Motion for Summary Judgment has yet to be ruled on and remains outstanding.

As another bit of background, a host of motions for summary judgment by other third-, fourth-, and fifth-party defendants were also heard by the Court on September 8, 2022. Those motions advocated for summary judgment on the grounds that DR Horton, Inc.'s claims are merely disguised claims for indemnification and should therefore be dismissed. On October 31, 2022, the Court issued an Order denying those motions.

Blue Ridge's motion for summary judgment raises an argument distinct from the motions for summary judgment that the Court denied in its October 31, 2022 Order. Specifically, Blue Ridge argues in its motion and supporting memorandum[2] that because Plaintiffs have not alleged a common defect that implicates the work of Blue Ridge, DR Horton, Inc. cannot demand that that Blue Ridge defend and indemnify it in this lawsuit.

Accordingly, because the Court has not yet ruled on its Motion for Summary Judgment, Blue Ridge respectfully requests that the Court reconsider its Order, vacate the order as to Blue Ridge contained therein, and rule on Blue Ridge's Motion for Summary Judgment.

[2] Blue Ridge has attached its Motion for Summary Judgment and its Memorandum in Support thereof as Exhibit A and Exhibit B, respectively.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

/s/ Scott W. Giblin
Everett A. Kendall, II, SC Bar No. 8450
Scott W. Giblin, SC Bar No. 105368
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260
(803) 782-4100
Attorneys for IBP Asset, LLC d/b/a Blue Ridge Building Products

Columbia, South Carolina
February 22, 2023

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ELECTRONICALLY FILED - 2023 Apr 19 2:08 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2019-CP-04-01942
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.	**IBP ASSET, LLC d/b/a BLUE RIDGE BUILDING PRODUCTS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AS TO D.R. HORTON, INC.'S THIRD-PARTY COMPLAINT**
D.R. Horton, Inc. Third-Party Plaintiff v. AJ Landscaping & Grading, LLC, a/k/a A J Landscaping & Grading, LLC; IBP Asset, LLC d/b/a Blue Ridge Building Products, et al. Third-Party Defendants.	

Third-Party Defendant IBP Asset, LLC d/b/a Blue Ridge Building Products ("Blue Ridge") submits this Supplemental Memorandum of Law in support of its Motion for Summary Judgment as to Third-Party Plaintiff D.R. Horton, Inc.'s ("Horton") Third-Party Complaint against Blue Ridge.

Since the time that the Blue Ridge submitted its Memorandum in Support of its Motion for Summary Judgment on September 2, 2022, the parties have taken many depositions, including the depositions of Plaintiffs' experts. NO WITNESS HAS TESTIFED TO ANY

DEFECT IN THE WORK PERFORMED BY BLUE RIDGE. If that is not so, DR Horton should submit admissible evidence to this Court in opposition to this Motion. It has not, because it cannot.

Significantly, Plaintiffs'experts have testified that they have no opinions regarding any defects in the work performed by Blue Ridge. As a reminder, Blue Ridge installed gutters and insulation on *some* of the houses in Rose Hill. Blue Ridge did not perform any work on the Zitek residence.

Attached hereto are excerpts from the testimony of Rhett Whitlock and Warren Maddox attached at Exhibits 25 and 26 respectively.

Because the Plaintiffs are not making any claim that the work performed by Blue Ridge is defective and part of the class claims against DR Horton, DR Horton has no right to seek indemnification from Blue Ridge and Summary Judgment should be granted.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

/s/ Everett A. Kendall II
Everett A. Kendall, II, SC Bar No. 8450
Scott W. Giblin, SC Bar No. 105368
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260
(803) 782-4100
Attorneys for IBP Asset, LLC d/b/a Blue Ridge Building Products

Columbia, South Carolina
April 19, 2023

ELECTRONICALLY FILED - 2023 Apr 19 2:08 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

ELECTRONICALLY FILED - 2023 Apr 19 2:08 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

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.

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subcontractor named Gale Contractors Services. I only have a few brief questions before we move on to the next topic.

First, your reports do not discuss gutters and/or downspouts, correct?

A. No. I don't think so.

Q. Did you inspect any gutters and/or downspouts at Rose Hill?

A. No.

Q. Is it fair to say you have no criticisms of the gutters and/or downspouts installed on the houses at Rose Hill?

A. That's correct.

Q. Are you calling for any specific repairs to be performed to the gutters and/or downspouts?

A. Only where they need to be removed to get to other materials.

Q. Okay. So it's fair to say the -- you're not calling for a specific repair but removing the gutters to access other locations to perform repairs.

A. That's correct.

Q. Do you intend to offer any opinions as to the gutters and/or downspouts?

A. I haven't been asked to.

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MS. STRATTA: Okay. Thank you those are all the questions I have.

MR. LUCEY: 9:07 AM. We're moving to the second topic which is what, please, Ms. Sheets?

MS. SHEETS: Insulation.

MR. LUCEY: Who's taking the lead on that, please.

MS. SHEETS: Me.

EXAMINATION

BY MS. SHEETS:

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.

MS. SHEETS: Are you going to testify at trial.

MR. LUCEY: I'm just putting it on the record.

MS. SHEETS: I will be as quick as I possibly can and/or his testimony allows me.

Q. (MS. SHEETS) Dr. Whitlock, we're taking a look at Exhibit Number 34 here and the green highlighted properties that you inspected. Did

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

DEPOSITION OF WARREN MADDOX, 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,

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A. Flex duct.
Q. Anything wrong with it?
A. Well, again, just hard turn and bending over top of a 2-by-4 down there, compressed nature of the ductwork installation.
Q. What about 24?
A. I believe that was where one of the ducts is going down in a chase to the first floor.
Q. Anything wrong with this condition?
A. No. Just documenting condition there.
Q. How about 25?
A. Documenting the condition.
Q. Thank you. And 26?
A. Documenting R-value and ADC.
Q. 27?
A. Just documenting insulation thickness.
Q. Are you critical of the insulation in any way in the houses?
A. Yeah.
Q. Not on the ductwork but the blown-in.
A. Right, the blown-in. In certain areas, it's not the thickness it needs to be. I mean, they've got the thickness -- the markers on the trusses. And where the markers are, they're up

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to the required thickness. But in other areas, like here, you know, I've got exposed framing, which is -- you know, it's not the thickness that it needs to be.

Q. Are you prepared to offer testimony and opinions about that?

A. We didn't include it in my report, so I wouldn't be testifying about that part of it.

Q. How about number 28?

A. Top of an exhaust fan that's exposed. And again, that fan is about 4 inches tall, so the insulation right around it is only 4 inches deep. So that would, you know, be a documentation of that. And then that duct tape is connection of the ductwork to it. So, again, just documenting conditions.

Q. 29?

A. That's documenting conditions of the dryer exhaust duct.

Q. Anything else?

A. No. You've got some flex duct in the same picture there.

Q. I guess my question, is there anything wrong with the flex duct in that picture?

A. It's compressed and twisted right there.

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came out, were present just to look at the air handler, the ductwork, the condenser unit, all of that stuff, correct?

A. That's correct.

Q. And they did that for these 234 houses, correct?

A. I don't remember seeing inspection reports on all 234 houses, but I would assume that they did, yes.

Q. And you would assume that certificates of occupancy were issued after those inspections, correct?

A. Yes. And I will tell you further that that means absolutely nothing.

MR. HARJEHAUSEN: Well, I appreciate you answering my questions, Mr. Maddox. Those are the only questions I have.

THE WITNESS: Okay.

MS. LYNN: Anybody else with different questions?

EXAMINATION

BY MR. EMGE:

Q. Warren, Chip Emge. How are you? I know you're tired. It's been a long day. I'm going to try to be as brief as possible.

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I represent Gale Contractor Services. I've deposed you before, I believe. You are familiar with Gale Contractor Services; is that correct?

A. I am. I know who they are.

Q. I believe when you testified in Smith's case, you said that you saw their trucks around town and whatnot, correct?

A. Correct.

Q. Based on -- do you have any experience with Gale Contractor Services upon which you are relying for your opinions or testimony in this case?

A. Say that again.

Q. I'm sorry. Did you not hear me?

A. No.

Q. Okay. Are you -- based on your experience or knowledge of Gale Contractor Services, are you relying on any of that for your opinions or testimony in this case?

A. I'm not -- no. I guess I don't really fully understand what you're asking in that question. You know, I'm testifying today about the issues that are in my report, and if Gale did those -- any of that ductwork, then that would be

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the issue.

(Off-the-record discussion.)

Q. Well, I will represent to you that Gale installed -- part of their scope of work was installation of the blown insulation in the attics and the batt insulation in the walls. Do you have any prior experience with Gale Contractor Services that is informing your opinions with respect to any issues you saw with the batt or blown insulation in this case?

A. No.

Q. And we've talked about the 32 houses that you inspected. Are you relying on your sheet that has the visual only, the spreadsheet that was supplied by Annette Mixson earlier today? Is that what you're relying on for the number 32?

A. Yes. That and my pictures.

MR. EMGE: And Madam Court Reporter, if we could go ahead and enter that as Exhibit Number 6. It's in the Dropbox as Bates label Maddox 113 through 220.

(Exhibit No. 6 marked for identification.)

Q. Now, I wanted to make sure -- you

testified earlier that -- and I wrote it down so that I would not forget it, but that, 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, 2021, again, there are no issues in that that need to be addressed due to the installation of the insulation, correct?

A. Correct.

Q. All right. Your -- and believe me, I am not going to beat the dead horse of the energy bills too much, but you have not done any

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calculations to be able to offer any testimony with respect to any amount of that energy waste or cost that would be attributable to the installation of the insulation, have you?

A. We did not include anything in that regard.

Q. Okay. Great. Now, are you aware that the R factor for the insulation, blown insulation in the attic, was supposed to be R-30? Does that sound right to you?

A. That would be correct.

Q. And the depth which the blown insulation has to be applied would be a certain depth that's dictated by the manufacturer's instructions, correct?

A. Correct.

MR. EMGE: Madam Court Reporter, if we could mark as Exhibit 7 in the Warren Maddox folder, I believe it's -- we marked it GCS Exhibit 4. It's Maddox Bates label 959.

(Exhibit No. 7 marked for identification.)

Q. Warren, do you have access to that? Or I can share my screen.

A. Why don't you share your screen.

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Q. All right. Can you see that?

A. Yes.

Q. So this is from your -- these are from your photographs. And I will represent to you that it is 8 Kettering Drive, Bates labeled Maddox 959. And this is a sheet from Owens-Corning indicating the various depths to which the blown insulation should be applied to achieve a corresponding R factor; is that correct?

A. Yes.

Q. And you see in the center there where I'm moving my cursor, it says for an R factor of 30, the depth should be 10 and a quarter inches; is that correct?

A. Yes.

Q. Do you have -- because I have looked through all 1,311 photographs, and I could not find one picture in which there was an actual measurement of blown insulation that was less than 10 and a quarter inches. Do you recall any sitting here today?

A. Well, we looked at one, I believe with Mr. Imhoff, indicated there was a picture. I don't remember the number now. But there was no

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insulation against the ceiling in that particular case. He asked if I had any knowledge of why that was, and I was like, no, that's just a bare spot in the insulation. I don't know why it was there.

But, you know, as I said earlier, I've got some pictures of things like that, and there's one bare spot in one house. That's a one-off issue. I'm not going to make that into the report as an issue, because it's not across all of the houses.

MR. EMGE: And I'm sharing my screen now, and if we could enter this as the next exhibit, Madam Court Reporter. This is Exhibit 1 for GCS.

(Exhibit No. 8 marked for identification.)

Q. Can you see that, Warren?

A. Yes.

Q. Exhibit 8, this is your Bates label -- well, let me back up a little bit. This is Exhibit [sic] 24. Do you see any issue with the blown insulation in Maddox photo 24?

A. No.

Q. Again, this is Maddox photo 27. Do you

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see any issue with the blown insulation in that photograph?

A. No. We're not putting that in as an issue.

Q. And we talked about this one briefly. This may have been the photograph you were referring to earlier, Maddox photo 28, that little junction box I guess it is. I believe you testified earlier that there appeared to be a lack of insulation around that; is that correct?

A. Yeah. That's an exhaust fan, bathroom exhaust fan, and it's about 4 to 5 inches tall. So the insulation around it is only 4 to 5 inches deep. But, again, that's one little area that -- you know, we didn't make that an issue in the report.

Q. Okay. And you don't know sitting here today whether that device could have been installed after the blown insulation was applied? Is that possible? It looks like it was sort of dug out, if you will.

A. You know, again, I don't know, Chip. I mean, they could have had an issue and somebody went over and dug it out. I don't know.

Q. And I did want to go through this one,

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scrolling down. This is going to be Maddox 450 when I get to it. This is that bare area. This also may be the one.

A. That's the one we talked about earlier.

Q. Great. And the reason I wanted to ask that is it looks to me -- does it appear to you to be sort of an original construction issue? It looks like you've got sort of a specific square that's been put down there, some slats across it. You've got insulation everywhere except that one area. Would you agree with me that it's at least possible that that is an after original construction repair or alteration?

MS. LYNN: Objection.

A. You know, I'd be making a guess at this point. I don't know what the reasoning for it is.

Q. But, again, that is not an issue that you included in your report, correct?

A. Correct.

Q. And let me ask you this. If the depth of the insulation is supposed to be 10 and a quarter inches to meet the R-30 value, I believe you testified earlier that there were some areas where the insulation didn't cover the framing.

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But if the framing member -- say, for example, if it's a 2-by-12 or a 1-by-12, if you had 10 and a half inches of insulation there, you would still be meeting the R-30 requirement, would you not?

A. Yes.

Q. Give me one second here. I've tried to be brief and concise, and I think that -- so just let me confirm.

Any of the pictures that might be directly related to insulation, is it your testimony that would be just to show the general condition?

MS. LYNN: Objection.

Q. Or to document the general condition?

A. Yes.

MR. EMGE: Okay. Warren, thank you very much. I appreciate your time. I hope I have not overextended you.

THE WITNESS: Thanks, Chip.

EXAMINATION

BY MS. MAHON:

Q. This is Christy Mahon. I represent Nicholas Soto and Soto HVAC. You're not familiar with that company, are you?

A. No.

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STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2019-CP-04-01942
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.	**IBP ASSET, LLC d/b/a BLUE RIDGE BUILDING PRODUCTS' SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT AS TO D.R. HORTON, INC.'S THIRD-PARTY COMPLAINT**
D.R. Horton, Inc. Third-Party Plaintiff v. AJ Landscaping & Grading, LLC, a/k/a A J Landscaping & Grading, LLC; IBP Asset, LLC d/b/a Blue Ridge Building Products, Third-Party Defendants.	

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Third-Party Defendant IBP Asset, LLC d/b/a Blue Ridge Building Products ("Blue Ridge"), by and through its undersigned counsel, submits this Supplemental Motion for Summary Judgment and respectfully requests that the Court enter an Order of Summary Judgment as to Third-Party Plaintiff D.R. Horton, Inc.'s ("Horton") Third-Party Complaint against Blue Ridge.

Blue Ridge's Motion for Summary Judgment was heard by Judge Sprouse on April 21, 2023, wherein Plaintiff's counsel stipulated that Plaintiff is not alleging a class-wide defect

relating to the provision or installation of insulation and gutters in the Rose Hill subdivision. Plaintiff's counsel did state, however, that Plaintiff is alleging a class-wide defect relating to the provision and installation of exterior doorknobs in the Rose Hill subdivision; specifically, Plaintiff's counsel stated that the exterior doorknobs leaked during the spray rack tests performed by Plaintiff's expert, Dr. Rhett Whitlock.

Blue Ridge moves for summary judgment on the grounds that neither Plaintiff, as class representative, nor her experts have alleged a class-wide defect related to the provision and installation of exterior doorknobs in the Rose Hill subdivision. Plaintiff's counsel's comments during the April 21, 2023 hearing that water was observed passing through the doorknob keyhole when it was sprayed with water is not evidence of a class-wide defect. Plaintiff's construction defect expert, Dr. Rhett Whitlock, has submitted numerous affidavits, reports, and repair estimates and has sat for eight (8) days of depositions, and not once have doorknobs been mentioned as a class-wide defect in the Rose Hill subdivision. In fact, during Dr. Whitlock's April 12, 2023 deposition, where the window and door subcontractors got the opportunity to depose Dr. Whitlock, Dr. Whitlock was questioned for approximately twenty (20) pages about the exterior doors at the Rose Hill neighborhood and not once did he mention doorknobs. Further, Dr. Whitlock testified that he performed spray rack tests on two exterior doors in the Rose Hill neighborhood, with one of those two being a sliding glass door. Stated differently, Dr. Whitlock sprayed one doorknob with water and it leaked.

The Court's certification of the class on January 27, 2021 with respect to the class-wide defects previously alleged in Plaintiff's pleadings and attachments does not act as carte blanche authority for Plaintiff to bring additional class-wide defects without Court approval, and it

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certainly does not allow Plaintiff's counsel to unilaterally identify class-wide defects that are not supported by its experts.

It must also be mentioned that (a) Blue Ridge did not install the exterior doorknob that was spray tested by Dr. Whitlock and (b) Blue Ridge performed no work on the Zitek residence.

In its Third-Party Complaint, in addition to claims for contractual and equitable indemnity, Horton also brings causes of action against Blue Ridge for breach of contract, breach of express warranties, breach of implied warranties, negligence, gross negligence, and recklessness. However, because these causes of action are dependent solely on the potential liability that may arise from Plaintiff's claims against Horton and because Horton's damages arise exclusively from having to defend itself from Plaintiff's lawsuit, these causes of action are in reality claim for equitable indemnification and should be dismissed in accordance with the South Carolina Court of Appeals' ruling in *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 635, 776 S.E.2d 434, 437 (Ct. App. 2015). See also, *Hampton Hall, LLC v. Chapman Coyle Chapman & Assocs. Architects AIA, Inc.*, 2018 WL 3475472, at *1-2 (D.S.C. July 19, 2018).

Further, Horton cannot satisfy the "clear and unequivocal" standard set forth by the South Carolina Court of Appeals in *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 642, 819 S.E.2d 166, 168 (Ct. App. 2018) and thus cannot demand that Blue Ridge defend and indemnify Horton in this case.

Moreover, as of the filing of this Motion, the provision and installation of exterior doorknobs is not among the list of certified class defects. As such, D.R. Horton, Inc. has not incurred, nor will it incur, any damages in this lawsuit resulting from Blue Ridge's work, and Blue Ridge cannot be compelled to defend and indemnify Horton in this lawsuit.

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This Motion is based on the pleadings, discovery, and deposition testimony already conducted in this case, and any other matters that may be presented at or prior to the hearing on this Motion. In addition, this Motion will be supported by a Memorandum of Law, which will be filed prior to the hearing on this Motion.

WHEREFORE, Third-Party Defendant IBP Asset, LLC d/b/a Blue Ridge Building Products prays that the Court grant its Motion for Summary Judgment as to Third-Party Plaintiff D.R. Horton, Inc.'s Third-Party Complaint and dismiss all claims and causes of action against Third-Party Defendant IBP Asset, LLC d/b/a Blue Ridge Building Products.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

/s/ Scott W. Giblin
Everett A. Kendall, II, SC Bar No. 8450
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Columbia, South Carolina
May 1, 2023

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STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
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.	Civil Action No. 2019-CP-04-01942 **BUILDERS SERVICES GROUP, INC. D/B/A GALE CONTRACTOR SERVICES' MOTION FOR SUMMARY JUDGMENT OF D.R. HORTON'S THIRD-PARTY COMPLAINT**
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-Z, INC.; ATLANTA FLOOR DESIGNS CENTER; A GRADE ABOVE OTHERS, LLC; BRAND-VAUGH 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.; CARYLE MECHANICS II, INC., A/K/A CARYLE MECHANICALS, INC.; CANNADAY SIDING & GUTTER, INC.; COLEMAN FLOOR, LLC; CORTES PAINTING, LLC; CBU ENTERPRISES, INC.; CPI	

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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;

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UTM ENTERPRISES, INC.; AND WILLOW TREE LANDSCAPING, INC., Third-Party Defendants.	)
LONG HEATING & AIR CONDITIONING, INC., Fourth-Party Plaintiff, vs. ZENON GUTIERREZ ANTUNEZ, JESUS PEREZ, FREDY PEREZ AND VENUSTIANO PEREZ, INDIVIDUALLY AND D/B/A FREDY'S HVAC, NICHOLAS SOTO A/K/A NICOLAS SOTO, INDIVIDUALLY AND D/B/A SOTO HVAC, JASON WEAVER, INDIVIDUALLY AND D/B/A TIGER MECHANICAL AND PANUNCIO VICTORIANO MARTINEZ, INDIVIDUALLY AND D/B/A VICTORIANO HVAC, LLC, Fourth-Party Defendants.	)

TO: D.R. HORTON INC. AND ITS' ATTORNEYS JOHN T. CRAWFORD ESQ., AND JASON IMHOFF, ESQ.:

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 Builder Services Group, Inc. f/k/a Masco Contractor Services Central Inc. f/k/a Gale Industries, Inc. d/b/a Gale Contractor Services, improperly named as TopBuild Home Services, Inc., a/k/a Gale Contractors Service (hereinafter "Defendant"), 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 Defendant summary judgment as to D.R. Horton, Inc.'s Third-Party Complaint against the Defendant. The basis for this motion is that there is no genuine issue as to any material fact and Defendant is entitled to judgment as a matter of law.

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Defendant is entitled to judgment as a matter of law on the grounds that there are no defects associated with Defendant's scope of work performed at the Rose Hill subdivision, which is the subject of Plaintiff Natalie Zitek's, individually, and on behalf of all others similarly situated, lawsuit. Further the indemnification clause contained in DR Horton's Master Addendum to the Independent Contracting Agreement entered with the Defendant is against public policy, is void, and unenforceable.

Defendant'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. Defendant reserves the right to submit a Memorandum of Law in support of this Motion and to make additional arguments at a hearing on this Motion.

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Respectfully submitted,

RESNICK & LOUIS, P.C.

s/ N. Keith Emge, Jr.

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May ___, 2023
Charleston, South Carolina

ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

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 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-Z, INC.; ATLANTA FLOOR DESIGNS CENTER; A GRADE ABOVE OTHERS, LLC; BRAND-VAUGH LUMBER CO, INC..; BKF BUILDERS, INC.; GALE BUILDING PRODUCTS, LLC; BUILDERS DESIGNHOUSE, LLC; BMC EAST LLC; BUILDERS FIRSTSOURCE SOUTHEAST GROUP, LLC A/K/A BUILDERS FIRSTSOURCE, INC.; BRAVO CARPENTERS, INC.; CARYLE MECHANICS II, INC., A/K/A CARYLE MECHANICALS, INC.; CANNADAY SIDING & GUTTER, INC.; COLEMAN FLOOR, LLC; CORTES PAINTING, LLC; CBU ENTERPRISES, INC.; CPI	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT Civil Action No. 2019-CP-04-01942 **BUILDERS SERVICES GROUP, INC. D/B/A GALE CONTRACTOR SERVICES' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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;

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ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

UTM ENTERPRISES, INC.; AND WILLOW TREE LANDSCAPING, INC., Third-Party Defendants.	)
LONG HEATING & AIR CONDITIONING, INC., Fourth-Party Plaintiff, vs. ZENON GUTIERREZ ANTUNEZ, JESUS PEREZ, FREDY PEREZ AND VENUSTIANO PEREZ, INDIVIDUALLY AND D/B/A FREDY'S HVAC, NICHOLAS SOTO A/K/A NICOLAS SOTO, INDIVIDUALLY AND D/B/A SOTO HVAC, JASON WEAVER, INDIVIDUALLY AND D/B/A TIGER MECHANICAL AND PANUNCIO VICTORIANO MARTINEZ, INDIVIDUALLY AND D/B/A VICTORIANO HVAC, LLC, Fourth-Party Defendants.	)

TO: D.R. HORTON INC., AND ITS' ATTORNEYS JOHN T. CRAWFORD ESQ., JASON IMHOFF, ESQ. AND KIM WOOTEN, ESQ.:

The Defendant Builder Services Group, Inc. D/B/A Gale Contractor Services' (hereinafter "Defendant" or "Gale") submits this Memorandum of Law in support of its Motion for Summary Judgment as to Third-Party Plaintiff D.R. Horton, Inc.' s ("D.R. Horton") Third-Party Complaint against Gale.

PROCEDURAL BACKGROUND

This litigation arises out of the development and construction of the Rose Hill subdivision in Anderson County, South Carolina ("Rose Hill"). Rose Hill consists of approximately 270 single-family homes. D.R. Horton served as the developer and builder for Rose Hill, taking over the

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project from Poinsett Development, LLC and Poinsett Homes, LLC. Gale served as a subcontractor to D.R. Horton, providing labor and materials for 91 of the homes in Rose Hill.

Gale's scope of work at Rose Hill consisted of installing the garage doors, gutters, downspouts, and batt and blown insulation. Gale's scope of work in the Rose Hill subdivision is derived from Gale's work tickets and purchase orders[1], which identifies all of the work that Gales performed at Rose Hill, the dates the work was performed, how much Gale was paid for the work, etc. Gale did not work on every home in Rose Hill. Moreover, Gale did not install all of the above items in each home that it worked on. Gale's scope of work varied from home to home. For example, at 6 Dartford Court, Gale installed gutters, downspouts, garage doors, and insulation. Whereas at 311 Amesbury Lane, Gale only installed gutters, downspouts, and garage doors. D.R. Horton has produced a Vendor Spend spreadsheet, upon which it relies for Gale's scope of work.[2]

On September 25, 2019, Plaintiff Natalie Zitek ("Plaintiff Zitek") brought a class action lawsuit on behalf of herself and a proposed class of other similar situated Rose Hill homeowners (collectively the "Class") against D.R. Horton, Inc. and Jane and John Does. In her Complaint, Plaintiff Zitek alleged that the prerequisites of Rule 23(a), SCRCP had been satisfied and that class certification is appropriate. Pertinent to the present Motion, Plaintiff Zitek alleged in her Complaint that her claims are "typical of the class"[3] and that "questions of law and fact common to the Class predominate over questions affecting only individual members."[4]

On October 20, 2020, Plaintiff Zitek moved for an Order certifying the Class under SCRCP Rule 23, wherein she re-alleged that her claims are "typical of the Class members' claims."[5]

[1] A sample of Gale's Work Tickets and Purchase Orders are attached as Exhibit 1.
[2] Relevant portions of the Vendor Spreadshee22t allegedly identifying Gale's work are produced as Exhibit 2.
[3] Zitek Compl. ¶ 38.
[4] Zitek Compl. ¶ 40.
[5] Affidavit of Natalie Zitek ¶ 4.

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Plaintiff Zitek filed an affidavit contemporaneously with the motion for class certification, identifying the following defects common to the Class, notably none of which identify Gale's work:

- Leaky windows;
- Leaky patio door;
- Brick that is cracking along exterior walls and near garage door;
- Cracking in garage's concrete floor;
- Inadequate air flow throughout interior rooms; and
- Backyard that fills with water when it rains and does not rain.

On November 23, 2020, Plaintiff Zitek filed a memorandum in support of her motion for class certification[6] along with a letter and three affidavits from her engineering expert, Rhett Whitlock.[7] The supporting documentation identifies, in detail, the defects that are common to the Class and the repairs that will be required. Mr. Whitlock identified the following common defects:

- Masonry veneer that has cracked and fallen;
- Masonry veneer that is improperly flashed, poorly weeped, inadequately anchored and
- supported;
- Windows with insufficient water resistance and broken, leaking miters at the bottom
- comers;
- Damaged patio doors and trim with insufficient water resistance; and
- Slab foundations that are cracking excessively.

On January 27, 2021, this Court certified the Class, finding, inter alia, that Plaintiff. Zitek's claims are typical of the Class. On March 11, 2021, D.R. Horton filed an Amended Answer and Third-Party Complaint. On February 23, 2022, D.R. Horton filed a Second Amended Answer and Third-Party Complaint, naming Gale as a Third-Party Defendant. In its Third-Party Complaint, D.R. Horton demands that Gale defend D.R. Horton in this lawsuit and indemnify D.R. Horton for the damages it has and will sustain as a result of Gale's work in Rose Hill.

[6] Zitek Memorandum in Support of Motion for Class Certification
[7] Whitlock Letter; Exhibit 3, Whitlock Affidavit; Exhibit 4, Whitlock Reply Affidavit; Exhibit 5, Whitlock Supplemental Affidavit, Exhibit 6.

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FACTUAL BACKGROUND

The factual background for purposes of this motion is comprised of the expert opinions in the case, responses to Requests to Admit, admissions to the Court as well as the contracts upon which D.R. Horton relies in support of its indemnity and breach of contract claims. Plaintiff Zitek has retained three experts to opine as to the defects common to the class. NONE of the defects discussed in Plaintiff's expert reports or their testimony implicates Gale's work. Similarly, D.R. Horton has retained two experts to review and assess the work and opinions of Plaintiff's experts. NONE of D.R. Horton's experts, in their reports or deposition testimony have implicated the work performed by Gale. The absence of any claimed defects in Gale's scope of work is also evidenced in discovery responses and admissions to the Court.

I. Plaintiff's Experts

Plaintiffs retained Dr. Rhett Whitlock of WDP & Associates Consulting Engineers, Inc. to opine about construction defects. Mr. Warren Maddox of Maddox Engineering, Inc., was retained to opine about HVAC and mechanical defects. Mr. Thomas Sherard of Site Consultants, Inc., was retained to opine about grading and drainage defects. Each of the above experts personally inspected homes in Rose Hill have issued reports summarizing their findings, and have been deposed.

A. Dr. Whitlock

On August 10, 2021, Dr. Whitlock issued a scope of repair report identifying the construction defects common to the class.[8] The common defects identified in Dr. Whitlock's expert report are reproduced below, along with a brief synopsis of the defect and repair required:

A. MASONRY REMEDIATION

[8] Whitlock Scope of Repair Report, attached as Exhibit 7.

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1. Stone: The stone veneer must be removed and replaced with new stone veneer.
2. Brick: The brick veneer must be removed and replaced with new brick masonry veneer.
3. Garage Door Opening and Roofs with Brick Veneer: The lintels above garages with brick veneer must be removed and replaced with new lintels.

B. WINDOW REMEDIATION: The windows require removal and replacement.

C. PATIO DOOR REMEDIATION: The patio doors require removal and replacement.

D. SLAB AND FOUNDATION CRACK REMEDIATION: All cracks in the concrete slabs and foundations require repair.

E. DUCTWORK AND UNDERCUTS: All ductwork in the attic of all Rose Hill homes and all flexible ductwork in between the first and second floors of the two-story Rose Hill homes requires repair, and interior doors require undercutting.

F. GRADING AND DRAINAGE: The yards of all Rose Hill homes require regrading and drainage corrections as recommended and to be determined by Plaintiffs expert engineer, Andy Sherard.

Notably NONE of the defects discussed in Dr. Whitlock's report implicate the work performed by Gale. Further, Dr. Whtilock's deposition was taken over the course of five days. On April 13, 2023, counsel for Gale examined Dr. Whitlock. He provided the following testimony confirming he has NO criticisms of Gale's scope and repairs to Gale's work are NOT included in his repair estimate:

Q. First, your reports do not discuss gutters and/or downspouts, correct?
A. No. I don't think so.
Q. Did you inspect any gutters and/or downspouts at Rose Hill?
A. No.
Q. Is it fair to say you have no criticisms of the gutters and/or downspouts installed on the houses at Rose Hill?
A. That's correct.
Q. Are you calling for any specific repairs to be performed to the gutters and/or downspouts?
A. Only where they need to be removed to get to other materials.
Q. Okay. So it's fair to say the -- you're not calling for a specific repair but removing the gutters to access other locations to perform repairs.
A. That's correct.

Whitlock Dep. Vol VI, P. 1552:4-23, attached as Exhibit 8.

Q. Your repair estimate calls for removing insulation from rigid ductwork and replacing new insulation properly installed to the correct thickness; is that correct?
A. Yes.
Q. The insulation around the ductwork is in no way related to the batt and blown insulation installed in the areas in the attic such as the flooring and the walls, correct?
A. It's different.
Q. So that specific repair to the insulation around the ductwork does not involve the batt and blown insulation installed in the attic elsewhere.
A. Correct.
Q. And your report does not discuss any batt or blown insulation installed throughout the houses at Rose Hill, correct?
A. That's correct.
Q. And you do not have any criticisms of the batt and blown insulation installed at any of the houses in Rose Hill, correct?
A. I do not.

Whitlock Dep. Vol VI, P. 1558:1-23, attached as Exhibit 9.

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 VIII, P. 2156:10-15, attached as Exhibit 10.

Q. Do you have any criticisms on how the garage doors were installed at Rose Hill?
A. No, but let me clarify. I did inspect the garage door openings and masonry above the openings but not the garage door itself.
Q. Okay. So my questions are focused specifically on the door itself, the door on the metal hinges that goes up and down, not the actual framing.
A. Right.
Q. Okay. Great. Is it fair to say that you are then not calling for any repairs to the garage doors at Rose Hill?
A. There's none in my estimate.
Q. Is the installation of the garage doors in any way tied to the brick work or lintel issues above the garage doors?
A. No. If you're speaking strictly of the door itself and its opening and closing mechanisms and its cracks, those are unrelated to any issues that I have.
Q. Is it fair to say that your repair estimate does not have any allocations for repairs to the garage door?
A. That's correct.

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Whitlock Dep. Vol VI, P. 1762:2-25;1763:1, attached as Exhibit 11.

B. Mr. Maddox

On May 7, 2020, Mr. Maddox issued a scope and cost of repair report identifying the HVAC and plumbing defects common to the class.[9] Mr. Maddox thereafter issued two supplemental reports, dated January 27, 2021, and December 19, 2021, respectively.[10] The common defects identified in Mr. Maddox's expert reports are reproduced below:

- Flexible ductwork is crimped, sagging, and making hard turns;
- Ductwork is unsealed and unbalanced;
- Insulation on rigid ductwork in the attic is compressed;
- Inadequate interior door undercuts;
- Deficient bathroom exhaust fans;
- Unsealed exterior wall penetrations;
- Uninsulated HVAC condensate lines;
- Improper dampers in runouts;
- Unsupported expansion tanks; and
- Improper P&T vent piping.

Mr. Maddox's most recent expert report (i.e., December 19, 2021) makes the following recommendations:

1. Remove insulation from rigid ductwork and replace with new insulation properly installed to the correct thickness;
2. Disconnect all flexible ductwork from the main truck duct and install balancing dampers;
3. Straightening all flexible ductwork in attic and in between floors ensuring proper installation according to the manufacturer's installation instructions (including supply, return, and exhaust ducts);
4. Install balancing dampers in the first-floor branch lines of 2 store homes;
5. Insulate condensate lines fully from the air handling unit in the attic with closed cell foam insulation;
6. Undercutting interior doors by 3/4 inches;
7. Remove and replace bathroom exhaust fan;
8. Provide test and balancing of each home after the work is complete;
9. Remove the water heater's existing P&T piping; terminate the piping in the pan under the water heater; and drain the pan to the exterior;
10. Seal all HVAC and plumbing penetrations; and

[9] Maddox Scope and Cost of Repair Report, May 7, 2020, attached as Exhibit 12.

[10] Maddox Scope and Cost of Repair Report, January 27, 2021, attached as Exhibit 13a, Maddox Scope and Cost of Repair Report, December 19, 2021, attached as Exhibit 13b.

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11. Support expansion tanks per the manufacturer's installation instructions.

Again, NONE of the defects discussed in Mr. Maddox's report implicate the work performed by Gale. Further, Mr. Maddox deposition was taken on October 26, 2023. He provided the following testimony confirming he has NO criticisms of Gale's scope:

> 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 14.

C. Mr. Sherard

On December 23, 2021, Mr. Sherard issued a report identifying the grading and drainage defects common to the class.[11] The common defects identified in Mr. Sherard's report are reproduced below.

1. Improperly graded/sloped rear and side yards that do not obtain the minimum two percent grade for ten feet away from the foundation in the rear of the home and on the high side of the home;
2. Improperly graded/sloped rear and side yards that direct water towards the homes and/or adjacent homes; and
3. Ineffective drainage systems and lack of stormwater piping.

Yet again, NONE of the defects discussed in Mr. Sherard's report implicates the work performed by Gale. Further, Mr. Sherard's deposition was taken on March 30, 2023. He provided

[11] Sherard Scope and Cost of Repair Report, attached as Exhibit 15.

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the following testimony confirming he has NO criticisms of Gale's scope:

> Q. Did you notice any loose or missing downspout connections.
> A. Not that I specifically recall.
> Q. Are you aware of any downspout connections contributing to any of the site issues you're seeing out there?
> A. If the grading is done properly, a lot of the downspout piping would not be necessary.
> Q. But I'm talking about the downspouts themselves. Are you aware of any of the downspouts contributing in any way to the site issues we're seeing out there today?
> A. Can you clarify what you mean by contributing to the –
> Q. Yeah. Are they causing any of the problems out there?
> A. Again, the problems are created by the grading of the lot.
> Q. Right. But I'm talking about just the downspouts. Take the -- I understand your concern is grading and to the extent the grading can't accept or handle part of that downspout flow or outage or however you want to term it.
> A. I think I'm going to answer what you're asking me, being that the water coming out of the downspouts is not the cause of the drainage issues. The grading is the cause of the drainage issues.

Sherard Dep. P. 578; 579:1-6, attached as Exhibit 16.

> Q. Explain to me what your observations are with respect to the gutter connections with the downspouts.
> A. I would have been looking at the downspouts to make sure they were connected to the gutters, potentially. I would be looking at the downspouts to see if there were any underground piping connected to the downspouts.
> Q. Okay. Did you -- or do you have any criticisms of the gutters or the downspouts that you inspected?
> A. Not specifically that I'm aware of at this time.

Sherard Dep. P. 611:1-13, attached as Exhibit 17.

II. D.R. Horton's Experts

D.R. Horton retained Steven Moore, PE, RRC, REWC, of Applied Building Sciences to opine about construction defects, the grading, and to prepare a rebuttal repair estimate. D.R. Horton also retained Chad Jones of Warren Forensics, to opine about HVAC and mechanical defects.

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A. Steve Moore

Mr. Moore's deposition was taken on May 11, 2023. He provided the following testimony confirming he has NO criticisms of Gale's scope:

> 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?
> A. We did not. There were no allegations of any issues with the garage doors, and we did not look at any garage doors for any issues whatsoever.
> Q. Okay. And so again, you -- sitting here today, you have no criticisms or opinions concerning any installation errors or defects with respect to the installation of the garage doors?
> A. Correct, sir.
> Q. And your report and cost of repair contained nothing related to damages caused by -- damages, if any, caused by garage doors?
> A. Correct, sir.
> Q. And just to clarify, we've talked a lot about the lintels over the garage doors over the past two days. The lintel issue has nothing to do with the garage doors themselves; is that correct?
> A. That is correct, sir.
> Q. Okay. Let's turn to the gutters and downspouts. Did your investigation include issues related to the installation of the gutters and downspouts?
> A. It did not, sir.
> Q. Okay. So do you have -- again, do you have any criticisms or opinions concerning any installation errors or defects with respect to the gutters or downspouts?
> A. I do not, sir.
> Q. Okay. And your report and cost estimate do not contain any items that are related or need repair as a result of installation defects or errors with respect to the gutters and downspouts; is that correct?
> A. Yes, sir.

S. Moore Dep. P. 611:10-25;612; 613:1-13., attached as Exhibit 18.

> There are no issues – there are no alleged issues whatsoever with the gutters or downspouts. I would have no recommendations or opinion to make any changes to this one.

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S. Moore Dep. P. 615:11-14, attached as Exhibit 19.

B. Chad Jones

Mr. Jones deposition was taken on April 13, 2023. He provided the following testimony confirming he has NO criticisms of Gale's scope:

> 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 20.

III. Admissions to the Court

During a status conference held by Judge Sprouse on April 21, 2023, counsel for **Plaintiff Zitek confirmed that the gutters, downspouts, and insulation were NOT defects for which the Class would be seeking damages**. Judge Spouse then ordered the counsel for Plaintiff Zitek and or DR Horton to prepare a stipulation consistent with those representations. To date a stipulation has not been filed with the Court or circulated among the parties.

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IV. Discovery Responses

Gale has served both Plaintiff and D.R. Horton with requests to admit. In Plaintiff Zitek's answers to Gale's Requests for Admissions, Plaintiff Zitek ADMITS she is not aware of any deficiencies, damages, or expert criticisms regarding the garage doors[12] and insulation[13]. Plaintiff admitted that she is not aware of any deficiencies, damages, or expert criticisms regarding the gutters and downspouts themselves, but denied the Request as to damage that exists in areas where the gutters and downspouts intersect with other components of the subject properties (i.e., downspouts potentially causing settlement of the foundation as testified to by Derek Hodgin, an expert for Defendants ML Reyna and JLS Masonry), [14] The denial based on the testimony of Mr. Hodgin is a complete misinterpretation of his testimony. Specifically, Hodgin testified the design for the drainage of the grade is flawed, which caused water to pool around the foundations, not the gutters or downspouts. He had NO criticisms of the gutters or downspouts:

> Q. Do you have specific criticisms of the downspout itself or is it more so tied to a drainage issue of the water coming out of the downspout?
> A. It would be more of the **design of the water management of, you know, what happens with the water when it discharges from the bottom of the downspout to make sure it doesn't stay next to the foundation and saturate the soils.**
> Q. Okay. Do you have any criticisms of the downspouts that you observed during your investigation at Rose Hill?
> A. No.
>
> D. Hodgin Dep. P. 218: 24-25; 219:1-11, attached as Exhibit 23. (emphasis added).

Despite the evidence set forth above, D.R. Horton has denied all of Gale's requests to admit concerning the lack of deficiencies, damages or expert criticism with respect to the gutters, downspouts and insulation. D.R. Horton has admitted the lack of deficiencies, damages or expert

[12] Plaintiff Zitek's Answers to Gale's Requests for Admissions, dated August 11, 2022, attached as Exhibit 21.
[13] Plaintiff Zitek's Answers to Gale's Requests for Admissions dated June 9, 2023, attached as Exhibit 22.
[14] *Id.*

criticism for the garage doors.[15]

V. Contracts Upon Which D.R. Horton Bases its Claims for Indemnification.

The universe of documents upon which D.R. Horton is relying for its claims consists of 1) The "First Amendment to Master Addendum to Independent Contractor Agreement" executed March 8, 2006; 2) the "Master Addendum to Independent Contractor Agreement" executed October 23, 2015 respectively, (the foregoing collectively referred to herein as the "Addendum Contracts")[16]; and 3) Plaintiff Zitek's Notice and Opportunity to Cure Improper Construction Conditions and Resulting Damages correspondence served December 11, 2019 (the "NOC Letter").[17]

D.R. Horton contends an indemnity provision in a putative Independent Contracting Agreement with Gale, *which it has never produced*, creates Gale's duty to defend and indemnify D.R. Horton and reimburse them for defense costs relating to litigation of this case. Pursuant to D.R. Horton's March 17, 2013 Indemnification and Additional Insured Tender served on Gale (the "Tender")[18], D.R. Horton asserts Gale entered into an Independent Contracting agreement with the following indemnification clause:[19]

> To the fullest extent remitted 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, … on account of damage to or loss of tangible or intangible property. 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.

[15] D.R. Horton's Answers to Gale's Requests for Admission, attached as Exhibit 24.
[16] The Addendum Contracts, Bates Stamped KDC13229-13251, are attached as Exhibit 25.
[17] Plaintiff Zitek's NOC Letter is attached as Exhibit 26.
[18] D.R. Horton's Indemnification and AI Tender is attached as Exhibit 27.
[19] *Id*.

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> 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 plead, 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.

However, as noted above, D.R. Horton has failed to produce a copy of any Independent Contractor Agreement with Gale that contains the above indemnification clause. The only contract documents produced by D.R. Horton is a compilation of the Addendum Contracts, identified above. Due to the passage of time, Gale does not have copies of any contracts with D.R. Horton for Rose Hill. Notably, in the Addendum Contracts the indemnification clause states in pertinent part:

> Indemnity and Insurance. Any defense, indemnification hold harmless or similar obligation (collectively "Indemnification") imposed on Contractor under the Standard Agreement shall be limited to any claims, demands, damages, defense expenses (including attorneys fees and litigation costs) or liabilities (collectively "Loss'") covered by the terms of the Indemnification in the Standard Agreement that are caused by Contractor's negligence or the negligence of its subcontractors or its Work (**including any liability of Builder for its supervision of Contractor**, Contractor's subcontractors, or Contractor's Work). Other than as set forth above, Contractor's Indemnification shall not apply (based on indemnity, insurance, warranty, strict liability or otherwise) to the extent that the Loss arises out of the work, negligence or misconduct of Builder or any other indemnitee as defined in the Standard Agreement, third parties, or Builder's (or any other indemnitee's) activities related to supervision of third parties. Except as set forth above, Contractor shall not be responsible to the extent that the Loss arises out of (a) accident, misuse, abuse or neglect by someone other than Contractor or its agents; or (b) alteration, repair or attempted alteration or repair by anyone other than Contractor or its authorized agent.
>
> Where Builder or other indemnitee as defined under the Standard Agreement (collectively "Indemnitee") demands indemnification for Loss falling within the terms of this indemnity, Builder may retain counsel of Builder's own choosing that is reasonably acceptable to Contractor. **Contractor shall then have the duty to reimburse Builder only for the proportion of Builder's**

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> **defense expenses that are attributable to Loss caused by Contractor** and not excluded from indemnification in the preceding paragraph. The proportion of Builder's defense costs to be reimbursed by Contractor shall be calculated by Builder based upon Builder's reasonable and good faith allocation of the proportion of the Loss attributable to Contractor's conduct for which indemnity is owed in the preceding paragraph. Contractor's proportion of the defense costs may be subject to reasonable adjustment (upward or downward) in the event the original allocation provided for in this paragraph proves to be inequitable. In such case, the parties shall reimburse each other accordingly. In the event of a judgment or award against an Indemnitee, Contractor shall indemnify Indemnitee for that portion of the judgment or award attributable to Loss caused by Contractor and not excluded from indemnification in the preceding paragraph. In the event of a settlement, Contractor shall only be responsible for that portion of the settlement attributable to Loss allegedly caused by Contractor and not excluded from indemnification in the preceding paragraph; but no such settlement shall be entered into without Contractor's consent, such consent not to be unreasonably withheld.
>
> The Addendum Contracts, KDC13229-30 (emphasis added).

D.R. Horton also relies on Plaintiff Zitek's Notice and Opportunity to Cure Improper Construction Conditions and Resulting Damages correspondence dated December 11, 2019 (the "NOC Letter")[20] as justification for an indemnification demand. While the NOC Letter cites "missing/inadequate insulation at exterior walls" and "insufficient insulation in attics"[21], discovery has revealed that neither Plaintiff Zitek nor any of her experts have any criticisms of Gale's work, and per the admission of her counsel, the Class does not seek compensation for damages related to Gale's scope of work.

In summary, not only has it been established that Gale's work is not defective, but D.R. Horton relies on a clause from a purported Independent Contractor Agreement with Gale, which D.R. Horton has never produced and there is no evidence that Gale ever agreed to it.

[20] Plaintiff Zitek's NOC Letter, *see* Exhibit 26. D.R. Horton enclosed the NOC Letter with its March 17, 2023 Tender, which was more three years and three months after the date of the NOC Letter.
[21] *Id*.

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LEGAL STANDARD

Rule 56(c) of the South Carolina Rules of Civil Procedure provides a motion for summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *See Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 42, 747 S.E.2d 178, 181 (2013). "In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment." *Id.*; *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 425, 746 S.E.2d 35, 38 (2013). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citations omitted). Furthermore, the "construction and enforcement of an unambiguous contract is a question of law for the court, and thus can be properly disposed of at summary judgment." *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 477, 465 S.E.2d 765, 770 (Ct. App. 1995).

ARGUMENT

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

Plaintiff Zitek, as the representative of the Class, has not alleged a common defect that implicates Gale's work. Specifically, there are no allegations of common defects in Plaintiff Zitek's pleadings, the deposition testimony, or expert reports as to gutters, downspouts, batt and blown insulation, or garage doors. Accordingly, because D.R. Horton has not incurred, nor will it incur, any damages in this lawsuit resulting from Gale's work, Gale cannot be compelled to defend and

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indemnify D.R. Horton in this lawsuit. In the absence of any derivative claim, the entire Third-Party Complaint by D.R. Horton against Gale should be dismissed.

A. D.R. Horton Cannot prove the Addendum Contracts apply to the construction of Rose Hill and Cannot prove that Gale is bound by the Indemnification Clause Referenced in its Tender.

A breach of contract claim is a failure to perform a contractual promise without legal excuse. The action is one at law, predicated on the existence of a contract. *See Sterling Development Co. v. Collins*, 309 S.C. 237, 421 S.E.2d 402, 404 (1992); *Cain v. United States Insurance, Co*., 232 S.C. 397, 102 S.E.2d 360 (1958). A binding, valid contract must exist for there to be a cause of action for breach of contract. *Id*. The party asserting such a claim must, therefore, allege and prove each material element of the contract sued on. *Rabon v. State Financial Corp*., 203 S.C. 183, 26 S.E.2d 501 (1943). A contract only arises when there is actual agreement by parties in which they demonstrate mutual intent to be bound. *Electro-Lab of Aiken, Inc. v. Sharp Construction Co. of Sumter, Inc*., 357 S.C. 363, 593 S.E.2d 170 (Ct. App. 2004).

First, the Addendum Contracts entered into between D.R. Horton and Gale do not encompass terms governing the construction of Rose Hill. Without the underlying Independent Contractor Agreement, the Addendum Contracts do not even define the scope of work Gale was hired to perform. It is clear that there was no "meeting of the minds" in the Addendum Contracts for the installation of insulation, gutters, downspouts, insulation and garage doors at Rose Hill. D.R. Horton's own 30(b)(6) designee agreed he did not know if the Addendum Contracts applied to Gale's work at Rose Hill:

> Q. Do you know if this amendment would apply to the construction at the Rose Hill project?
> A. No, ma'am. No.
> Q. Why do you not know whether or not that addendum or amendment applies to the construction at Rose Hill?
> A. Because I'm not familiar with what work they did in Rose Hill.

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> Q. But looking at that contract alone, you don't know if it applied to the work at Rose Hill?
> A. Correct.

Kruglewicz 30(b)(6) D.R. Horton Dep. P. 298:3-15, attached as Exhibit 28.

The terms of a contract speak for themselves[22]; however, without the underlying Independent Contractor Agreement, the terms to which the Addendum Contracts apply cannot be known. Therefore, the Third-Party Claims that are based on the Contract are not valid as a matter of law.

In addition, the lack of the underlying Independent Contractor Agreement, to which the Addendum Contracts refer, inherently creates an issue of ambiguity as to the terms governing the relationship between Gale and D.R. Horton as it applies to Rose Hill and the conditions of any indemnity obligations imposed on Gale. Any such ambiguity must be construed against the drafter, D.R. Horton. A court will construe any doubts and ambiguities in an agreement against the drafter of the agreement. *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 499–500, 649 S.E.2d 494, 502 (Ct.App.2007). ("Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage." (quoting *Myrtle Beach Lumber Co., Inc. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981) (internal quotation marks omitted)).

Read as a whole, the Addendum Contracts are ambiguous as to what scopes of work it contemplates. "A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause." *McGill v. Moore*, 381 S.C. 179 at 185, 672 S.E.2d

[22] *See* Addendum Contracts, KDC 13231-2; KDC 13237-8; KDC 13243-4.

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571 at 574 (citation omitted). Whether a contract is ambiguous is to be determined from examining the entire contract, not by reviewing isolated portions of the contract. *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975) (citation omitted). Nowhere in the Addendum Contracts is the scope of work Gale was hired to perform at Rose Hill even discussed nor is the Rose Hill subdivision identified. Accordingly, the Addendum Contracts do not apply to the installation of insulation, gutters, downspouts, and garage doors Gale performed at Rose Hill. As a result, Summary Judgment is proper as to D.R. Horton's Third-Party Complaint for breach of contract.

Second, D.R. Horton cannot produce any contract Gale entered containing the Indemnification clause cited in its Tender. It is unfathomable to assert Gale is bound by an indemnification clause to which D.R. Horton cannot prove Gale agreed. Again, there was no "meeting of the minds" between D.R. Horton and Gale with respect to the indemnification clause cited in the Tender. Therefore, the Third-Party Claims based on the indemnification clause cited in the Tender are not valid as a matter of law. Accordingly, the Court must rely on the Indemnification clause contained in the Contract D.R. Horton did produce.

B. To the extent the Addendum Contracts *may* be enforceable, D.R. Horton's claims for contractual indemnity fail as a matter of a law and public policy.

As a matter of law, D.R. Horton's claim for indemnity for its own negligence fails if the language contained in the indemnity clause does not clearly and unequivocally provide indemnity for D.R. Horton's own negligence. S*ee Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland*, LLC, 424 S.C. 639, 647, 819 S.E.2d 166, 171 (Ct. App. 2018). Our Supreme Court has ruled that "a contract of indemnity will not be construed to indemnify the indemnitee against losses resulting from its own negligent acts unless such intention is expressed in clear and unequivocal terms." *Id*. In ruling on motions for summary judgment in the *Concord*

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& Cumberland case, Judge Newman explained that a general contractor must "meet the very high standard of eliminating any possibility that the contract language on which [it] rel[ies] can be read to limit indemnification to the [general contractor's] own negligence." Judge Newman further explained that "if any other interpretation of the contract language is reasonably possible, [the general contractor] cannot prevail on their contract claims as a matter of law."

The indemnity provisions contained in the Addendum Contracts fall directly in line with the *Concord* decision and are unenforceable as a matter of law. The Addendum Contracts' Indemnification provision does not clearly and unequivocally state what Gale's indemnification responsibilities are as they relate to the sole or concurrent negligence of D.R. Horton. There is also a lack of clarity between the inclusion of liability for Builder for its supervision of the Contractor but the exclusion of work, negligence or misconduct of Builder, which by definition includes supervision of the subcontractors. The language contained in the Addendum Contracts that D.R. Horton and Gale executed states,

> Any defense, indemnification hold harmless or similar obligation (collectively "Indemnification") imposed on Contractor under the Standard Agreement shall be limited to any claims, demands, damages, defense expenses (including attorneys fees and litigation costs) or liabilities (collectively "Loss"') covered by the terms of the Indemnification in the Standard Agreement **that are caused by Contractor's negligence or the negligence of its subcontractors or its Work (including any liability of Builder for its supervision of Contractor, Contractor's subcontractors, or Contractor's Work)**.[23]

This language appears to require indemnity for concurrent acts and omissions of D.R. Horton, as it states Gale must indemnify D.R. Horton for "any liability of Builder for its supervision of Contractor". This clearly creates ambiguity as to whether D.R. Horton is seeking indemnification for its own concurrent negligence and must be construed against D.R. Horton

[23] *See* Addendum Contracts, KDC 13230-3; (emphasis added).

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Accordingly the indemnification agreement is unenforceable because it is vague, ambiguous, implies D.R. Horton is to be indemnified for its own negligence in direct contradiction of the *Concord* holding.

Even if the Court found that the indemnification clause was enforceable, the terms of the Addendum Contracts are clear that the indemnity is triggered by negligent acts of a subcontractor, for which there is no evidence regarding Gale.

Plaintiff Zitek's Complaint specifically alleges the following construction defects: "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."[24] The complaint does not mention insulation, garage doors, or gutters and downspouts. Although the NOC Letter makes a vague reference to "insulation" it does not identify gutters, downspouts, or the garage doors and Plaintiff has admitted that insulation is not at issue in the case.

Despite the Complaint not mentioning Gale's scope of work, D.R. Horton's Third-Party Complaint claims its "subcontractors agreed to indemnify D.R. Horton from damages arising out of Subcontractors' Work on in Rose Hill."[25] However, the indemnity provision in the Addendum Contracts also states**, "Contractor shall then have the duty to reimburse Builder only for the proportion of Builder's defense expenses that are attributable to Loss caused by Contractor".**[26] (Emphasis added). D.R. Horton cannot attribute what loss Gale caused since the Class is not seeking damages for the scope of work Gale performed. Without damages or a loss, D.R. Horton has no claim. D.R. Horton has provided no evidence of what it has spent defending

[24] See Compl. ¶ 27.
[25] Third-Party Compl., ¶¶ 103-104.
[26] Addendum Contracts KCD 13231.

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claims against it related to Gale's scope of work. Moreover a demand for attorney's fees is not ripe until entry of a judgment. See *Bayles v. Marsh Realty & Assocs., LLC*, Civil Action No. DKC 20-3322, 2021 U.S. Dist. LEXIS 61066, at *9 (D. Md. Mar. 30, 2021). Here there will be NO judgment attributable to damages from Gale's work, as the Class has not asserted any claims against Gale and stipulates the Class is not seeking damages related to the work Gale performed.

When a plaintiff brings a class action lawsuit and does not allege defects related to a subcontractor's scope of work, the general contractor cannot demand that the subcontractor defend and indemnify it for any damages. Simply put it is inequitable for D.R. Horton to demand that Gale defend and indemnify it where there are no claimed defects in Gale's scope of work. As a result, D.R. Horton's claim for contractual indemnification against Gale fails as a matter of law.

C. D.R. Horton's claims for breach of contract, breach of express and implied warranties, and negligence/gross negligence/recklessness are "merely disguised ... claims for equitable indemnity" and fail as a matter of law.

South Carolina's Court of Appeals has held that disguised equitable indemnity claims should be summarily dismissed. *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Const., LLC*, 413 S.C. 615, 619, 776 S.E.2d 426, 428 (Ct. App. 2015); *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 633, 776 S.E.2d 434, 436 (Ct. App. 2015). In the *Stoneledge* cases, Justice Few found that "the circuit court properly granted summary judgment on [the general contractor's] breach of contract and breach of warranty cross-claims because they [were] not an independent cause of action from [the general contractor's] equitable indemnity claim. *Stoneledge*, 413 S.C. at 639, 776 S.E.2d at 439 (emphasis added). Justice Few made an identical conclusion regarding a negligence cause of action. *Stoneledge*, 413 S.C. at 620, 776 S.E.2d at 429. In following the reasoning from two district court cases, the Court in *Stoneledge* found that the general contractor's "claims arose only when it faced potential liability

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for [the owner's] damages and incurred fees and costs defending against" those claims. *Stoneledge*, 413 S.C. at 637, 776 S.E.2d at 438. In sum, "without [the] plaintiffs suing the … defendants[,] the 'independent claims' …would not exist, 'and thus 'these claims are really nothing more than claims for indemnity."' *Id*. (internal citations omitted). The Court of Appeals affirmed the circuit court's dismissal of the general contractor's legal claims.

Here, similar to the claims in *Stoneledge*, D.R. Horton's Third-Party Complaint for Breach of Contract, Breach of Express Warranties, Breach of Implied Warranties, and Negligence/Gross Negligence/Recklessness are not independent causes of action, but rather merely disguised and duplicative claims for equitable indemnity and should be dismissed. This is because D.R. Horton's legal claims are derivative of Plaintiffs' claims against D.R. Horton, as evidenced by D.R. Horton seeking to recover from Gale only those liabilities/costs/damages D.R. Horton allegedly has incurred or will incur because of Plaintiffs' direct claims against D.R. Horton. Specifically, the Third-Party Complaint alleges that 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;" [27]

There is no genuine issue of material fact as to whether D.R. Horton's legal claims in the Third-Party Complaint are simply disguised claims for indemnity or whether they are duplicative of D.R. Horton's Third-Party Complaint for equitable indemnity. Accordingly, Gale is entitled to dismissal of D.R. Horton's Third-Party Complaint for breach of contract, breach of express and implied warranties, and negligence/gross negligence/recklessness as a matter of law.

D. D.R. Horton's Unclean Hands preclude it from Recovering under a Theory of Equitable Indemnification.

In general, there is no right to indemnity between joint tortfeasors. *Atl. Coast Line R.R.*

[27] See Third Party Compl. WHEREFORE Paragraph, P. 26.

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Co. v. Whetstone, 243 S.C. 61, 70, 132 S.E.2d 172, 176 (1963). Equitable indemnity arises in scenarios where "the first party is at fault, but the second party is not." *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999); see also *Fowler v. Hunter*, 697 S.E.2d 531, 388 S.C. 355 (S.C. 2010). "If the second party is also at fault, he comes to court without equity and has no right to indemnity." *Id*. For a party to recover under the theory of equitable indemnity, it must satisfy the following three elements: (1) the party from whom indemnity is sought is liable for causing the plaintiff's damages; (2) the party seeking indemnity is exonerated from any liability for those damages; and (3) the party seeking indemnity incurred damages as a result of the plaintiff's claims against it, which were eventually proven to be the fault of the indemnitor. *Id*. However, South Carolina law is clear that "[t]he most important requirement for the finding of equitable indemnity is that the party seeking to be indemnified is adjudged without fault." *Id*.

Here Plaintiff Zitek alleges defects in the development, surveying, construction, maintenance, and selling of Plaintiff's Residence. D.R. Horton, as the developer and general contractor, bore ultimate responsibility for the development and construction of Plaintiff's Residence. Specifically, 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 Residence. (*See* Zitek Complaint, ¶7). After construction under D.R. Horton's supervision, D.R. Horton determined that Plaintiff's Residence was built according to its plans and specification and in compliance with the applicable building codes and industry standards, and D.R. Horton facilitated the sale of the Residence. Accordingly, *if* it was determined that Gale's scope of work was improper and contributed to Plaintiffs' damages, then, D.R. Horton, as the owner, developer, and general contractor, would share responsibility for those damages. Under

this scenario, D.R. Horton and Gale would be considered joint tortfeasors; and, under South Carolina law, a joint tortfeasor cannot maintain an action for equitable indemnity. *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 64, 518 S.E.2d 301, 307 (Ct. App. 1999).

However, as previously discussed, the Class is not seeking any damages related to Gale's scope of work because there are no defects in Gale's work. Thus, D.R. Horton cannot prove it has incurred damages as a result of defending against Plaintiff Zitek's claims that are the fault of Gale. Further, D.R. Horton has been exonerated from liability relating to any defects from Gales' work, pursuant to counsel's admission during the hearing with Judge Sprouse that Plaintiff Zitek does not seek any damages relating to the gutters, downspouts, and insulation. Therefore, is no genuine issue of material fact for a jury to consider with respect to D.R. Horton's equitable indemnity claim against Gale.

CONCLUSION

Based on the foregoing arguments, Gale respectfully asks the Court to grant its Motion for Summary Judgment and dismiss D.R. Horton's Third-Party Complaint as a matter of law.

SIGNATURE BLOCK TO FOLLOW

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Respectfully Submitted,

RESNICK & LOUIS, P.C.

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July 10, 2023
Charleston, South Carolina

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EXHIBIT 1

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D. Horton Lot 21 Rose Hill

Gale Contractor 1705

Header Section

SALES ORDER # 400248232

Div # & Name	028-PIEDMONT GCS - PIEDMONT	**Dispatch From Date**			
Quote #	926877	**Dispatch To Date**			
Template Order #	1561255	**Prevailing Wage**	No		
Trade/Product Line	GARAGE DOOR	**Billing Details**			
Status	FINISHED	Standard			
Customer # & Name	20047 / DR HORTON	**Billing Type**	DRAW		
Custom/Comm/Subdiv	ROSE HILL	**Garage Door Install**	435.00		
Project Name/Lot/Block	Phase NA/Lot 264/Block NA	**Contract Amt**	435.00		
Job Address	6 DARTFORD COURT				
County	Pickens				
City / State / Zip	EASLEY/ SC/ 29642/ US				
Salesman	Hudgins, Shawn				
Line of Business	Residential	**Total Contract**	435.00		
Unit Type	Custom				
Plan Number					

Summary To Date

	Amount	% of Revenue
Total Estimated Quantity	1.00	
Total Actual Quantity	18.00	
Estimated Material Cost	[redacted]	
Actual Material Cost		
Estimated Labor Cost		
Actual Labor Cost		
Estimated Additional Costs	0.00	0.00
Actual Additional Costs	0.00	0.00
Total Revenue	435.00	
Earned Revenue	435.00	
Billed Amount	435.00	
Estimated DM		[redacted]
Actual DM		

Billing Details Section

Date	SO #	Invoice #	Order Type	Billing Type	Billed Amount	%	Retainage	%
14-MAY-12	400248232	51538985	Standard	DRAW	435.00	100.00	0.00	0.00
				Total	435.00	100.00	0.00	0.00

Line Summary and Status Section

SO #	Order Type	Trip	Work Area	Item Number	Item Description	UOM	Est. Qty	Shipped Qty	Diff.	Line Status
400248232	Standard	Garage Door Install	ADD	100292	COMPONENT WD SCREW,LAG,5/16 X 1.63 ,HWH,STL,ZN	PC	8	8	0	Closed
400248232	Standard	Garage Door Install	ADD	251228	BOLT,HH,5/16-18X2 ,F3089	DO	8	8	0	Closed
400248232	Standard	Garage Door Install	ADD	741714117966	ANGLE, BULK PK, PERF (10PCS PER BDL), 1.25X1.25X10'00, 13GA	DO	1	1	0	Closed
400248232	Standard	Garage Door Install		WD91001600X0700 SNWH100117	MDL 9100 16'0" X 7'0" ,SONOMA,WHITE,SOLID,TORQUEMASTER,STD LIFT,12" R ,2" TRK,BRACKET MOUNT,OMIT LOCK	DO	1	1	0	Closed

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Gale Contractor 1706

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Activity Details Section										
Date	Trip	Work Area	SO #	Item # / DIV #	Item Description / Employee Name	UOM	Qty Ship	REV	Material	Labor
04-MAY-12	Garage Door Install		400248232	Div# 028	(50%) Gregory, John Joseph	DO			[redacted]	
04-MAY-12	Garage Door Install		400248232	Div# 028	(50%) Crook, Tommy Lee	DO				
11-MAY-12	Garage Door Install	ADD	400248232	100292	COMPONENT WD SCREW,LAG,5/16 X 1.63 ,HWH,STL,ZN	PC	8	0.00		
11-MAY-12	Garage Door Install	ADD	400248232	741714117966	ANGLE, BULK PK, PERF (10PCS PER BDL), 1.25X1.25X10'00, 13GA	PC	1	0.00		
11-MAY-12	Garage Door Install		400248232	WD91001600X0700SN WH100117	MDL 9100 16'0" X 7'0" ,SONOMA,WHITE,SOLID,TORQUEMASTER,STD LIFT,12" R ,2" TRK,BRACKET MOUNT,OMIT LOCK	PC	1	435.00		
11-MAY-12	Garage Door Install	ADD	400248232	251228	BOLT,HH,5/16-18X2 ,F3089	PC	8	0.00		
11-MAY-12	Garage Door Install		400248232	Add Pay	(PIECE RATE ADJUSTMENT) Crook, Tommy Lee	DO				
11-MAY-12	Garage Door Install		400248232	Div# 028	(100%) Crook, Tommy Lee	DO				
						Total	18	435.00		

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DATE 11-MAY-2012 05:48:24 AM

GARAGE DOOR WORK TICKET

SCHEDULE DATE 11-MAY-12

WORK ORDER #: 400248232 Garage Door Install **Shift #** 1

TRUCK# B05-028 / 28-BB05

INSTALLER INFO	SPLIT
Crook, Tommy	100%

CUSTOMER NAME
DR HORTON
100 AUGUSTA ST
GREENVILLE SC
29601

SALES PERSON:
Hudgins, Shawn

JOBSITE ADDRESS
ROSE HILL Phase NA/Lot 264/Block NA
6 DARTFORD COURT NA
EASLEY SC 29642

ADDITIONAL INFO
LOB Residential
UNIT TYPE Custom

FINISHED / UNFINISHED
1960.00

TRANSACTION TYPE : MCS_Standard_Order_Type

Job Site Superintendent Name :
Phone Number :

Trip : Reserved
Plan Number :

DIRECTIONS / INTERSECTION:

LINE NUMBER	WORK AREA	ITEM #	ITEM DESCRIPTION	UOM	UNITS NEEDED	INSTALLED QUANTITY	SF	USED	F/U	Reserved
1.1		WD91001600X0700SNWH100117	MDL 9100 16'0" X 7'0" ,SONOMA,WHITE,SOLID,TORQUEMASTER,STD LIFT,12" R ,2" TRK,BRACKET MOUNT,OMIT LOCK	PC	1	0		1	F	R

LINE NUMBER	AREA	ADDITIONAL MATERIAL/BRAND	FT/PACK	QTY. INSTALLED	FOOTAGE	F/U
	Angle			1		F
	Lags			8		F
	Nuts / Bolts			8/8		F

SCHEDULER NOTES:

SAFETY QUESTIONS:

Are you endangered by other sub's actions?	YES____NO✓
Do guardrails/toeboards need to be installed?	YES____NO✓
Do you additional/diffferent equipment?	YES____NO✓
Do you need to tape or barricade?	YES____NO✓
Is the worksite dirty or unclear?	YES____NO✓

Note: IF "YES" PLEASE PLACE COMMENTS ON THE BACK OF THE SHEET AND TAKE APPROPRIATE CORRECTIVE BEFORE STARTING ANY WORK

INSTALLER'S SIGNATURE: Tommy **DATE:** 5-11 **TIME:**_____

5/4

PURCHASE ORDER

400248232

D·R·HORTON® DHI Listed NYSE
America's Builder

VENDOR: 1311444 **OPEN AMOUNT: 435.00**

BUILDERS SERVICES GROUP INC
GALE CONTRACTOR SERVICES
1800 Piedmont Hwy
PIEDMONT SC 29673

Phone: (864) 299-5501 **Fax:** (864) 299-5201

Page	1
Purchase Order Date	01/06/12
Bid Contract Number	100031
FPO Requisition Number	
Purchase Order Number	200171 ON
Sub # / Lot #	70953 / 0264
Swing/Plan/Elevation	R / FIEL / B

Remit To
D.R. HORTON - GREENVILLE
,
Phone: Fax:

Work Description
45150.01 Garage Door

DELIVER TO:

Rose Hill 90' **Delivery Date**
6 Dartford Court
EASLEY, SC 29642
Lot/Block

Description	Option	Qty	Unit Price	Extension
Garage Door 16x7 5120 Series		1	435.000	435.00
				435.00

SPECIAL INSTRUCTIONS:

1. We reserve the right to cancel if not filled as specified.
2. Place P.O. number on all invoices.
3. A copy of delivery ticket signed by D.R. Horton personnel and this signed P.O. must accompany each invoice submitted for payment with signed lien release.
4. Partial Shipments will not be accepted.
5. No liability will be assumed for materials placed on the job site that are not installed or that are in the excess of the amount specified on this P.O.
6. This P.O. is applicable only to the jobs indicated.
7. Receipt of this P.O. is binding on supplier for material at prices specified.
8. All terms and conditions of the signed contract and scope of work apply to this document.

Terms	Tax Percentage	Sales Tax	Total PO
			435.00

Superintendent: **Phone:**

D.R. Horton Appr: _____ **DATE:** _____

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Header Section

SALES ORDER # 400248235

Div # & Name	028-PIEDMONT GCS - PIEDMONT	**Dispatch From Date**			
Quote #	677031	**Dispatch To Date**			
Template Order #	1383495	**Prevailing Wage**	No		
Trade/Product Line	GARAGE DOOR	**Billing Details**			
Status	FINISHED	Standard			
Customer # & Name	20047 / DR HORTON	**Billing Type**	DRAW		
Custom/Comm/Subdiv	ROSE HILL	**Operator Install**	260.00		
Project Name/Lot/Block	Phase NA/Lot 264/Block NA	**Contract Amt**	260.00		
Job Address	6 DARTFORD COURT				
County	Pickens				
City / State / Zip	EASLEY/ SC/ 29642/ US				
Salesman	Hudgins, Shawn	**Total Contract**	260.00		
Line of Business	Retrofit				
Unit Type	Traditional				
Plan Number					

Summary To Date

	Amount	% of Revenue
Total Estimated Quantity	2.00	
Total Actual Quantity	20.00	
Estimated Material Cost	[redacted]	
Actual Material Cost		
Estimated Labor Cost		
Actual Labor Cost		
Estimated Additional Costs	0.00	0.00
Actual Additional Costs	0.00	0.00
Total Revenue	260.00	
Earned Revenue	260.00	
Billed Amount	260.00	
Estimated DM		[redacted]
Actual DM		

Billing Details Section

Date	SO #	Invoice #	Order Type	Billing Type	Billed Amount	%	Retainage	%
14-MAY-12	400248235	51538861	Standard	DRAW	260.00	100.00	0.00	0.00
				Total	260.00	100.00	0.00	0.00

Line Summary and Status Section

SO #	Order Type	Trip	Work Area	Item Number	Item Description	UOM	Est. Qty	Shipped Qty	Diff.	Line Status
400248235	Standard	Operator Install		050049016470	1024 OPERATOR HEAD W/ 2 REMOTES (GENIE)	PC	1	1	0	Closed
400248235	Standard	Operator Install	ADD	100292	COMPONENT WD SCREW,LAG,5/16 X 1.63 ,HWH,STL,ZN	PC	8	8	0	Closed
400248235	Standard	Operator Install		050049016296	7' CHAIN T-RAIL (GENIE)	PC	1	1	0	Closed
400248235	Standard	Operator Install		050049017330	FPK,WKPD,GK-BX,GENIE (KEYLESS ENTRY)	DO	1	1	0	Closed
400248235	Standard	Operator Install	ADD	741714117966	ANGLE, BULK PK, PERF (10PCS PER BDL), 1.25X1.25X10'00, 13GA	DO	1	1	0	Closed
400248235	Standard	Operator Install		ROUNDING-GARAGE DOOR	PRICE ROUNDING ON SALES ORDER	DO	3500	3500	0	Closed
400248235	Standard	Operator Install	ADD	251228	BOLT,HH,5/16-18X2 ,F3089	DO	8	8	0	Closed

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Gale Contractor 1710

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Activity Details Section										
Date	**Trip**	**Work Area**	**SO #**	**Item # / DIV #**	**Item Description / Employee Name**	**UOM**	**Qty Ship**	**REV**	**Material**	**Labor**
04-MAY-12	Operator Install		400248235	Div# 028	(50%) Crook, Tommy Lee	DO			[redacted]	
04-MAY-12	Operator Install		400248235	Div# 028	(50%) Gregory, John Joseph	DO				
11-MAY-12	Operator Install	ADD	400248235	100292	COMPONENT WD SCREW,LAG,5/16 X 1.63 ,HWH,STL,ZN	PC	8	0.00		
11-MAY-12	Operator Install		400248235	ROUNDING-GARAGE DOOR	PRICE ROUNDING ON SALES ORDER	DO	3500	35.00		
11-MAY-12	Operator Install	ADD	400248235	741714117966	ANGLE, BULK PK, PERF (10PCS PER BDL), 1.25X1.25X10'00, 13GA	PC	1	0.00		
11-MAY-12	Operator Install	ADD	400248235	251228	BOLT,HH,5/16-18X2 ,F3089	PC	8	0.00		
11-MAY-12	Operator Install		400248235	050049016296	7' CHAIN T-RAIL (GENIE)	PC	1	50.35		
11-MAY-12	Operator Install		400248235	050049016470	1024 OPERATOR HEAD W/ 2 REMOTES (GENIE)	PC	1	174.65		
11-MAY-12	Operator Install		400248235	050049017330	FPK,WKPD,GK-BX,GENIE (KEYLESS ENTRY)	PC	1	0.00		
11-MAY-12	Operator Install		400248235	Div# 028	(100%) Crook, Tommy Lee	DO				
						Total	3520	260.00		

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DATE 11-MAY-2012 05:48:23 AM

GARAGE DOOR WORK TICKET

SCHEDULE DATE 11-MAY-12

WORK ORDER #: 400248235 Operator Install

Shift # 1

TRUCK# B05-028 / 28-BB05

INSTALLER INFO	SPLIT
Crook, Tommy	100%

CUSTOMER NAME
DR HORTON
100 AUGUSTA ST
GREENVILLE SC
29601

SALES PERSON:
Hudgins, Shawn

JOBSITE ADDRESS
ROSE HILL Phase NA/Lot 264/Block NA
6 DARTFORD COURT NA
EASLEY SC 29642

ADDITIONAL INFO
LOB Retrofit
UNIT TYPE Traditional

FINISHED / UNFINISHED

TRANSACTION TYPE : MCS_Standard_Order_Type

Job Site Superintendent Name :
Phone Number :

Trip : Reserved
Plan Number :

DIRECTIONS / INTERSECTION:

LINE NUMBER	WORK AREA	ITEM #	ITEM DESCRIPTION	UOM	UNITS NEEDED	INSTALLED QUANTITY	SF	USED	F/U	Reserved
1.1		050049016296	7' CHAIN T-RAIL (GENIE)	PC	1	0		1	F	R
2.1		050049016470	1024 OPERATOR HEAD W/ 2 REMOTES (GENIE)	PC	1	0		1	F	R
4.1		050049017330	FPK,WKPD,GK-BX,GENIE (KEYLESS ENTRY)	PC	1	0		1	F	R

****** Non-Stocked item items ******

LINE NUMBER	AREA	ADDITIONAL MATERIAL/BRAND	FT/PACK	QTY. INSTALLED	FOOTAGE	F/U
	Angle			1		F
	Lags			8		F
	Nuts / Bolts			8 / 8		F

SCHEDULER NOTES:

SAFETY QUESTIONS:

Are you endangered by other sub's actions?	YES____NO~~N~~
Do guardrails/toeboards need to be installed?	YES____NO~~N~~
Do you additional/diffferent equipment?	YES____NO~~N~~
Do you need to tape or barricade?	YES____NO~~N~~
Is the worksite dirty or unclear?	YES____NO~~N~~

Note: IF "YES" PLEASE PLACE COMMENTS ON THE BACK OF THE SHEET AND TAKE APPROPRIATE CORRECTIVE BEFORE STARTING ANY WORK

INSTALLER'S SIGNATURE: Tommy Crook **DATE:** 5-11 **TIME:**_____

Gale Contractor 1712

PURCHASE ORDER

5/4

400248235 PO#

D·R·HORTON® DHI Listed NYSE
America's Builder

VENDOR: 1311444 **OPEN AMOUNT:** 260.00

BUILDERS SERVICES GROUP INC
GALE CONTRACTOR SERVICES
1800 Piedmont Hwy
PIEDMONT SC 29673

Phone: (864) 299-5501 **Fax:** (864) 299-5201

Page	1
Purchase Order Date	01/06/12
Bid Contract Number	100031
FPO Requisition Number	
Purchase Order Number	200192 ON
Sub # / Lot #	70953 / 0264
Swing/Plan/Elevation	R / FIEL / B

Remit To
D.R. HORTON - GREENVILLE
,
Phone: Fax:

Work Description
45160.01 Garage Door Opener

DELIVER TO:

Rose Hill 90' **Delivery Date**
6 Dartford Court
EASLEY, SC 29642
Lot/Block

Description	Option	Qty	Unit Price	Extension
ENTRY KEY PAD FOR GARAGE DOOR		1	35.000	35.00
Garage Door Operator (1/2 hp)		1	225.000	225.00
Incl. 2 Remotes				
				260.00
JGDO00KP GARAGE DOOR KEYPAD				
JGDO00XX GARAGE DOOR OPENER-WITH T				

key pad
PO# 1102847

Req # 280984

SPECIAL INSTRUCTIONS:

1. We reserve the right to cancel if not filled as specified.
2. Place P.O. number on all invoices.
3. A copy of delivery ticket signed by D.R. Horton personnel and this signed P.O. must accompany each invoice submitted for payment with signed lien release.
4. Partial Shipments will not be accepted.
5. No liability will be assumed for materials placed on the job site that are not installed or that are in the excess of the amount specified on this P.O.
6. This P.O. is applicable only to the jobs indicated.
7. Receipt of this P.O. is binding on supplier for material at prices specified.
8. All terms and conditions of the signed contract and scope of work apply to this document.

Terms	Tax Percentage	Sales Tax	Total PO
			260.00

Superintendent: **Phone:**

D.R. Horton Appr: _____ **DATE:** _____

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MASCO Contractor Services MCS Procurement

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Shop | Requisitions

Requisitions | Notifications | Approvals

Requisitions: Requisitions >

Requisition 280984

Description	**FPK,WKPD,GK-BX,GENIE (KEYLESS ENTRY)**	Status	Approved
Created By	**Johnson, Mary Ann**	Change History	**No**
Creation Date	**26-Apr-2012 08:45:42**	Attachment	**None**
Deliver-To	**1800 Piedmont Hwy Piedmont, Greenville, SC, 29673-9251**	Note to Buyer	

Details

Line	Description	Need-By	Deliver-To	Unit	Quantity	Price	Amount (USD)	Details	Order
1	FPK,WKPD,GK-BX,GENIE (KEYLESS ENTRY)	27-Apr-2012 08:46:13	PIEDMONT GCS - PIEDMONT	Piece	1	21.58 USD	21.58		1102847
						Total	**21.58**		

Return

Shop | Requisitions | Shopping Cart | Close Window | Preferences | Help

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Gale Contractor 1714

Header Section

SALES ORDER # 400189976

Div # & Name	028-PIEDMONT GCS - PIEDMONT	**Dispatch From Date**	
Quote #	1125874	**Dispatch To Date**	
Template Order #	100103074	**Prevailing Wage**	No
Trade/Product Line	INSULATION	**Billing Details**	
Status	FINISHED	Standard	
Customer # & Name	20047 / DR HORTON	**Billing Type**	DRAW
Custom/Comm/Subdiv	ROSE HILL	**Batt**	1060.00
Project Name/Lot/Block	Phase NA/Lot 264/Block NA	**Blow**	382.00
Job Address	6 DARTFORD COURT	**Contract Amt**	1442.00
County	Pickens		
City / State / Zip	EASLEY/ SC/ 29642/ US		
Salesman	Hudgins, Shawn		
Line of Business	Residential		
Unit Type	Tract/Production	**Total Contract**	1442.00
Plan Number			

Summary To Date

	Amount	% of Revenue
Total Estimated Quantity	47.00	
Total Actual Quantity	44.00	
Estimated Material Cost	[redacted]	
Actual Material Cost		
Estimated Labor Cost		
Actual Labor Cost		
Estimated Additional Costs	0.00	0.00
Actual Additional Costs	0.00	0.00
Total Revenue	1,442.00	
Earned Revenue	1,442.00	
Billed Amount	1,442.00	
Estimated DM		[redacted]
Actual DM		

Billing Details Section

Date	SO #	Invoice #	Order Type	Billing Type	Billed Amount	%	Retainage	%
28-MAR-12	400189976	51433161	Standard	DRAW	1,060.00	73.51	0.00	0.00
23-MAY-12	400189976	51562383	Standard	DRAW	382.00	26.49	0.00	0.00
				Total	1,442.00	100.00	0.00	0.00

Line Summary and Status Section

SO #	Order Type	Trip	Work Area	Item Number	Item Description	UOM	Est. Qty	Shipped Qty	Diff.	Line Status
400189976	Standard	Batt	EW	047563305500	IBA OC R-13 KF 15.25"X105" 133.44 SF FSBAT	BG	6	0	6	Cancelled
400189976	Standard	Blow	R-30/C AFlat	047563701289	IBL OC PROPINK L77 PINK FIBERGLAS 33 LB	DO	21	0	21	Cancelled
400189976	Standard	Batt	EW	047563500028	IBA OC R-13 KF 15.25"X93" 128.04 SF FSBAT	DO	2	2	0	Closed
400189976	Standard	Batt		ADDITIONALLABOR-BATT	ADDITIONAL LABOR-BATT	DO	35	35	0	Closed
400189976	Standard	Batt	EW	047563309164	IBA OC R-13 KFT 15"X105" 131.25 SF	DO	6	0	6	Cancelled
400189976	Standard	Batt	CAV	047563502251	IBA OC R-30 KFT 24"X48" 88 SF	DO	1	1	0	Closed
400189976	Standard	Batt	BJ	047563305746	IBA OC R-13 KFT 23"X93" 148.54 SF	BG	1	0	1	Cancelled
400189976	Standard	Batt	CAV	047563305685	IBA OC R-30 KFT 24"X48" 88 SF	BG	1	0	1	Cancelled

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Gale Contractor 1715

Line Summary and Status Section

SO #	Order Type	Trip	Work Area	Item Number	Item Description	UOM	Est. Qty	Shipped Qty	Diff.	Line Status
400189976	Standard	Blow	R-30/CAFlat	90005273	IBL JM WINDER HIGH DENSITY BLOWING WOOL 31 LB	DO	26	0	26	Cancelled
400189976	Standard	Batt	FOG	086397695555	IBA OC R-19 KFT 23"X93" 118.83 SF	BG	3	0	3	Cancelled
400189976	Standard	Blow	CAFlat	INS-FG-BLOW R-30	INSULATION FIBERGLASS BLOW R-30	SF	1580	1580	0	Closed
400189976	Standard	Batt	EW	086397695555	IBA OC R-19 KFT 23"X93" 118.83 SF	BG	1	0	1	Cancelled
400189976	Standard	Batt	EW	047563309263	IBA OC R-13 KFT 15"X93" 125.94 SF	DO	5	5	0	Closed
400189976	Standard	Blow	R-30/CAFlat	047563701289	IBL OC PROPINK L77 PINK FIBERGLAS 33 LB	DO	19	19	0	Closed
400189976	Standard	Batt	EW	ROUNDING-BATT	PRICE ROUNDING ON SALES ORDER	DO	42	27	15	Closed
400189976	Standard	Batt	CANA	047563305685	IBA OC R-30 KFT 24"X48" 88 SF	BG	1	0	1	Cancelled
400189976	Standard	Batt	EW	086397689073	IBA OC R-19 KFT 23"X48" 122.67 SF	BG	1	0	1	Closed
400189976	Standard	Batt	EW	086397688939	IBA OC R-19 KFT 15"X48" 80 SF	BG	1	0	1	Cancelled
400189976	Standard	Batt	FOG	086397689073	IBA OC R-19 KFT 23"X48" 122.67 SF	BG	3	3	0	Closed
400189976	Standard	Batt	GCW	047563309164	IBA OC R-13 KFT 15"X105" 131.25 SF	DO	2	2	0	Closed
400189976	Standard	Batt	EW	047563309263	IBA OC R-13 KFT 15"X93" 125.94 SF	DO	2	0	2	Cancelled
400189976	Standard	Batt	EW	047563309188	IBA OC R-13 KF 15.25"X105" 133.44 SF FSBAT	BG	6	6	0	Closed
400189976	Standard	Batt	EW	047563305456	IBA OC R-13 KF 15.25"X93" 106.56 SF FSBAT	BG	8	0	8	Cancelled
400189976	Standard	Batt	BJ	047563502183	IBA OC R-13 KFT 23"X93" 148.54 SF	DO	1	1	0	Closed
400189976	Standard	Batt	EW	086397689073	IBA OC R-19 KFT 23"X48" 122.67 SF	BG	1	0	1	Cancelled
400189976	Standard	Blow	R-30/CAFlat	ROUNDING-BLOW	PRICE ROUNDING ON SALES ORDER	DO	70	42	28	Closed
400189976	Standard	Batt	GCW	047563305500	IBA OC R-13 KF 15.25"X105" 133.44 SF FSBAT	BG	2	0	2	Cancelled
400189976	Standard	Batt		7613023416555	HI INSULATING FOAM CF 812 WD	PC	3	3	0	Closed
400189976	Standard	Batt	CANA	047563502251	IBA OC R-30 KFT 24"X48" 88 SF	DO	1	1	0	Closed
400189976	Standard	Batt	EW	047563503395	IBA OC R-19 KFT 15"X93" 77.5 SF	DO	1	1	0	Closed

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Activity Details Section

Date	Trip	Work Area	SO #	Item # / DIV #	Item Description / Employee Name	UOM	Qty Ship	REV	Material	Labor
22-MAR-12	Batt	EW	400189976	086397689073	IBA OC R-19 KFT 23"X48" 122.67 SF	BG	1	7.79	[redacted]	
22-MAR-12	Batt	EW	400189976	ROUNDING-BATT	PRICE ROUNDING ON SALES ORDER	DO	15	0.15		
22-MAR-12	Blow	R-30/ CAFlat	400189976	ROUNDING-BLOW	PRICE ROUNDING ON SALES ORDER	DO	28	0.28		
27-MAR-12	Batt	EW	400189976	047563309188	IBA OC R-13 KF 15.25"X105" 133.44 SF FSBAT	BG	6	234.84		
27-MAR-12	Batt	EW	400189976	086397689073	IBA OC R-19 KFT 23"X48" 122.67 SF	BG	0	0.00		
27-MAR-12	Batt	FOG	400189976	086397689073	IBA OC R-19 KFT 23"X48" 122.67 SF	BG	3	104.07		
27-MAR-12	Batt		400189976	7613023416555	HI INSULATING FOAM CF 812 WD	PC	3	17.16		
27-MAR-12	Batt	EW	400189976	047563309263	IBA OC R-13 KFT 15"X93" 125.94 SF	BG	5	164.85		
27-MAR-12	Batt	GCW	400189976	047563309164	IBA OC R-13 KFT 15"X105" 131.25 SF	BG	2	82.46		
27-MAR-12	Batt	EW	400189976	047563309164	IBA OC R-13 KFT 15"X105" 131.25 SF	BG	0	0.00		
27-MAR-12	Batt	EW	400189976	047563500028	IBA OC R-13 KF 15.25"X93" 128.04 SF FSBAT	BG	2	65.92		
27-MAR-12	Batt	CAV	400189976	047563502251	IBA OC R-30 KFT 24"X48" 88 SF	BG	1	38.58		
27-MAR-12	Batt	CANA	400189976	047563502251	IBA OC R-30 KFT 24"X48" 88 SF	BG	1	62.08		
27-MAR-12	Batt	EW	400189976	047563503395	IBA OC R-19 KFT 15"X93" 77.5 SF	BG	1	26.02		
27-MAR-12	Batt	BJ	400189976	047563502183	IBA OC R-13 KFT 23"X93" 148.54 SF	BG	1	46.71		
27-MAR-12	Batt		400189976	ADDITIONALLABOR-BATT	ADDITIONAL LABOR-BATT	DO	35	70.00		
27-MAR-12	Batt	EW	400189976	ROUNDING-BATT	PRICE ROUNDING ON SALES ORDER	DO	27	0.27		
27-MAR-12	Batt		400189976	Div# 028	(55%) Sandoval, Felix	DO				
27-MAR-12	Batt		400189976	Div# 028	(45%) Mangrum, Anthony Mark	DO				
20-APR-12	Blow		400189976	Div# 028	(50%) Taylor, Desmond Lamar	DO				
20-APR-12	Blow		400189976	Div# 028	(50%) Wilging, David P	DO				
22-MAY-12	Blow	CAFlat	400189976	INS-FG-BLOW R-30	INSULATION FIBERGLASS BLOW R-30	SF	1580	94.80		
22-MAY-12	Blow	R-30/ CAFlat	400189976	047563701289	IBL OC PROPINK L77 PINK FIBERGLAS 33 LB	BG	19	425.60		
22-MAY-12	Blow	R-30/ CAFlat	400189976	ROUNDING-BLOW	PRICE ROUNDING ON SALES ORDER	DO	42	0.42		
22-MAY-12	Blow	R-30/ CAFlat	400189976	90005273	IBL JM WINDER HIGH DENSITY BLOWING WOOL 31 LB	BG	0	0.00		
22-MAY-12	Blow		400189976	Div# 028	(50%) Wilging, David P	DO				
22-MAY-12	Blow		400189976	Div# 028	(50%) Taylor, Desmond Lamar	DO				
						Total	1772	1,442.00		

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David

DATE 22-MAY-2012 05:41:43 AM

Dey

INSULATION WORK TICKET

SCHEDULE DATE 22-MAY-12

WORK ORDER #: 400189976 Blow

Shift # 1

TRUCK# T02-028 / 28-1759

INSTALLER INFO	SPLIT
Taylor, Desmond	50%
Wilging, David	50%

CUSTOMER NAME
DR HORTON
100 AUGUSTA ST
GREENVILLE SC
29601

SALES PERSON:
Hudgins, Shawn

JOBSITE ADDRESS
ROSE HILL Phase NA/Lot 264/Block NA
6 DARTFORD COURT NA
EASLEY SC 29642

ADDITIONAL INFO
LOB Residential
UNIT TYPE Tract/Production

FINISHED / UNFINISHED

TRANSACTION TYPE : MCS_Standard_Order_Type

Job Site Superintendent Name :
Phone Number :

Trip : Reserved
Plan Number :

DIRECTIONS / INTERSECTION:

LINE NUMBER	WORK AREA	ITEM #	ITEM DESCRIPTION	UOM	UNITS NEEDED	INSTALLED QUANTITY	SF	USED	F/U	Reserved
31.1	R-30/CAFlat	90005273	IBL JM WINDER HIGH DENSITY BLOWING WOOL 31 LB	BG	26	0		19		R

**** Bid items ****

OC

**** Non-Stocked item items ****

-Attic Batts

LINE NUMBER	AREA	ADDITIONAL MATERIAL/BRAND	FT/PACK	QTY. INSTALLED	FOOTAGE	F/U

INSTALLER INSTRUCTIONS:
ROBERT 704-913-9709, FOAM BEHIND OUTLETS ON EXTERIOR WALLS AND AROUND WINDOWS AND DOORS, CAULK ALL BASE PLATES, TOP PLATES AND T CORNERS. MAKE SURE THE FLOOR OVER THE GARAGE IS PUSHED TO THE PLYWOOD AND HELD WITH TIGER TEETH.

SCHEDULER NOTES:

SAFETY QUESTIONS:

Are you endangered by other sub's actions?	YES_____NO_✓
Do guardrails/toeboards need to be installed?	YES_____NO_✓
Do you additional/diffferent equipment?	YES_____NO_✓
Do you need to tape or barricade?	YES_____NO_✓
Is the worksite dirty or unclear?	YES_____NO_✓

Note: IF "YES" PLEASE PLACE COMMENTS ON THE BACK OF THE SHEET AND TAKE APPROPRIATE CORRECTIVE BEFORE STARTING ANY WORK

INSTALLER'S SIGNATURE: _____ **DATE:** 5/22/12 **TIME:** _____

Page

Gale Contractor 1718

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ASKING FOR FRI 3/23, LET MR KNOW.

MASCO Contractor Services

Gale Contractor Services
Lic #: 48822
1800 Piedmont Hwy Piedmont, SC 29673-9251
Tel: (864) 299-5501, Fax: (864) 299-5201

WORK AGREEMENT

400189976

TO: DR HORTON	**RE:** ROSE HILL 264 / INSULATION / FIELDSTONE	
Address: 100 AUGUSTA ST GREENVILLE, SC 29601	**Job Address:** 6 DARTFORD CT, EASLEY, SC 29642	
Attn :	**Date:** 03/21/2012	**Expiration Date:** 06/19/2012
Tel: (864) 370-6000	**Estimator:** Hudgins, Shawn	**Quote #:**1125874 **Version** 1 Of 1
Fax: (864) 627-3885		

10010307H

Subject to the terms and conditions stated in this agreement, Company is willing to furnish to Customer all material and labor required for the Scope of Work described below:

Scope of Work (the "Work") to be performed:

Draft stop, fire block, fire stop (UBC 708.2.1 et seq., formerly 2516(f), or locally adopted equivalent), and fire rated caulking are not included within Company's Work unless specifically listed below.

CELLULOSE NOTICE. If cellulose is to be applied with a wet spray application, you must allow adequate time for it to cure and dry before installing drywall or other materials. The adequate time required varies depending upon climate, altitude and weather. Do not install vapor barriers, vapor retards, dry wall, or other interior finish until the material has dried to less than 20% moisture content. Time to cure will vary based on climate and weather. Be sure to schedule your trades accordingly.

Plan#: *Trade*: INSULATION

EXTERIOR WALLS	R-13 KRAFT BATT INSULATION R-19 KRAFT BATT INSULATION
CEILING AREA NOT ACCESSIBLE	R-30 KRAFT BATT INSULATION
FLOOR OVER GARAGE	R-19 KRAFT BATT INSULATION
CEILING AREA FLAT	R-30 FIBERGLASS BLOW INSULATION
GARAGE COMMON WALL	R-13 KRAFT BATT INSULATION
BAND JOIST, BOX SILL, RIM JOIST	R-13 KRAFT BATT INSULATION
CEILING AREA VAULTED	R-30 KRAFT BATT INSULATION HI INSULATING FOAM CF 812 WD

Base Price: **$1,442.00**

Additional Information: Blow: $382 Batt: $1060

NOTE: This agreement consists of multiple pages. If you do not receive the number of pages noted below, please contact Company directly at the telephone number stated above.

TERMS OF PAYMENT: Payment in full due as stated on invoice regardless of any payment arrangements you have with third parties.
ACCEPTANCE: Company may change and/or withdraw this agreement if Company does not receive your signed acceptance on or before the Expiration Date stated above.
PRICING: The prices stated in this Agreement will remain firm for 90 days after the Date stated above. If performance of this agreement extends beyond this 90 day period, you agree to pay Company's then current pricing ("Price") for any Work performed after that 90 day period. The Prices are based only on the terms and conditions expressly stated in this agreement and include any and all addendums, attachments, schedules or exhibits attached hereto. The Prices exclude any and all terms and conditions not expressly stated herein, including, without limitation, any obligation by Company to name you or any third-party as an additional insured on its insurance policy; to provide per project aggregate insurance coverage for the Work; to participate in any owner controlled, wrap, or similar insurance program; to indemnify or defend you or any third-party from any claims, actions and/or lawsuits of any kind or nature whatsoever except to the limited extent state in Section 18 of this agreement. Any terms or conditions required by you by contract or otherwise in addition to or inconsistent with those expressly stated in this agreement will result in additional charges and/or higher Prices. Any additional work performed is subject to Company's then current pricing (unless Company otherwise agrees in writing) and to this agreement.

CUSTOMER: COMPANY:

By: _____ By: _____
SIGNATURE TITLE SIGNATURE TITLE

Company Name _____ Date: _____

THE INFORMATION CONTAINED IN THIS AGREEMENT IS CONFIDENTIAL. NEITHER THIS AGREEMENT NOR ITS TERMS MAY BE DISCLOSED TO THIRD PARTIES.

A.P. 3.21.12 @ 9:12 A.M. 2:56 7:11 PM

Gale Contractor 1719

ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

Estimate Take Off CONFIDENTIAL

Customer: DR HORTON
Estimator: Hudgins, Shawn
Quote Name: ROSE HILL 264 / INSULATION / FIELDSTONE
Customer Contact:
Customer Address: 100 AUGUSTA ST
GREENVILLE, GREENVILLE, SC 29601, United States
Customer Phone: (864) 370-6000

Quote # 1125874

Job Address: 6 DARTFORD CT, EASLEY, SC 29642

Quote Date: 21-MAR-12

Order Type:
MCS_Template_Order_Type
Trade: INSULATION
Plan#:
Unit Type: Tract/Production

Division #: 028

#	Trip	Group	Work Area	Product	UOM	Ext Labor	Labor	Pay	LSP Price	Disc %	Unit Price	QTY	Est. Qty	Ext. Price	Opt/UG
1.3	Batt		Exterior Walls	047563305500 - IBA OC R-13 KF 15.25"X105" 133.44 SF FSBAT	BG	[redacted]					$39.17	6	855	$235.02	
1.6	Batt		Ceiling Area Not Accessible	047563305685 - IBA OC R-30 KFT 24"X48" 88 SF	BG						$62.09	1	108	$62.09	
1.9	Batt		Floor Over Garage	086397695555 - IBA OC R-19 KFT 23"X93" 118.83 SF	BG						$34.70	3	320	$104.1	
1.12	Blow		R-30Ceiling Area Flat	047563701289 - IBL OC PROPINK L77 PINK FIBERGLAS 33 LB	BG						$20.30	21	1580	$426.3	
1.14	Blow		Ceiling Area Flat	INS-FG-BLOW R-30 - INSULATION FIBERGLASS BLOW R-30	SF						$0.06	1580	1580	$94.8	
1.17	Batt		Garage Common Wall	047563305500 - IBA OC R-13 KF 15.25"X105" 133.44 SF FSBAT	BG						$41.24	2	300	$82.48	
1.20	Batt		Exterior Walls	047563305456 - IBA OC R-13 KF 15.25"X93" 106.56 SF FSBAT	BG						$28.86	8	840	$230.88	
1.23	Batt		Band Joist, Box Sill, Rim Joist	047563305746 - IBA OC R-13 KFT 23"X93" 148.54 SF	BG						$46.73	1	170	$46.73	
1.26	Batt		Exterior Walls	086397688939 - IBA OC R-19 KFT 15"X48" 80 SF	BG						$26.03	1	80	$26.03	
1.29	Batt		Exterior Walls	086397695555 - IBA OC R-19 KFT 23"X93" 118.83 SF	BG						$7.81	1	24	$7.81	
1.32	Batt		Ceiling Area Vaulted	047563305685 - IBA OC R-30 KFT 24"X48" 88 SF	BG						$38.60	1	80	$38.6	
2.0	Batt			7613023416555 - III INSULATING FOAM CF 812 WD	PC						$8.58	2		$17.16	
3.0	Batt			ADDITIONALLABOR-BATT - ADDITIONAL LABOR-BATT	DO						$2.00	35		$70	

Summary:

Base

Base: **Disc:** [redacted] **Total:** $1,442.00

Gale Contractor 1720

Estimate Take Off CONFIDENTIAL

Customer: DR HORTON **Quote #** 1125874
Estimator: Hudgins, Shawn
Quote Name: ROSE HILL 264 / INSULATION / FIELDSTONE
Customer Contact:
Customer Address: 100 AUGUSTA ST
GREENVILLE, GREENVILLE, SC 29601, United States
Customer Phone: (864) 370-6000

Job Address: 6 DARTFORD CT, EASLEY, SC 29642

Quote Date: 21-MAR-12

Order Type:
MCS_Template_Order_Type
Trade: INSULATION **Division #:** 028
Plan#:
Unit Type: Tract/Production

Trip	Pay	List Base Price	Disc Amt.	Ext. Price
Batt	[redacted]			$920.90
Blow				$521.10
Total				$1,442.00

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PURCHASE ORDER

D·R·HORTON® DHI Listed NYSE
America's Builder

VENDOR: 1311444 **OPEN AMOUNT: 1,060.00**

BUILDERS SERVICES GROUP INC
GALE CONTRACTOR SERVICES
1800 Piedmont Hwy
PIEDMONT SC 29673

Phone: (864) 299-5501 **Fax:** (864) 299-5201

Page	1
Purchase Order Date	01/06/12
Bid Contract Number	100070
FPO Requisition Number	
Purchase Order Number	200155 ON
Sub # / Lot #	70953 / 0264
Swing/Plan/Elevation	R / FIEL / B

Remit To
D.R. HORTON - GREENVILLE
,
Phone: Fax:

Work Description
44070.03 Insulation - Wall

DELIVER TO:

Rose Hill 90'
6 Dartford Court
EASLEY, SC 29642
Lot/Block

Delivery Date

Description	Option	Qty	Unit Price	Extension
Insulation - Wall Foam and Caulk Package		1.00	175.000	175.00
Insulation - Wall Foam and Caulk Package		1.00	885.000	885.00
				1,060.00

SPECIAL INSTRUCTIONS:

1. We reserve the right to cancel if not filled as specified.
2. Place P.O. number on all invoices.
3. A copy of delivery ticket signed by D.R. Horton personnel and this signed P.O. must accompany each invoice submitted for payment with signed lien release.
4. Partial Shipments will not be accepted.
5. No liability will be assumed for materials placed on the job site that are not installed or that are in the excess of the amount specified on this P.O.
6. This P.O. is applicable only to the jobs indicated.
7. Receipt of this P.O. is binding on supplier for material at prices specified.
8. All terms and conditions of the signed contract and scope of work apply to this document.

Terms	Tax Percentage	Sales Tax	Total PO
			1,060.00

Superintendent: **Phone:**

D.R. Horton Appr: _____ **DATE:** _____

ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

PURCHASE ORDER

D·R·HORTON® DHI Listed NYSE
America's Builder

VENDOR: 1311444 **OPEN AMOUNT:** 382.00

Page	1
Purchase Order Date	01/06/12
Bid Contract Number	100070
FPO Requisition Number	
Purchase Order Number	200156 ON
Sub # / Lot #	70953 / 0264
Swing/Plan/Elevation	R / FIEL / B

BUILDERS SERVICES GROUP INC
GALE CONTRACTOR SERVICES
1800 Piedmont Hwy
PIEDMONT SC 29673

Phone: (864) 299-5501 **Fax:** (864) 299-5201

Remit To
D.R. HORTON - GREENVILLE
,
Phone: Fax:

DELIVER TO:

Rose Hill 90'
6 Dartford Court
EASLEY, SC 29642
Lot/Block

Delivery Date

Work Description	
44070.04	Insulation - Attic

Description	Option	Qty	Unit Price	Extension
Insulation - Attic		1.00	382.000	382.00
				382.00

SPECIAL INSTRUCTIONS:

1. We reserve the right to cancel if not filled as specified.
2. Place P.O. number on all invoices.
3. A copy of delivery ticket signed by D.R. Horton personnel and this signed P.O. must accompany each invoice submitted for payment with signed lien release.
4. Partial Shipments will not be accepted.
5. No liability will be assumed for materials placed on the job site that are not installed or that are in the excess of the amount specified on this P.O.
6. This P.O. is applicable only to the jobs indicated.
7. Receipt of this P.O. is binding on supplier for material at prices specified.
8. All terms and conditions of the signed contract and scope of work apply to this document.

Terms	Tax Percentage	Sales Tax	Total PO
			382.00

Superintendent: **Phone:**

D.R. Horton Appr: _____ **DATE:** _____

ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

Run Date 29-MAR-12

JOB STATUS REPORT
(DETAIL)

SALES ORDER # 400189976

PIEDMONT GCS - PIEDMONT - 028

Sales Order #	**400189976**	**Status**	**UN FINISHED**		
Cust # Name	DR HORTON	**Salesman**	Hudgins, Shawn		
Project Name	ROSE HILL	**Line of Business**	Residential		
Lot-Block-Phase	Phase NA/Lot 264/Block NA	**Unit Type**	Tract/Production		
Job Address	Phase NA/Lot 264/Block NA,6 DARTFORD COURT	**Plan Number**			
County	Pickens				
City \ State \ Zip	EASLEY\SC\29642				

BILLING DETAILS	
Billing Type	**DRAW**
Batt	1060.00
Blow	382.00
Contract Amt	1442.00
Sales Order Amt	1442.00

SUMMARY TO DATE	
ACTUAL QTY	25.00
ESTIMATED QTY	23.00
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
REVENUE AMOUNT	920.90
BILLED AMOUNT	1060.00
% BILLED	115.10
[redacted]	[redacted]

MCS_Standard_Order_Type | **SO#** 400189976 | **TRIP** - Batt

DATE	AREA	RESOURCE TYPE	DESCRIPTION	ESTIMATED QTY	ACTUAL QTY	DIFFERENCE	ESTIMATED COST	ACTUAL COST	DIFFERENCE
22-MAR-12	EW	Miscellaneous*	ROUNDING-BATT-PRICE ROUNDING ON SALES ORDER	0.00	1.00	-1.00	[redacted]		
22-MAR-12	EW	Miscellaneous*	ROUNDING-BATT-PRICE ROUNDING ON SALES ORDER	0.00	2.00	-2.00			
22-MAR-12	EW	Miscellaneous*	ROUNDING-BATT-PRICE ROUNDING ON SALES ORDER	0.00	12.00	-12.00			
27-MAR-12		Employee	Mangrum, Anthony Mark	0.00	0.00	0.00			
27-MAR-12		Employee	Sandoval, Felix	0.00	0.00	0.00			
27-MAR-12		Item	7613023416555-HI INSULATING FOAM CF 812 WD	2.00	2.00	0.00			
27-MAR-12	EW	Item	047563309263-IBA OC R-13 KFT 15"X93" 125.94 SF	0.00	5.00	-5.00			
27-MAR-12		Item	7613023416555-HI INSULATING FOAM CF 812 WD	0.00	1.00	-1.00			
27-MAR-12	GCW	Item	047563309164-IBA OC R-13 KFT 15"X105" 131.25 SF	0.00	2.00	-2.00			
27-MAR-12	FOG	Item	086397689073-IBA OC R-19 KFT 23"X48" 122.67 SF	0.00	3.00	-3.00			
27-MAR-12	EW	Item	047563503395-IBA OC R-19 KFT 15"X93" 77.5 SF	0.00	1.00	-1.00			

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Gale Contractor 1724

27-MAR-12	EW	Item	047563500028-IBA OC R-13 KF 15.25"X93" 128.04 SF FSBAT	0.00	2.00	-2.00	[redacted]
27-MAR-12	EW	Item	047563309188-IBA OC R-13 KF 15.25"X105" 133.44 SF FSBAT	0.00	6.00	-6.00	
27-MAR-12	CAV	Item	047563502251-IBA OC R-30 KFT 24"X48" 88 SF	0.00	1.00	-1.00	
27-MAR-12	CANA	Item	047563502251-IBA OC R-30 KFT 24"X48" 88 SF	0.00	1.00	-1.00	
27-MAR-12	BJ	Item	047563502183-IBA OC R-13 KFT 23"X93" 148.54 SF	0.00	1.00	-1.00	
27-MAR-12	EW	Miscellaneous*	ROUNDING-BATT-PRICE ROUNDING ON SALES ORDER	0.00	27.00	-27.00	
			TOTALS	2.00	67.00	-65.00	

FINANCIAL SUMMARY	REVENUE AMOUNT	ESTIMATED DM	ACTUAL DM	ESTIMATED DM%	ACTUAL DM%	DIFFERENCE
	920.90	[redacted]				

MCS_Standard_Order_Type | SO# 400189976 | TRIP - Blow

DATE	AREA	RESOURCE TYPE	DESCRIPTION	ESTIMATED QTY	ACTUAL QTY	DIFFERENCE	ESTIMATED COST	ACTUAL COST	DIFFERENCE
	R-30/CAFI at	Item	047563701289-IBL OC PROPINK L77 PINK FIBERGLAS 33 LB	21.00	0.00	21.00	[redacted]		
			TOTALS	21.00	0.00	21.00			

FINANCIAL SUMMARY	REVENUE AMOUNT	ESTIMATED DM	ACTUAL DM	ESTIMATED DM%	ACTUAL DM%	DIFFERENCE
	0.00	[redacted]				

ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON COMMON PLEAS - CASE#2019CP0401942

DATE 27-MAR-2012 05:37:27 AM

INSULATION WORK TICKET

SCHEDULE DATE 27-MAR-12

TRUCK# T13-028 / 28-797

INSTALLER INFO	SPLIT
Sandoval, Felix	55%
Mangrum, Anthony Mark	45%

WORK ORDER #: 400189976 Batt

Shift # 1

Read instructions on next page

CUSTOMER NAME
DR HORTON
100 AUGUSTA ST
GREENVILLE SC
29601

SALES PERSON:
Hudgins, Shawn

JOBSITE ADDRESS
ROSE HILL Phase NA/Lot 264/Block NA
6 DARTFORD COURT NA
EASLEY SC 29642

ADDITIONAL INFO
LOB Residential
UNIT TYPE Tract/Production

Foam windows - door - behind outlets - Caulk base plates. top plates. "T" Corners.

TRANSACTION TYPE : MCS_Standard_Order_Type

Job Site Superintendent Name :
Phone Number :

Trip : Reserved
Plan Number :

DIRECTIONS / INTERSECTION:

ENTERED

Push garage ceiling all the way to deck

LINE NUMBER	WORK AREA	ITEM #	ITEM DESCRIPTION	UOM	UNITS NEEDED	INSTALLED QUANTITY	SF	USED	F/U	Reserve
12.1		7613023416555	HI INSULATING FOAM CF 812 WD	PC	2	0				R
14.1	EW	047563309164	IBA OC R-13 KFT 15"X105" 131.25 SF	BG	6	0	787.5			R
16.1	CANA	047563502251	IBA OC R-30 KFT 24"X48" 88 SF	BG	1	0	88			R
17.1	FOG	086397689073	IBA OC R-19 KFT 23"X48" 122.67 SF	BG	3	0	368.01			R
18.1	GCW	047563309164	IBA OC R-13 KFT 15"X105" 131.25 SF	BG	2	0	262.5			R
19.1	EW	047563309263	IBA OC R-13 KFT 15"X93" 125.94 SF	BG	7	0	881.58			R
20.1	BJ	047563502183	IBA OC R-13 KFT 23"X93" 148.54 SF	BG	1	0	148.54			R
21.1	EW	047563503395	IBA OC R-19 KFT 15"X93" 77.5 SF	BG	1	0	77.5			R
22.1	EW	086397689073	IBA OC R-19 KFT 23"X48" 122.67 SF	BG	1	0	122.67			R
23.1	CAV	047563502251	IBA OC R-30 KFT 24"X48" 88 SF	BG	1	0	88			R

****** Non-Stocked item items ******

R19 x 24 x 48 = 3 Bags.
R13 x 105 x 15 = 9 Bags - 2 reg. 6 FB
R19 x 15 x 93 = 1 Bag
R13 x 93 x 15 = 7 Bags 5 reg - 2 FB
R30 x 24 x 48 = 2 Bags
R19 x 24 x 93 = 1 Bag
Battles: 50
P.V.: 20
foam: 4 cans

Gale Contractor 1726

ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

DATE 27-MAR-2012 05:37:27 AM

INSULATION WORK TICKET

SCHEDULE DATE 27-MAR-12

TRUCK# T13-028 / 28-7971

INSTALLER INFO	SPLIT
Sandoval, Felix	55%
Mangrum, Anthony Mark	45%

WORK ORDER #: 400189976 Batt

Shift # 1

CUSTOMER NAME
DR HORTON
100 AUGUSTA ST
GREENVILLE SC
29601

SALES PERSON:
Hudgins, Shawn

JOBSITE ADDRESS
ROSE HILL Phase NA/Lot 264/Block NA
6 DARTFORD COURT NA
EASLEY SC 29642

ADDITIONAL INFO
LOB Residential
UNIT TYPE Tract/Production

FINISHED / UNFINISHED

TRANSACTION TYPE : MCS_Standard_Order_Type

Job Site Superintendent Name :
Phone Number :

Trip : Reserved
Plan Number :

DIRECTIONS / INTERSECTION:

LINE NUMBER	AREA	ADDITIONAL MATERIAL/BRAND	FT/PACK	QTY. INSTALLED	FOOTAGE	F/U

INSTALLER INSTRUCTIONS:
ROBERT 704-913-9709, FOAM BEHIND OUTLETS ON EXTERIOR WALLS AND AROUND WINDOWS AND DOORS, CAULK ALL BASE PLATES, TOP PLATES AND T CORNERS. MAKE SURE THE FLOOR OVER THE GARAGE IS PUSHED TO THE PLYWOOD AND HELD WITH TIGER TEETH.

SCHEDULER NOTES:

SAFETY QUESTIONS:

Are you endangered by other sub's actions?	YES_____NO_____
Do guardrails/toeboards need to be installed?	YES_____NO_____
Do you additional/diffferent equipment?	YES_____NO_____
Do you need to tape or barricade?	YES_____NO_____
Is the worksite dirty or unclear?	YES_____NO_____

Note: IF "YES" PLEASE PLACE COMMENTS ON THE BACK OF THE SHEET AND TAKE APPROPRIATE CORRECTIVE BEFORE STARTING ANY WORK

INSTALLER'S SIGNATURE: _____ **DATE:** _____ **TIME:**_____

Gale Contractor 1727

Felix
MARK

PICK LIST

DIVISION NAME PIEDMONT GCS - PIEDMONT
DIVISION # 028

SCHEDULE DATE 27-MAR-2012
SHIFT # 1

TRUCK #

T13-028

LOGICAL NAME # 28-7971

LOAD SEQUENCE - 1

W.O.#	CUSTOMER NAME	SITE ADDRESS
400189976 Batt	DR HORTON	ROSE HILL Phase NA/Lot 264/Block NA 6 DARTFORD COURT NA EASLEY SC 29642

PRODUCT/LPN NUMBER	UOM	LOAD?	QTY NEEDED	QTY TAKEN	QTY RETURN	QTY USED
047563309164 IBA OC R-13 KFT 15"X105" 131.25 SF	BG	Y	8	2 8		
047563309263 IBA OC R-13 KFT 15"X93" 125.94 SF	BG	Y	7	5		
047563502183 IBA OC R-13 KFT 23"X93" 148.54 SF	BG	Y	1	2		
047563502251 IBA OC R-30 KFT 24"X48" 88 SF	BG	Y	2	5		
047563503395 IBA OC R-19 KFT 15"X93" 77.5 SF	BG	Y	1	1		
086397689073 IBA OC R-19 KFT 23"X48" 122.67 SF	BG	Y	4	5		
7613023416555 HI INSULATING FOAM CF 812 WD	PC	Y	2	4		
OC 13HIS493 FOAM				5		
OC 13HIST105 FOAM				8		

NOTES :-

LOAD SEQUENCE - 2

W.O.#	CUSTOMER NAME	SITE ADDRESS
400184140 Floor-Crawl	TERMINIX SERVICE INC	CUSTOM BUILDER 505 SPRING LAKE LOOP SIMPSONVILLE SC 29681

PRODUCT/LPN NUMBER	UOM	LOAD?	QTY NEEDED	QTY TAKEN	QTY RETURN	QTY USED
047563503395 IBA OC R-19 KFT 15"X93" 77.5 SF	BG	Y	10	15		

NOTES :-

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PICK LIST

DIVISION NAME PIEDMONT GCS - PIEDMONT
DIVISION # 028

SCHEDULE DATE 27-MAR-2012
SHIFT # 1

CONSOLIDATED TOTAL

PRODUCT NUMBER	UOM	LOAD?	QTY NEEDED	QTY TAKEN	QTY RETURN	QTY USED
7613023416555 HI INSULATING FOAM CF 812 WD	PC	Y	2	4	2	2
047563502183 IBA OC R-13 KFT 23"X93" 148.54 SF	BG	Y	1	2	1	1
047563502251 IBA OC R-30 KFT 24"X48" 88 SF	BG	Y	2	5	3	2
047563309164 IBA OC R-13 KFT 15"X105" 131.25 SF	BG	Y	8	2	0	2
047563503395 IBA OC R-19 KFT 15"X93" 77.5 SF	BG	Y	11	15	4	11
086397689073 IBA OC R-19 KFT 23"X48" 122.67 SF	BG	Y	4	5	2	3
047563309263 IBA OC R-13 KFT 15"X93" 125.94 SF	BG	Y	7	5	0	5

OC 13 K15 493 FNST

OC 13 K15 4105 FNST

4 mill

5 3 2

8 2 6

1 0 1

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Run Date 13-APR-12

JOB STATUS REPORT (DETAIL)

SALES ORDER # 400189976

PIEDMONT GCS - PIEDMONT - 028

Sales Order #	**400189976**	**Status**	**UN FINISHED**		
Cust # Name	DR HORTON		**Salesman**	Hudgins, Shawn	
Project Name	ROSE HILL		**Line of Business**	Residential	
Lot-Block-Phase	Phase NA/Lot 264/Block NA		**Unit Type**	Tract/Production	
Job Address	Phase NA/Lot 264/Block NA,6 DARTFORD COURT		**Plan Number**		
County	Pickens				
City \ State \ Zip	EASLEY\SC\29642				

BILLING DETAILS	
Billing Type	**DRAW**
Batt	1060.00
Blow	382.00
Contract Amt	1442.00
Sales Order Amt	1442.00

SUMMARY TO DATE	
ACTUAL QTY	25.00
ESTIMATED QTY	23.00
[redacted]	[redacted]
REVENUE AMOUNT	920.90
BILLED AMOUNT	1060.00
% BILLED	115.10

MCS_Standard_Order_Type | **SO#** 400189976 | **TRIP** - Batt

DATE	AREA	RESOURCE TYPE	DESCRIPTION	ESTIMATED QTY	ACTUAL QTY	DIFFERENCE	ESTIMATED COST	ACTUAL COST	DIFFERENCE
22-MAR-12	EW	Miscellaneous*	ROUNDING-BATT-PRICE ROUNDING ON SALES ORDER	0.00	12.00	-12.00	[redacted]		
22-MAR-12	EW	Miscellaneous*	ROUNDING-BATT-PRICE ROUNDING ON SALES ORDER	0.00	1.00	-1.00			
22-MAR-12	EW	Miscellaneous*	ROUNDING-BATT-PRICE ROUNDING ON SALES ORDER	0.00	2.00	-2.00			
27-MAR-12		Employee	Sandoval, Felix	0.00	0.00	0.00			
27-MAR-12		Employee	Mangrum, Anthony Mark	0.00	0.00	0.00			
27-MAR-12		Item	7613023416555-HI INSULATING FOAM CF 812 WD	2.00	2.00	0.00			
27-MAR-12		Item	7613023416555-HI INSULATING FOAM CF 812 WD	0.00	1.00	-1.00			
27-MAR-12	BJ	Item	047563502183-IBA OC R-13 KFT 23"X93" 148.54 SF	0.00	1.00	-1.00			
27-MAR-12	CANA	Item	047563502251-IBA OC R-30 KFT 24"X48" 88 SF	0.00	1.00	-1.00			
27-MAR-12	CAV	Item	047563502251-IBA OC R-30 KFT 24"X48" 88 SF	0.00	1.00	-1.00			
27-MAR-12	EW	Item	047563309188-IBA OC R-13 KF 15.25"X105" 133.44 SF FSBAT	0.00	6.00	-6.00			

ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

Gale Contractor 1730

PIEDMONT GCS - PIEDMONT - 028

SALES ORDER # 400189976

27-MAR-12	EW	Item	047563309263-IBA OC R-13 KFT 15"X93" 125.94 SF	0.00	5.00	-5.00	[redacted]
27-MAR-12	EW	Item	047563500028-IBA OC R-13 KF 15.25"X93" 128.04 SF FSBAT	0.00	2.00	-2.00	
27-MAR-12	EW	Item	047563503395-IBA OC R-19 KFT 15"X93" 77.5 SF	0.00	1.00	-1.00	
27-MAR-12	FOG	Item	086397689073-IBA OC R-19 KFT 23"X48" 122.67 SF	0.00	3.00	-3.00	
27-MAR-12	GCW	Item	047563309164-IBA OC R-13 KFT 15"X105" 131.25 SF	0.00	2.00	-2.00	
27-MAR-12	EW	Miscellaneous*	ROUNDING-BATT-PRICE ROUNDING ON SALES ORDER	0.00	27.00	-27.00	
			TOTALS	2.00	67.00	-65.00	

FINANCIAL SUMMARY	REVENUE AMOUNT	ESTIMATED DM	ACTUAL DM	ESTIMATED DM%	ACTUAL DM%	DIFFERENCE
	920.90		[redacted]			

MCS_Standard_Order_Type **SO#** 400189976 **TRIP** - Blow

DATE	AREA	RESOURCE TYPE	DESCRIPTION	ESTIMATED QTY	ACTUAL QTY	DIFFERENCE	ESTIMATED COST	ACTUAL COST	DIFFERENCE
10-APR-12		Employee	Taylor, Desmond	0.00	0.00	0.00	[redacted]		
10-APR-12		Employee	Wilging, David	0.00	0.00	0.00			
	R-30/CAFI at	Item	047563701289-IBL OC PROPINK L77 PINK FIBERGLAS 33 LB	21.00	0.00	21.00			
			TOTALS	21.00	0.00	21.00			

FINANCIAL SUMMARY	REVENUE AMOUNT	ESTIMATED DM	ACTUAL DM	ESTIMATED DM%	ACTUAL DM%	DIFFERENCE
	0.00		[redacted]			

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DATE 10-APR-2012 05:39:09 AM

INSULATION WORK TICKET

WORK ORDER #: 400189976 Blow
Shift # 1

SCHEDULE DATE 10-APR-12
TRUCK# T02-028 / 28-1759

INSTALLER INFO	SPLIT
Taylor, Desmond	50%
Wilging, David	50%

CUSTOMER NAME
DR HORTON
100 AUGUSTA ST
GREENVILLE SC
29601

SALES PERSON:
Hudgins, Shawn

JOBSITE ADDRESS
ROSE HILL Phase NA/Lot 264/Block NA
6 DARTFORD COURT NA
EASLEY SC 29642

ADDITIONAL INFO
LOB Residential
UNIT TYPE Tract/Production

FINISHED / UNFINISHED

TRANSACTION TYPE : MCS_Standard_Order_Type

Job Site Superintendent Name :
Phone Number :

Trip : Reserved
Plan Number :

DIRECTIONS / INTERSECTION:

LINE NUMBER	WORK AREA	ITEM #	ITEM DESCRIPTION	UOM	UNITS NEEDED	INSTALLED QUANTITY	SF	USED	F/U	Reserved
4.1	R-30/CAFlat	047563701289	IBL OC PROPINK L77 PINK FIBERGLAS 33 LB	BG	21	0	1580			R

****** Bid items ******

Back of House w/ Baffles

LINE NUMBER	AREA	ADDITIONAL MATERIAL/BRAND	FT/PACK	QTY. INSTALLED	FOOTAGE	F/U

INSTALLER INSTRUCTIONS:
ROBERT 704-913-9709, FOAM BEHIND OUTLETS ON EXTERIOR WALLS AND AROUND WINDOWS AND DOORS, CAULK ALL BASE PLATES, TOP PLATES AND T CORNERS. MAKE SURE THE FLOOR OVER THE GARAGE IS PUSHED TO THE PLYWOOD AND HELD WITH TIGER TEETH.

SCHEDULER NOTES:

SAFETY QUESTIONS:

Are you endangered by other sub's actions?	YES_____NO_✓
Do guardrails/toeboards need to be installed?	YES_____NO_✓
Do you additional/diffferent equipment?	YES_____NO_✓
Do you need to tape or barricade?	YES_____NO_✓
Is the worksite dirty or unclear?	YES_____NO_✓

Note: IF "YES" PLEASE PLACE COMMENTS ON THE BACK OF THE SHEET AND TAKE APPROPRIATE CORRECTIVE BEFORE STARTING ANY WORK

INSTALLER'S SIGNATURE: DeD! **DATE:** _____ **TIME:** _____

Gale Contractor 1732

PICK LIST

DAVID DEZ

DIVISION NAME PIEDMONT GCS - PIEDMONT
DIVISION # 028

SCHEDULE DATE 10-APR-2012
SHIFT # 1

TRUCK #

T02-028

LOGICAL NAME # 28-1759

ON Consolidated

LOAD SEQUENCE - 1

W.O.#	CUSTOMER NAME	SITE ADDRESS
400203389 Floor-Crawl	AMERICAS HOME PLACE	CUSTOM BUILDER 36 GARREN RD EASLEY SC 29640

PRODUCT/LPN NUMBER	UOM	LOAD?	QTY NEEDED	QTY TAKEN	QTY RETURN	QTY USED
047563503395 IBA OC R-19 KFT 15"X93" 77.5 SF	BG	Y	21			
SPPF0612B POLY FILM,6M12' X100' BLK	SF	Y	1477			

NOTES :-

LOAD SEQUENCE - 2

W.O.#	CUSTOMER NAME	SITE ADDRESS
400203389 Batt	AMERICAS HOME PLACE	CUSTOM BUILDER 36 GARREN RD EASLEY SC 29640

PRODUCT/LPN NUMBER	UOM	LOAD?	QTY NEEDED	QTY TAKEN	QTY RETURN	QTY USED
047563309188 IBA OC R-13 KF 15.25"X105" 133.44 SF FSBAT	BG	Y	9			
047563502251 IBA OC R-30 KFT 24"X48" 88 SF	BG	Y	1			

NOTES :-

LOAD SEQUENCE - 3

W.O.#	CUSTOMER NAME	SITE ADDRESS
400203389 Air Infiltration	AMERICAS HOME PLACE	CUSTOM BUILDER 36 GARREN RD EASLEY SC 29640

PRODUCT/LPN NUMBER	UOM	LOAD?	QTY NEEDED	QTY TAKEN	QTY RETURN	QTY USED
7613023416555 HI INSULATING FOAM CF 812 WD	PC	Y	3			
CAULK						

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DAVED
DEZ

PICK LIST

DIVISION NAME PIEDMONT GCS - PIEDMONT
DIVISION # 028

SCHEDULE DATE 10-APR-2012
SHIFT # 1

NOTES :-

LOAD SEQUENCE - 4

W.O.#	CUSTOMER NAME	SITE ADDRESS
400189976 Blow	DR HORTON	ROSE HILL Phase NA/Lot 264/Block NA 6 DARTFORD COURT NA EASLEY SC 29642

PRODUCT/LPN NUMBER	UOM	LOAD?	QTY NEEDED	QTY TAKEN	QTY RETURN	QTY USED
047563701289 IBL OC PROPINK L77 PINK FIBERGLAS 33 LB	BG	Y	21			

NOTES :-

LOAD SEQUENCE - 5

W.O.#	CUSTOMER NAME	SITE ADDRESS
400163755 Blow	DR HORTON	ROSE HILL Phase NA/Lot LOT 143/Block NA 143 DUXBURY LANE LOT 143 NA EASLEY SC 29642

PRODUCT/LPN NUMBER	UOM	LOAD?	QTY NEEDED	QTY TAKEN	QTY RETURN	QTY USED
047563701289 IBL OC PROPINK L77 PINK FIBERGLAS 33 LB	BG	Y	14			

NOTES :-

LOAD SEQUENCE - 6

W.O.#	CUSTOMER NAME	SITE ADDRESS
400099970 Blow	DR HORTON	ROSE HILL Phase NA/Lot 27/Block NA 134 BERWICK COURT NA EASLEY SC 29642

PRODUCT/LPN NUMBER	UOM	LOAD?	QTY NEEDED	QTY TAKEN	QTY RETURN	QTY USED
047563701289 IBL OC PROPINK L77 PINK FIBERGLAS 33 LB	BG	Y	21			

NOTES :-

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PICK LIST

DIVISION NAME PIEDMONT GCS - PIEDMONT
DIVISION # 028

SCHEDULE DATE 10-APR-2012
SHIFT # 1

CONSOLIDATED TOTAL

PRODUCT NUMBER	UOM	LOAD?	QTY NEEDED	QTY TAKEN	QTY RETURN	QTY USED
7613023416555 HI INSULATING FOAM CF 812 WD	PC	Y	3	2	0	2
047563503395 IBA OC R-19 KFT 15"X93" 77.5 SF	BG	Y	21	25	6	21
047563309188 IBA OC R-13 KF 15.25"X105" 133.44 SF FSBAT	BG	Y	9	10	4	6
SPPF0612B POLY FILM,6M12' X100' BLK	SF	Y	1477	2 rolls	0	2400
047563502251 IBA OC R-30 KFT 24"X48" 88 SF	BG	Y	1	2	1	1
047563701289 IBL OC PROPINK L77 PINK FIBERGLAS 33 LB	BG	Y	56	2	2	0

JM 43 − 36 = 7

OC 13 R15-Y105 TBS

79 | 24 | 55

1 | 1 | 0

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Run Date 25-APR-12

JOB STATUS REPORT
(DETAIL)

SALES ORDER # 400189976

PIEDMONT GCS - PIEDMONT - 028

Sales Order #	**400189976**	**Status**	**UN FINISHED**		
Cust # Name	DR HORTON		**Salesman**	Hudgins, Shawn	
Project Name	ROSE HILL		**Line of Business**	Residential	
Lot-Block-Phase	Phase NA/Lot 264/Block NA		**Unit Type**	Tract/Production	
Job Address	Phase NA/Lot 264/Block NA,6 DARTFORD COURT		**Plan Number**		
County	Pickens				
City \ State \ Zip	EASLEY\SC\29642				

BILLING DETAILS	
Billing Type	**DRAW**
Batt	1060.00
Blow	382.00
Contract Amt	1442.00
Sales Order Amt	1442.00

SUMMARY TO DATE	
ACTUAL QTY	25.00
ESTIMATED QTY	23.00
[redacted]	[redacted]
REVENUE AMOUNT	920.90
BILLED AMOUNT	1060.00
% BILLED	115.10
[redacted]	[redacted]

MCS_Standard_Order_Type | **SO#** 400189976 | **TRIP** - Batt

DATE	AREA	RESOURCE TYPE	DESCRIPTION	ESTIMATED QTY	ACTUAL QTY	DIFFERENCE	ESTIMATED COST	ACTUAL COST	DIFFERENCE
22-MAR-12	EW	Miscellaneous*	ROUNDING-BATT-PRICE ROUNDING ON SALES ORDER	0.00	1.00	-1.00	[redacted]		
22-MAR-12	EW	Miscellaneous*	ROUNDING-BATT-PRICE ROUNDING ON SALES ORDER	0.00	2.00	-2.00			
22-MAR-12	EW	Miscellaneous*	ROUNDING-BATT-PRICE ROUNDING ON SALES ORDER	0.00	12.00	-12.00			
27-MAR-12		Employee	Sandoval, Felix	0.00	0.00	0.00			
27-MAR-12		Employee	Mangrum, Anthony Mark	0.00	0.00	0.00			
27-MAR-12	FOG	Item	086397689073-IBA OC R-19 KFT 23"X48" 122.67 SF	0.00	3.00	-3.00			
27-MAR-12	GCW	Item	047563309164-IBA OC R-13 KFT 15"X105" 131.25 SF	0.00	2.00	-2.00			
27-MAR-12		Item	7613023416555-HI INSULATING FOAM CF 812 WD	2.00	2.00	0.00			
27-MAR-12		Item	7613023416555-HI INSULATING FOAM CF 812 WD	0.00	1.00	-1.00			
27-MAR-12	EW	Item	047563503395-IBA OC R-19 KFT 15"X93" 77.5 SF	0.00	1.00	-1.00			
27-MAR-12	BJ	Item	047563502183-IBA OC R-13 KFT 23"X93" 148.54 SF	0.00	1.00	-1.00			

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Gale Contractor 1736

27-MAR-12	CANA	Item	047563502251-IBA OC R-30 KFT 24"X48" 88 SF	0.00	1.00	-1.00	[redacted]
27-MAR-12	CAV	Item	047563502251-IBA OC R-30 KFT 24"X48" 88 SF	0.00	1.00	-1.00	
27-MAR-12	EW	Item	047563309188-IBA OC R-13 KF 15.25"X105" 133.44 SF FSBAT	0.00	6.00	-6.00	
27-MAR-12	EW	Item	047563309263-IBA OC R-13 KFT 15"X93" 125.94 SF	0.00	5.00	-5.00	
27-MAR-12	EW	Item	047563500028-IBA OC R-13 KF 15.25"X93" 128.04 SF FSBAT	0.00	2.00	-2.00	
27-MAR-12	EW	Miscellaneous*	ROUNDING-BATT-PRICE ROUNDING ON SALES ORDER	0.00	27.00	-27.00	
			TOTALS	2.00	67.00	-65.00	

FINANCIAL SUMMARY	REVENUE AMOUNT	ESTIMATED DM	ACTUAL DM	ESTIMATED DM%	ACTUAL DM%	DIFFERENCE
	920.90	[redacted]				

MCS_Standard_Order_Type **SO#** 400189976 **TRIP** - Blow

DATE	AREA	RESOURCE TYPE	DESCRIPTION	ESTIMATED QTY	ACTUAL QTY	DIFFERENCE	ESTIMATED COST	ACTUAL COST	DIFFERENCE
10-APR-12		Employee	Taylor, Desmond	0.00	0.00	0.00	[redacted]		
10-APR-12		Employee	Wilging, David	0.00	0.00	0.00			
16-APR-12		Employee	Wilging, David	0.00	0.00	0.00			
16-APR-12		Employee	Taylor, Desmond	0.00	0.00	0.00			
20-APR-12		Employee	Taylor, Desmond	0.00	0.00	0.00			
20-APR-12		Employee	Wilging, David	0.00	0.00	0.00			
	R-30/CAFI at	Item	047563701289-IBL OC PROPINK L77 PINK FIBERGLAS 33 LB	21.00	0.00	21.00			
			TOTALS	21.00	0.00	21.00	[redacted]		

FINANCIAL SUMMARY	REVENUE AMOUNT	ESTIMATED DM	ACTUAL DM	ESTIMATED DM%	ACTUAL DM%	DIFFERENCE
	0.00	[redacted]				

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Gale Contractor 1737

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DATE 20-APR-2012 06:25:28 AM

INSULATION WORK TICKET

SCHEDULE DATE 20-APR-12

TRUCK# T02-028 / 28-1759

INSTALLER INFO	SPLIT
Taylor, Desmond	50%
Wilging, David	50%

WORK ORDER #: 400189976 Blow

Shift # 1

CUSTOMER NAME
DR HORTON
100 AUGUSTA ST
GREENVILLE SC
29601

SALES PERSON:
Hudgins, Shawn

JOBSITE ADDRESS
ROSE HILL Phase NA/Lot 264/Block NA
6 DARTFORD COURT NA
EASLEY SC 29642

ADDITIONAL INFO
LOB Residential
UNIT TYPE Tract/Production

FINISHED / UNFINISHED

TRANSACTION TYPE : MCS_Standard_Order_Type

Job Site Superintendent Name :
Phone Number :

Trip : Reserved
Plan Number :

DIRECTIONS / INTERSECTION:

LINE NUMBER	WORK AREA	ITEM #	ITEM DESCRIPTION	UOM	UNITS NEEDED	INSTALLED QUANTITY	SF	USED	F/U	Reserved
4.1	R-30/CAFlat	047563701289	IBL OC PROPINK L77 PINK FIBERGLAS 33 LB	BG	21	0	1580			R

****** Bid items ******

No Siding Backside of House
Dry Run!

LINE NUMBER	AREA	ADDITIONAL MATERIAL/BRAND	FT/PACK	QTY. INSTALLED	FOOTAGE	F/U

INSTALLER INSTRUCTIONS:
ROBERT 704-913-9709, FOAM BEHIND OUTLETS ON EXTERIOR WALLS AND AROUND WINDOWS AND DOORS, CAULK ALL BASE PLATES, TOP PLATES AND T CORNERS. MAKE SURE THE FLOOR OVER THE GARAGE IS PUSHED TO THE PLYWOOD AND HELD WITH TIGER TEETH.

SCHEDULER NOTES:

SAFETY QUESTIONS:

Are you endangered by other sub's actions?	YES_____NO ✓
Do guardrails/toeboards need to be installed?	YES_____NO ✓
Do you additional/diffferent equipment?	YES_____NO ✓
Do you need to tape or barricade?	YES_____NO ✓
Is the worksite dirty or unclear?	YES_____NO ✓

Note: IF "YES" PLEASE PLACE COMMENTS ON THE BACK OF THE SHEET AND TAKE APPROPRIATE CORRECTIVE BEFORE STARTING ANY WORK

INSTALLER'S SIGNATURE: DeO! **DATE:** 4/20/12 **TIME:**

Rose Hill DRHorton

Directions to 101 Sturbridge Ct, Easley, SC 29642
9.2 mi – about 17 mins

Save trees. Go green!

A 1800 Piedmont Hwy, Piedmont, SC 29673

	1. Head north on Piedmont Rd toward County Rd 226/Lenhardt Crossing	go 0.8 mi
	2. Take the 3rd right onto White Horse Rd	go 0.7 mi
	3. Merge onto I-85 S via the ramp to Atlanta	go 2.8 mi
	4. Take exit 40 for S Carolina 153 toward Easley	go 0.2 mi
153	5. Turn right onto S Carolina 153	go 1.6 mi
	6. Turn left onto 3 Bridges Rd	go 2.8 mi
	7. Turn left	go 0.2 mi

B 101 Sturbridge Ct, Easley, SC 29642

Directions weren't right? Please find your route on maps.google.com and click "Report a problem" at the bottom left.

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Gale Contractor 1739

Header Section

SALES ORDER # 400189976

Div # & Name	028-PIEDMONT GCS - PIEDMONT	**Dispatch From Date**	
Quote #	1125874	**Dispatch To Date**	
Template Order #	100103074	**Prevailing Wage**	No
Trade/Product Line	INSULATION		
Status	UNFINISHED		
Customer # & Name	20047 / DR HORTON		
Custom/Comm/Subdiv	ROSE HILL		
Project Name/Lot/Block	Phase NA/Lot 264/Block NA		
Job Address	6 DARTFORD COURT		
County	Pickens		
City / State / Zip	EASLEY/ SC/ 29642/ US		
Salesman	Hudgins, Shawn		
Line of Business	Residential		
Unit Type	Tract/Production		
Plan Number			

Billing Details

Standard	
Billing Type	DRAW
Batt	1060.00
Blow	382.00
Contract Amt	1442.00
Total Contract	1442.00

Summary To Date

	Amount	% of Revenue
Total Estimated Quantity	47.00	
Total Actual Quantity	25.00	
Estimated Material Cost	[redacted]	
Actual Material Cost		
Estimated Labor Cost		
Actual Labor Cost		
Estimated Additional Costs	0.00	0.00
Actual Additional Costs	0.00	0.00
Total Revenue	1,442.00	
Earned Revenue	920.90	
Billed Amount	1,060.00	
Estimated DM		[redacted]
Actual DM		

Billing Details Section

Date	SO #	Invoice #	Order Type	Billing Type	Billed Amount	%	Retainage	%
28-MAR-12	400189976	51433161	Standard	DRAW	1,060.00	73.51	0.00	0.00
				Total	1,060.00	73.51	0.00	0.00

Line Summary and Status Section

SO #	Order Type	Trip	Work Area	Item Number	Item Description	UOM	Est. Qty	Shipped Qty	Diff.	Line Status
400189976	Standard	Batt	EW	047563305500	IBA OC R-13 KF 15.25"X105" 133.44 SF FSBAT	BG	6	0	6	Cancelled
400189976	Standard	Blow	CAFlat	INS-FG-BLOW R-30	INSULATION FIBERGLASS BLOW R-30	SF	1580	0	1580	Awaiting Shipping
400189976	Standard	Batt	EW	047563500028	IBA OC R-13 KF 15.25"X93" 128.04 SF FSBAT	DO	2	2	0	Closed
400189976	Standard	Batt		ADDITIONALLABOR-BATT	ADDITIONAL LABOR-BATT	DO	35	35	0	Closed
400189976	Standard	Batt	EW	047563309164	IBA OC R-13 KFT 15"X105" 131.25 SF	DO	6	0	6	Cancelled
400189976	Standard	Batt	CAV	047563502251	IBA OC R-30 KFT 24"X48" 88 SF	DO	1	1	0	Closed
400189976	Standard	Batt	BJ	047563305746	IBA OC R-13 KFT 23"X93" 148.54 SF	BG	1	0	1	Cancelled
400189976	Standard	Batt	CAV	047563305685	IBA OC R-30 KFT 24"X48" 88	BG	1	0	1	Cancelled

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Gale Contractor 1740

Line Summary and Status Section

SO #	Order Type	Trip	Work Area	Item Number	Item Description	UOM	Est. Qty	Shipped Qty	Diff.	Line Status
					SF					
400189976	Standard	Batt	FOG	086397695555	IBA OC R-19 KFT 23"X93" 118.83 SF	BG	3	0	3	Cancelled
400189976	Standard	Batt	EW	086397695555	IBA OC R-19 KFT 23"X93" 118.83 SF	BG	1	0	1	Cancelled
400189976	Standard	Batt	EW	047563309263	IBA OC R-13 KFT 15"X93" 125.94 SF	DO	5	5	0	Closed
400189976	Standard	Batt	EW	ROUNDING-BATT	PRICE ROUNDING ON SALES ORDER	DO	42	27	15	Closed
400189976	Standard	Batt	CANA	047563305685	IBA OC R-30 KFT 24"X48" 88 SF	BG	1	0	1	Cancelled
400189976	Standard	Batt	EW	086397689073	IBA OC R-19 KFT 23"X48" 122.67 SF	BG	1	0	1	Closed
400189976	Standard	Batt	EW	086397688939	IBA OC R-19 KFT 15"X48" 80 SF	BG	1	0	1	Cancelled
400189976	Standard	Batt	FOG	086397689073	IBA OC R-19 KFT 23"X48" 122.67 SF	BG	3	3	0	Closed
400189976	Standard	Batt	GCW	047563309164	IBA OC R-13 KFT 15"X105" 131.25 SF	DO	2	2	0	Closed
400189976	Standard	Batt	EW	047563309263	IBA OC R-13 KFT 15"X93" 125.94 SF	DO	2	0	2	Cancelled
400189976	Standard	Batt	EW	047563309188	IBA OC R-13 KF 15.25"X105" 133.44 SF FSBAT	BG	6	6	0	Closed
400189976	Standard	Blow	R-30/CAFlat	047563701289	IBL OC PROPINK L77 PINK FIBERGLAS 33 LB	DO	21	0	21	Awaiting Shipping
400189976	Standard	Batt	EW	047563305456	IBA OC R-13 KF 15.25"X93" 106.56 SF FSBAT	BG	8	0	8	Cancelled
400189976	Standard	Batt	BJ	047563502183	IBA OC R-13 KFT 23"X93" 148.54 SF	DO	1	1	0	Closed
400189976	Standard	Batt	EW	086397689073	IBA OC R-19 KFT 23"X48" 122.67 SF	BG	1	0	1	Cancelled
400189976	Standard	Batt	GCW	047563305500	IBA OC R-13 KF 15.25"X105" 133.44 SF FSBAT	BG	2	0	2	Cancelled
400189976	Standard	Batt		7613023416555	HI INSULATING FOAM CF 812 WD	PC	3	3	0	Closed
400189976	Standard	Batt	CANA	047563502251	IBA OC R-30 KFT 24"X48" 88 SF	DO	1	1	0	Closed
400189976	Standard	Batt	EW	047563503395	IBA OC R-19 KFT 15"X93" 77.5 SF	DO	1	1	0	Closed

Activity Details Section

Date	Trip	Work Area	SO #	Item # / DIV #	Item Description / Employee Name	UOM	Qty Ship	REV	Material	Labor
22-MAR-12	Batt	EW	400189976	086397689073	IBA OC R-19 KFT 23"X48" 122.67 SF	BG	1	7.79	[redacted]	
22-MAR-12	Batt	EW	400189976	ROUNDING-BATT	PRICE ROUNDING ON SALES ORDER	DO	15	0.15		

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Gale Contractor 1741

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Activity Details Section

Date	Trip	Work Area	SO #	Item # / DIV #	Item Description / Employee Name	UOM	Qty Ship	REV	Material	Labor
27-MAR-12	Batt	EW	400189976	047563309188	IBA OC R-13 KF 15.25"X105" 133.44 SF FSBAT	BG	6	234.84	[redacted]	
27-MAR-12	Batt	FOG	400189976	086397689073	IBA OC R-19 KFT 23"X48" 122.67 SF	BG	3	104.07		
27-MAR-12	Batt	EW	400189976	086397689073	IBA OC R-19 KFT 23"X48" 122.67 SF	BG	0	0.00		
27-MAR-12	Batt		400189976	7613023416555	HI INSULATING FOAM CF 812 WD	PC	3	17.16		
27-MAR-12	Batt	EW	400189976	047563309263	IBA OC R-13 KFT 15"X93" 125.94 SF	BG	5	164.85		
27-MAR-12	Batt	GCW	400189976	047563309164	IBA OC R-13 KFT 15"X105" 131.25 SF	BG	2	82.46		
27-MAR-12	Batt	EW	400189976	047563309164	IBA OC R-13 KFT 15"X105" 131.25 SF	BG	0	0.00		
27-MAR-12	Batt	EW	400189976	047563500028	IBA OC R-13 KF 15.25"X93" 128.04 SF FSBAT	BG	2	65.92		
27-MAR-12	Batt	CANA	400189976	047563502251	IBA OC R-30 KFT 24"X48" 88 SF	BG	1	62.08		
27-MAR-12	Batt	CAV	400189976	047563502251	IBA OC R-30 KFT 24"X48" 88 SF	BG	1	38.58		
27-MAR-12	Batt	EW	400189976	047563503395	IBA OC R-19 KFT 15"X93" 77.5 SF	BG	1	26.02		
27-MAR-12	Batt	BJ	400189976	047563502183	IBA OC R-13 KFT 23"X93" 148.54 SF	BG	1	46.71		
27-MAR-12	Batt		400189976	ADDITIONALLABOR-BATT	ADDITIONAL LABOR-BATT	DO	35	70.00		
27-MAR-12	Batt	EW	400189976	ROUNDING-BATT	PRICE ROUNDING ON SALES ORDER	DO	27	0.27		
27-MAR-12	Batt		400189976	Div# 028	(45%) Mangrum, Anthony Mark	DO				
27-MAR-12	Batt		400189976	Div# 028	(55%) Sandoval, Felix	DO				
20-APR-12	Blow		400189976	Div# 028	(50%) Taylor, Desmond Lamar	DO				
20-APR-12	Blow		400189976	Div# 028	(50%) Wilging, David P	DO				
						Total	103	920.90		

DATE 03-MAY-2012 05:34:54 AM

INSULATION WORK TICKET

SCHEDULE DATE 03-MAY-12

WORK ORDER #: 400189976 Blow

Shift # 1

TRUCK# T02-028 / 28-1758

INSTALLER INFO	SPLIT
Wilging, David	50%
Taylor, Desmond	50%

CUSTOMER NAME
DR HORTON
100 AUGUSTA ST
GREENVILLE SC
29601

SALES PERSON:
Hudgins, Shawn

JOBSITE ADDRESS
ROSE HILL Phase NA/Lot 264/Block NA
6 DARTFORD COURT NA
EASLEY SC 29642

ADDITIONAL INFO
LOB Residential
UNIT TYPE Tract/Production

FINISHED / UNFINISHED

TRANSACTION TYPE : MCS_Standard_Order_Type

Job Site Superintendent Name :
Phone Number :

Trip : Reserved
Plan Number :

DIRECTIONS / INTERSECTION:

LINE NUMBER	WORK AREA	ITEM #	ITEM DESCRIPTION	UOM	UNITS NEEDED	INSTALLED QUANTITY	SF	USED	F/U	Reserved
4.1	R-30/CAFlat	047563701289	IBL OC PROPINK L77 PINK FIBERGLAS 33 LB	BG	21	0	1580			R

****** Bid items ******

No Soffits

LINE NUMBER	AREA	ADDITIONAL MATERIAL/BRAND	FT/PACK	QTY. INSTALLED	FOOTAGE	F/U

INSTALLER INSTRUCTIONS:
ROBERT 704-913-9709, FOAM BEHIND OUTLETS ON EXTERIOR WALLS AND AROUND WINDOWS AND DOORS, CAULK ALL BASE PLATES, TOP PLATES AND T CORNERS. MAKE SURE THE FLOOR OVER THE GARAGE IS PUSHED TO THE PLYWOOD AND HELD WITH TIGER TEETH.

SCHEDULER NOTES:

SAFETY QUESTIONS:

Are you endangered by other sub's actions?	YES_____NO_____
Do guardrails/toeboards need to be installed?	YES_____NO_____
Do you additional/diffferent equipment?	YES_____NO_____
Do you need to tape or barricade?	YES_____NO_____
Is the worksite dirty or unclear?	YES_____NO_____

Note: IF "YES" PLEASE PLACE COMMENTS ON THE BACK OF THE SHEET AND TAKE APPROPRIATE CORRECTIVE BEFORE STARTING ANY WORK

INSTALLER'S SIGNATURE: _____ **DATE:** _____ **TIME:**_____

Gale Contractor 1743

ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON COMMON PLEAS - CASE#2019CP0401942

Header Section

SALES ORDER # 400287353

Div # & Name	028-PIEDMONT GCS - PIEDMONT
Quote #	1200442
Template Order #	100155294
Trade/Product Line	GUTTER
Status	FINISHED
Customer # & Name	20047 / DR HORTON
Custom/Comm/Subdiv	ROSE HILL
Project Name/Lot/Block	Phase NA/Lot 264/Block NA
Job Address	6 DARTFORD COURT
County	Pickens
City / State / Zip	EASLEY/ SC/ 29642/ US
Salesman	Hudgins, Shawn
Line of Business	Residential
Unit Type	Tract/Production
Plan Number	FIELDSTONE

Dispatch From Date	
Dispatch To Date	
Prevailing Wage	No

Billing Details

Standard	
Billing Type	DRAW
Gutter Install	423.00
Contract Amt	423.00
Total Contract	423.00

Summary To Date

	Amount	% of Revenue
Total Estimated Quantity	240.00	
Total Actual Quantity	248.00	
Estimated Material Cost	[redacted]	
Actual Material Cost		
Estimated Labor Cost		
Actual Labor Cost		
Estimated Additional Costs	0.00	0.00
Actual Additional Costs	0.00	0.00
Total Revenue	423.00	
Earned Revenue	423.00	
Billed Amount	423.00	
Estimated DM		[redacted]
Actual DM		

Billing Details Section

Date	SO #	Invoice #	Order Type	Billing Type	Billed Amount	%	Retainage	%
19-JUL-12	400287353	51696239	Standard	DRAW	423.00	100.00	0.00	0.00
				Total	423.00	100.00	0.00	0.00

Line Summary and Status Section

SO #	Order Type	Trip	Work Area	Item Number	Item Description	UOM	Est. Qty	Shipped Qty	Diff.	Line Status
400287353	Standard	Gutter Install	ADD	MBYO5WHT	GT MITRE 5" BAY O/S HI GLOSS WHITE (80 DEG)	PC	4	4	0	Closed
400287353	Standard	Gutter Install	ADD	MSI5WHT	GT MITRE 5" STRIP I/S HI GLOSS WHITE (80 DEG)	PC	1	1	0	Closed
400287353	Standard	Gutter Install	ADD	MSO5WHT	GT MITRE 5 STRIP O/S HI GLOSS WHITE (80 DEG)	PC	1	1	0	Closed
400287353	Standard	Gutter Install	Exterior	C113427CLY	GT COIL 11 3/4 X 027 CLAY	LB	130	130	0	Closed
400287353	Standard	Gutter Install	Exterior	E23BCLY	GT ELBOW 2X3 B CLAY	PC	2	2	0	Closed
400287353	Standard	Gutter Install	Exterior	E23ACLY	GT ELBOW 2X3 A CLAY	PC	18	18	0	Closed
400287353	Standard	Gutter Install	Exterior	DS23CLY-LF	GT DOWNSPOUT 2X3 CLAY	DO	90	90	0	Closed
400287353	Standard	Gutter Install	ADD	MBYI5WHT	GT MITRE 5" BAY I/S HI GLOSS WHITE (80 DEG)	PC	2	2	0	Closed

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Gale Contractor 1744

ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

Activity Details Section

Date	Trip	Work Area	SO #	Item # / DIV #	Item Description / Employee Name	UOM	Qty Ship	REV	Material	Labor
18-JUL-12	Gutter Install	Exterior	400287353	E23ACLY	GT ELBOW 2X3 A CLAY	PC	18	50.40	[redacted]	
18-JUL-12	Gutter Install	ADD	400287353	MBYI5WHT	GT MITRE 5" BAY I/S HI GLOSS WHITE (80 DEG)	PC	2	0.00		
18-JUL-12	Gutter Install	ADD	400287353	MSO5WHT	GT MITRE 5 STRIP O/S HI GLOSS WHITE (80 DEG)	PC	1	0.00		
18-JUL-12	Gutter Install	Exterior	400287353	E23BCLY	GT ELBOW 2X3 B CLAY	PC	2	5.50		
18-JUL-12	Gutter Install	ADD	400287353	MBYO5WHT	GT MITRE 5" BAY O/S HI GLOSS WHITE (80 DEG)	PC	4	0.00		
18-JUL-12	Gutter Install	ADD	400287353	MSI5WHT	GT MITRE 5" STRIP I/S HI GLOSS WHITE (80 DEG)	PC	1	0.00		
18-JUL-12	Gutter Install	Exterior	400287353	DS23CLY-LF	GT DOWNSPOUT 2X3 CLAY	LF	90	130.50		
18-JUL-12	Gutter Install	Exterior	400287353	C113427CLY	GT COIL 11 3/4 X 027 CLAY	LF	130	236.60		
18-JUL-12	Gutter Install		400287353	Add Pay	(PIECE RATE ADJUSTMENT) Gonzalez, Jose Juan	DO				
18-JUL-12	Gutter Install		400287353	Div# 028	(50%) Kinman, Shannon Laverne	DO				
18-JUL-12	Gutter Install		400287353	Div# 028	(50%) Gonzalez, Jose Juan	DO				
18-JUL-12	Gutter Install		400287353	Add Pay	(PIECE RATE ADJUSTMENT) Kinman, Shannon Laverne	DO				
						Total	248	423.00		

DATE 18-JUL-2012 06:06:06 AM

GUTTER WORK TICKET

SCHEDULE DATE 18-JUL-12

TRUCK# T14-028 / 28-4598

INSTALLER INFO	SPLIT
Kinman, Shannon	50%
Gonzalez, Jose	50%

WORK ORDER #: 400287353 Gutter Install **Shift #** 1

CUSTOMER NAME
DR HORTON
100 AUGUSTA ST
GREENVILLE SC
29601

(3)

SALES PERSON:
Hudgins, Shawn

JOBSITE ADDRESS
ROSE HILL Phase NA/Lot 264/Block NA
6 DARTFORD COURT NA
EASLEY SC 29642

ADDITIONAL INFO
LOB Residential
UNIT TYPE Tract/Production

FINISHED / UNFINISHED

$ 150.60

TRANSACTION TYPE : MCS_Standard_Order_Type

Job Site Superintendent Name :
Phone Number :

Trip : Reserved
Plan Number : FIELDSTONE

DIRECTIONS / INTERSECTION:

LINE NUMBER	WORK AREA	ITEM #	ITEM DESCRIPTION	UOM	UNITS NEEDED	INSTALLED QUANTITY	SF	USED	F/U	Reserved
1.1	Exterior	C113427CLY	GT COIL 11 3/4 X 027 CLAY	LF	130	0		130		R
2.1	Exterior	DS23CLY-LF	GT DOWNSPOUT 2X3 CLAY	LF	90	0		90		R
3.1	Exterior	E23ACLY	GT ELBOW 2X3 A CLAY	PC	18	0		18		R
4.1	Exterior	E23BCLY	GT ELBOW 2X3 B CLAY	PC	2	0		2		R

GT STRIP MITRE L/S — 1 WHITE
GT STRIP MITRE O/S — 1 WHITE
GT MITRES V WINDOW L/S — 2 WHITE
GT TITRES V WINDOW O/S — 4 WHITE

LINE NUMBER	AREA	ADDITIONAL MATERIAL/BRAND	FT/PACK	QTY. INSTALLED	FOOTAGE	F/U

INSTALLER INSTRUCTIONS:
ROBERT 704-913-9709, DONT FORGET, 2X3 DOWN SPOUTS DON'T BRING ANYTHING BACK INTO INVENTORY!!!! IF YOU WANT TO KEEP SOMETHING LEFT OVER, WRITE IT OFF AND KEEP IT IN BACK.

SCHEDULER NOTES:

SAFETY QUESTIONS:

Are you endangered by other sub's actions?	YES_____NO_✓
Do guardrails/toeboards need to be installed?	YES_____NO_✓
Do you additional/diffferent equipment?	YES_____NO_✓
Do you need to tape or barricade?	YES_____NO_✓
Is the worksite dirty or unclear?	YES_____NO_✓

Note: IF "YES" PLEASE PLACE COMMENTS ON THE BACK OF THE SHEET AND TAKE APPROPRIATE CORRECTIVE BEFORE STARTING ANY WORK

INSTALLER'S SIGNATURE: Shannon Kinman **DATE:** 7-18-12 **TIME:**_____

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Jose Shan

PICK LIST

DIVISION NAME PIEDMONT GCS - PIEDMONT
DIVISION # 028

SCHEDULE DATE 18-JUL-2012
SHIFT # 1

TRUCK #

T14-028

LOGICAL NAME # 28-4598

LOAD SEQUENCE - 1

W.O.#	CUSTOMER NAME	SITE ADDRESS
400287353 Gutter Install	DR HORTON	ROSE HILL Phase NA/Lot 264/Block NA 6 DARTFORD COURT NA EASLEY SC 29642

PRODUCT/LPN NUMBER	UOM	LOAD?	QTY NEEDED	QTY TAKEN	QTY RETURN	QTY USED
C113427CLY GT COIL 11 3/4 X 027 CLAY	LF	Y	130	130	0	130
DS23CLY-LF GT DOWNSPOUT 2X3 CLAY	LF	Y	90	90	0	90
E23ACLY GT ELBOW 2X3 A CLAY	PC	Y	18	18	0	18
E23BCLY GT ELBOW 2X3 B CLAY	PC	Y	2	2	0	2
MISWHT				1	0	1
MSO5WHT				1	0	1
MBY1SWHT				2	0	2
MBY0SWHT				4	0	4

NOTES :-

LOAD SEQUENCE - 2

W.O.#	CUSTOMER NAME	SITE ADDRESS
400338665 Gutter Install	AMERICAS HOME PLACE	CUSTOM BUILDER OAK HILL/Lot 20 1043 EDENBROOKE CIR ANDERSON SC 29625

PRODUCT/LPN NUMBER	UOM	LOAD?	QTY NEEDED	QTY TAKEN	QTY RETURN	QTY USED
C113427CLY GT COIL 11 3/4 X 027 CLAY	LF	Y	164			
DS34CLY-LF GT DOWNSPOUT 3X4 CLAY	LF	Y	60			
E34ACLY GT ELBOW 3X4 A CLAY	PC	Y	18			
MSO5CLY GT MITRE 5 STRIP O/S CLAY	PC	Y	1			
SPLASHGRN GT SPLASHBLOCK GREEN	PC	Y	6			

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PICK LIST

DIVISION NAME PIEDMONT GCS - PIEDMONT
DIVISION # 028

SCHEDULE DATE 18-JUL-2012
SHIFT # 1

NOTES :-

LOAD SEQUENCE - 3

W.O.#	CUSTOMER NAME	SITE ADDRESS
400384223 Gutter Install	MARSH BELL CONSTRUCTION	CUSTOM BUILDER ANDERSON UNIVERSITY/Lot DORM 4 313 SOUTH BOULEVARD ANDERSON SC 29621

PRODUCT/LPN NUMBER	UOM	LOAD?	QTY NEEDED	QTY TAKEN	QTY RETURN	QTY USED
C113427WHT GT COIL 11 3/4 X 027 HI GLOSS WHITE (80 DEG)	LF	Y	380	380	30	350
DS34WHT-LF GT DOWNSPOUT 3X4 HI GLOSS WHITE (80 DEG)	LF	Y	400	400	0	400
E34A WHT				24	0	24
E34C WHT				12	0	12
MSISWHT				8	0	8
MSOSWHT				4	0	4

NOTES :-

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PICK LIST

DIVISION NAME PIEDMONT GCS - PIEDMONT
DIVISION # 028

SCHEDULE DATE 18-JUL-2012
SHIFT # 1

CONSOLIDATED TOTAL

PRODUCT NUMBER	UOM	LOAD?	QTY NEEDED	QTY TAKEN	QTY RETURN	QTY USED
E34ACLY GT ELBOW 3X4 A CLAY	PC	Y	18			
C113427CLY GT COIL 11 3/4 X 027 CLAY	LF	Y	294			
E23ACLY GT ELBOW 2X3 A CLAY	PC	Y	18			
E23BCLY GT ELBOW 2X3 B CLAY	PC	Y	2			
DS34CLY-LF GT DOWNSPOUT 3X4 CLAY	LF	Y	60			
DS34WHT-LF GT DOWNSPOUT 3X4 HI GLOSS WHITE (80 DEG)	LF	Y	400			
SPLASHGRN GT SPLASHBLOCK GREEN	PC	Y	6			
DS23CLY-LF GT DOWNSPOUT 2X3 CLAY	LF	Y	90			
MSO5CLY GT MITRE 5 STRIP O/S CLAY	PC	Y	1			
C113427WHT GT COIL 11 3/4 X 027 HI GLOSS WHITE (80 DEG)	LF	Y	380			

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MASCO Contractor Services

Gale Contractor Services
Lic #: 48822
1800 Piedmont Hwy Piedmont, SC 29673-9251
Tel: (864) 299-5501, Fax: (864) 299-5201

WORK AGREEMENT

4002873553

No schedule date 5/21

100155294

TO: DR HORTON	**RE:** FIELDSTONE B / ROSE HILL 264 / GUTTER	
Address: 100 AUGUSTA ST GREENVILLE, SC 29601	**Job Address:** 6 DARTFORD CT, EASLEY, SC 29642	
Attn : TONY BEHLES	**Date:** 05/16/2012	**Expiration Date:** 08/14/2012
Tel: (864) 370-6000 **Fax:** (864) 627-3885	**Estimator:** Hudgins, Shawn	**Quote #:**1200442 **Version** 1 **Of** 1

Subject to the terms and conditions stated in this agreement, Company is willing to furnish to Customer all material and labor required for the Scope of Work described below:

Scope of Work (the "Work") to be performed:

Plan#: *FIELDSTONE* — *Trade*: GUTTER

EXTERIOR	5 IN ALUMINUM OGEE - K STYLE GUTTER 2X3 DOWNSPOUT

Base Price: **$423.00** **Additional Information:** Gutter Install: $423.00

Has lot 264 been created already? This was on my floor. Hope I didn't forget to give to you!

Clay color
F/S - (1) CAN PAINT IV

SP / REQ.# 290449
P.O.# 5140995

NOTE: This agreement consists of multiple pages. If you do not receive the number of pages noted below, please contact Company directly at the telephone number stated above.

TERMS OF PAYMENT: Payment in full due as stated on invoice regardless of any payment arrangements you have with third parties.
ACCEPTANCE: Company may change and/or withdraw this agreement if Company does not receive your signed acceptance on or before the Expiration Date stated above.
PRICING: The prices stated in this Agreement will remain firm for 90 days after the Date stated above. If performance of this agreement extends beyond this 90 day period, you agree to pay Company's then current pricing ("Price") for any Work performed after that 90 day period. The Prices are based only on the terms and conditions expressly stated in this agreement and include any and all addendums, attachments, schedules or exhibits attached hereto. The Prices exclude any and all terms and conditions not expressly stated herein, including, without limitation, any obligation by Company to name you or any third-party as an additional insured on its insurance policy; to provide per project aggregate insurance coverage for the Work; to participate in any owner controlled, wrap, or similar insurance program; to indemnify or defend you or any third-party from any claims, actions and/or lawsuits of any kind or nature whatsoever except to the limited extent state in Section 18 of this agreement. Any terms or conditions required by you by contract or otherwise in addition to or inconsistent with those expressly stated in this agreement will result in additional charges and/or higher Prices. Any additional work performed is subject to Company's then current pricing (unless Company otherwise agrees in writing) and to this agreement.

CUSTOMER: COMPANY:

By: _____ By: _____
SIGNATURE TITLE SIGNATURE TITLE

Company Name _____ Date: _____

THE INFORMATION CONTAINED IN THIS AGREEMENT IS CONFIDENTIAL. NEITHER THIS AGREEMENT NOR ITS TERMS MAY BE DISCLOSED TO THIRD PARTIES.

Estimate Take Off CONFIDENTIAL

Customer: DR HORTON
Estimator: Hudgins, Shawn
Quote Name: FIELDSTONE B / ROSE HILL 264 / GUTTER
Customer Contact: TONY BEHLES
Customer Address: 100 AUGUSTA ST
GREENVILLE, GREENVILLE, SC 29601, United States
Customer Phone: (864) 370-6000

Quote # 1200442

Job Address: 6 DARTFORD CT, EASLEY, SC 29642

Quote Date: 16-MAY-12

Order Type:
MCS_Template_Order_Type
Trade: GUTTER
Plan#: FIELDSTONE
Unit Type: Tract/Production

Division #: 028

#	Trip	Group	Work Area	Product	UOM	Ext Labor	Labor	Pay	LSP Price	Disc %	Unit Price	QTY	Est. Qty	Ext. Price	Opt/UG
1.2	Gutter Install		Exterior	C113427CLY - GT COIL 11 3/4 X 027 CLAY	LF	[redacted]					$1.82	130	✓	$236.6	
1.4	Gutter Install		Exterior	DS23CLY-LF - GT DOWNSPOUT 2X3 CLAY	LF						$1.45	90	✓	$130.5	
1.6	Gutter Install		Exterior	E23ACLY - GT ELBOW 2X3 A CLAY	PC						$2.80	18	✓	$50.4	
1.8	Gutter Install		Exterior	E23BCLY - GT ELBOW 2X3 B CLAY	PC						$2.75	2	✓	$5.5	

Summary:

Base

Trip	Pay	List Base Price	Disc Amt.	Ext. Price
Gutter Install				$423.00
Total				$423.00

Base: **Disc:** [redacted] **Total:** $423.00

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PURCHASE ORDER

D·R·HORTON® DHI Listed NYSE
America's Builder

VENDOR: 1311444 **OPEN AMOUNT:** 423.00

BUILDERS SERVICES GROUP INC
GALE CONTRACTOR SERVICES
1800 Piedmont Hwy
PIEDMONT SC 29673

Phone: (864) 299-5501 **Fax:** (864) 299-5201

Page	1
Purchase Order Date	01/06/12
Bid Contract Number	100066
FPO Requisition Number	
Purchase Order Number	200154 ON
Sub # / Lot #	70953 / 0264
Swing/Plan/Elevation	R / FIEL / B

Remit To
D.R. HORTON - GREENVILLE

Phone: Fax:

Work Description
44050.01 Gutters & Downspouts

DELIVER TO:

Rose Hill 90'
6 Dartford Court
EASLEY, SC 29642
Lot/Block

Delivery Date

Description	Option	Qty	Unit Price	Extension
Gutters & Downspouts		1.00	423.000	423.00
				423.00

SPECIAL INSTRUCTIONS:

1. We reserve the right to cancel if not filled as specified.
2. Place P.O. number on all invoices.
3. A copy of delivery ticket signed by D.R. Horton personnel and this signed P.O. must accompany each invoice submitted for payment with signed lien release.
4. Partial Shipments will not be accepted.
5. No liability will be assumed for materials placed on the job site that are not installed or that are in the excess of the amount specified on this P.O.
6. This P.O. is applicable only to the jobs indicated.
7. Receipt of this P.O. is binding on supplier for material at prices specified.
8. All terms and conditions of the signed contract and scope of work apply to this document.

Terms	Tax Percentage	Sales Tax	Total PO
			423.00

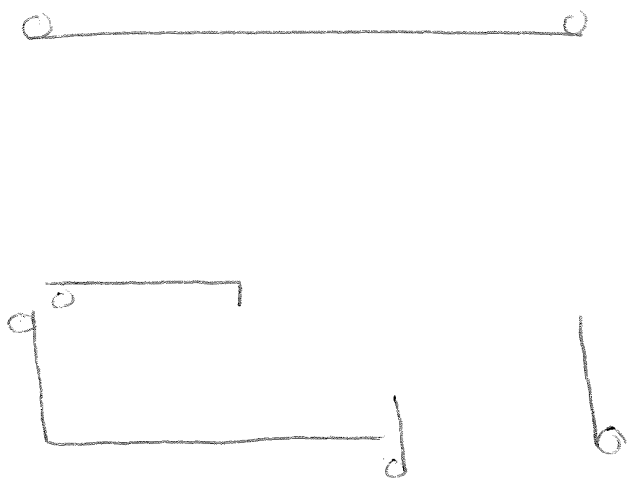
Superintendent: **Phone:**

D.R. Horton Appr: _____ **DATE:** _____

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ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

FIELD STONE B



5/21

MASCO Contractor Services

Gale Contractor Services
Lic #: 48822
1800 Piedmont Hwy Piedmont, SC 29673-9251
Tel: (864) 299-5501, Fax: (864) 299-5201

4002826 69

WORK AGREEMENT

TO: **DR HORTON**	**RE:** MCDANIEL D / ROSE HILL 264 / GUTTER	
Address: 100 AUGUSTA ST GREENVILLE, SC 29601	**Job Address:** 139 BERWICK CT, EASLEY, SC 29642	
Attn : TONY BEHLES	**Date:** 05/15/2012	**Expiration Date:** 08/13/2012
Tel: (864) 370-6000 **Fax:** (864) 627-3885	**Estimator:** Hudgins, Shawn	**Quote #:**1199797 **Version** 1 Of 1

100152752

Subject to the terms and conditions stated in this agreement, Company is willing to furnish to Customer all material and labor required for the Scope of Work described below:

Scope of Work (the "Work") to be performed:

Plan#: *Trade*: GUTTER

EXTERIOR — 5 IN ALUMINUM OGEE - K STYLE GUTTER
2X3 DOWNSPOUT

Base Price: **$525.00** **Additional Information:** Gutter Install: $525.00

Cancel Clay color

NOTE: This agreement consists of multiple pages. If you do not receive the number of pages noted below, please contact Company directly at the telephone number stated above.

TERMS OF PAYMENT: Payment in full due as stated on invoice regardless of any payment arrangements you have with third parties.
ACCEPTANCE: Company may change and/or withdraw this agreement if Company does not receive your signed acceptance on or before the Expiration Date stated above.
PRICING: The prices stated in this Agreement will remain firm for 90 days after the Date stated above. If performance of this agreement extends beyond this 90 day period, you agree to pay Company's then current pricing ("Price") for any Work performed after that 90 day period. The Prices are based only on the terms and conditions expressly stated in this agreement and include any and all addendums, attachments, schedules or exhibits attached hereto. The Prices exclude any and all terms and conditions not expressly stated herein, including, without limitation, any obligation by Company to name you or any third-party as an additional insured on its insurance policy; to provide per project aggregate insurance coverage for the Work; to participate in any owner controlled, wrap, or similar insurance program; to indemnify or defend you or any third-party from any claims, actions and/or lawsuits of any kind or nature whatsoever except to the limited extent state in Section 18 of this agreement. Any terms or conditions required by you by contract or otherwise in addition to or inconsistent with those expressly stated in this agreement will result in additional charges and/or higher Prices. Any additional work performed is subject to Company's then current pricing (unless Company otherwise agrees in writing) and to this agreement.

CUSTOMER: COMPANY:

By: _____ By: _____
SIGNATURE TITLE SIGNATURE TITLE

Company Name _____ Date: _____

THE INFORMATION CONTAINED IN THIS AGREEMENT IS CONFIDENTIAL. NEITHER THIS AGREEMENT NOR ITS TERMS MAY BE DISCLOSED TO THIRD PARTIES.

ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

Estimate Take Off CONFIDENTIAL

Customer: DR HORTON
Estimator: Hudgins, Shawn
Quote Name: MCDANIEL D / ROSE HILL 264 / GUTTER
Customer Contact: TONY BEHLES
Customer Address: 100 AUGUSTA ST
GREENVILLE, GREENVILLE, SC 29601, United States
Customer Phone: (864) 370-6000

Quote # 1199797

Job Address: 139 BERWICK CT, EASLEY, SC 29642

Quote Date: 15-MAY-12

Order Type:
MCS_Template_Order_Type
Trade: GUTTER
Plan#:
Unit Type: Tract/Production

Division #: 028

#	Trip	Group	Work Area	Product	UOM	Ext Labor	Labor	Pay	LSP Price	Disc %	Unit Price	QTY	Est. Qty	Ext. Price	Opt/UG
1.2	Gutter Install		Exterior	C113427CLY - GT COIL 11 3/4 X 027 CLAY	LF	[redacted]					$1.69	200		$338	
1.4	Gutter Install		Exterior	DS23CLY-LF - GT DOWNSPOUT 2X3 CLAY	LF						$1.35	100		$135	
1.6	Gutter Install		Exterior	E23ACLY - GT ELBOW 2X3 A CLAY	PC						$2.60	18		$46.8	
1.8	Gutter Install		Exterior	E23BCLY - GT ELBOW 2X3 B CLAY	PC						$2.55	2		$5.1	
2.0	Gutter Install		Exterior	ROUNDING-GUTTER - PRICE ROUNDING ON SALES ORDER	DO						$0.01	10		$.1	

Summary:

Base

Trip	Pay	List Base Price	Disc Amt.	Ext. Price
Gutter Install	[redacted]			$525.00
Total				$525.00

Base: **Disc:** [redacted] **Total:** $525.00

Gale Contractor 1755

ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

PURCHASE ORDER

D·R·HORTON® DHI Listed NYSE
America's Builder

VENDOR: 1311444 **OPEN AMOUNT:** 565.00

BUILDERS SERVICES GROUP INC
GALE CONTRACTOR SERVICES
1800 Piedmont Hwy
PIEDMONT SC 29673

Phone: (864) 299-5501 **Fax:** (864) 299-5201

Page	1
Purchase Order Date	02/28/12
Bid Contract Number	100066
FPO Requisition Number	
Purchase Order Number	201207 ON
Sub # / Lot #	70952 / 0025
Swing/Plan/Elevation	L / MCDA/ D

Remit To
D.R. HORTON - GREENVILLE

Phone: Fax:

Work Description
44050.01 **Gutters & Downspouts**

DELIVER TO:

Rose Hill 70'
138 Berwick Court
EASLEY, SC 29642
Lot/Block

Delivery Date

Description	Option	Qty	Unit Price	Extension
Gutters & Downspouts		1.00	565.000	565.00
				565.00

SPECIAL INSTRUCTIONS:

1. We reserve the right to cancel if not filled as specified.
2. Place P.O. number on all invoices.
3. A copy of delivery ticket signed by D.R. Horton personnel and this signed P.O. must accompany each invoice submitted for payment with signed lien release.
4. Partial Shipments will not be accepted.
5. No liability will be assumed for materials placed on the job site that are not installed or that are in the excess of the amount specified on this P.O.
6. This P.O. is applicable only to the jobs indicated.
7. Receipt of this P.O. is binding on supplier for material at prices specified.
8. All terms and conditions of the signed contract and scope of work apply to this document.

Terms	Tax Percentage	Sales Tax	Total PO
			565.00

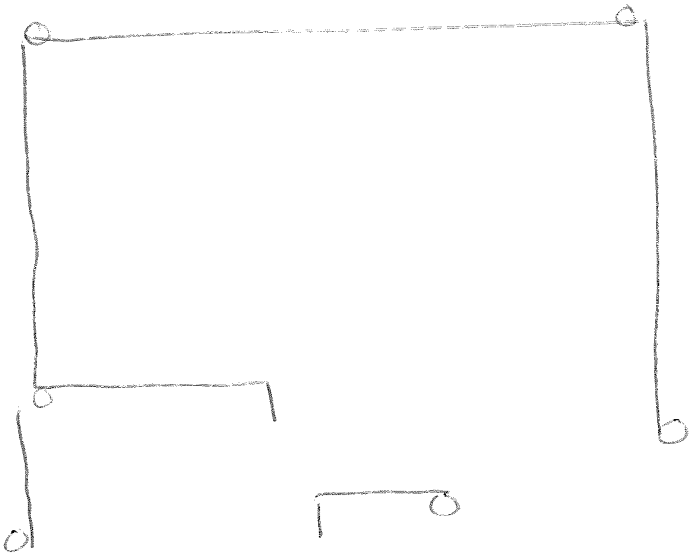
Superintendent: CLONINGER III, ROBERT G **Phone:**

D.R. Horton Appr: _____ **DATE:** _____

ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

264 Rose Hill

McDaniel D



ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

Page 1 of 1

MASCO Contractor Services MCS Procurement

SERVICE PARTNERS

Requisition 290449

Cancel Requisition Change Receive

Description	**COIL VG 11 3/4" X .027 COIL CLAY**
Created By	**Francis, Aura**
Creation Date	**18-May-2012 14:59:23**
Deliver-To	**1800 Piedmont Hwy Piedmont, Greenville, SC, 29673-9251**

Status	Approved
Change History	**No**
Attachment	**None**
Note to Buyer	

P.O.#

Details

Line	Description	Need-By	Deliver-To	Unit	Quantity	Price	Amount (USD)	Details	Order
1	COIL VG 11 3/4" X .027 COIL CLAY	21-May-2012 15:22:34	PIEDMONT GCS - PIEDMONT	Pound	52	1.64 USD	85.28		5140995
2	DOWNSPOUT VG 2X3 DOWNSPOUT CLAY	21-May-2012 15:22:34	PIEDMONT GCS - PIEDMONT	Linear Foot	90	0.47 USD	42.30		5140995
3	GT ELBOW 2X3 A CLAY	21-May-2012 15:22:34	PIEDMONT GCS - PIEDMONT	Piece	18	0.48 USD	8.64		5140995
4	GT ELBOW 2X3 B CLAY	21-May-2012 15:22:34	PIEDMONT GCS - PIEDMONT	Piece	2	0.48 USD	0.96		5140995
5	GT PAINT CLAY	21-May-2012 15:22:34	PIEDMONT GCS - PIEDMONT	Can	1	4.0005 USD	4.00		5140995
						Total	**141.18**		

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Gale Contractor 1758

Warranty

Header Section

SALES ORDER # 400287353

Div # & Name	028-PIEDMONT GCS - PIEDMONT
Quote #	1200442
Template Order #	100155294
Trade/Product Line	GUTTER
Status	FINISHED
Customer # & Name	20047 / DR HORTON
Custom/Comm/Subdiv	ROSE HILL
Project Name/Lot/Block	Phase NA/Lot 264/Block NA
Job Address	6 DARTFORD COURT
County	Pickens
City / State / Zip	EASLEY/ SC/ 29642/ US
Salesman	Hudgins, Shawn
Line of Business	Residential
Unit Type	Tract/Production
Plan Number	FIELDSTONE

Dispatch From Date	
Dispatch To Date	
Prevailing Wage	No

Billing Details

Standard	
Billing Type	DRAW
Gutter Install	423.00
Contract Amt	423.00
Warranty	0.00
Total Contract	423.00

Summary To Date

	Amount	% of Revenue
Total Estimated Quantity	242.00	
Total Actual Quantity	248.00	
Estimated Material Cost	[redacted]	
Actual Material Cost		
Estimated Labor Cost		
Actual Labor Cost		
Estimated Additional Costs	0.00	0.00
Actual Additional Costs	0.00	0.00
Total Revenue	423.00	
Earned Revenue	423.00	
Billed Amount	423.00	
Estimated DM		[redacted]
Actual DM		

Billing Details Section

Date	SO #	Invoice #	Order Type	Billing Type	Billed Amount	%	Retainage	%
19-JUL-12	400287353	51696239	Standard	DRAW	423.00	100.00	0.00	0.00
09-AUG-12	400429692	51752119	Warranty		0.00	0.00	0.00	0.00
				Total	423.00	100.00	0.00	0.00

Line Summary and Status Section

SO #	Order Type	Trip	Work Area	Item Number	Item Description	UOM	Est. Qty	Shipped Qty	Diff.	Line Status
400287353	Standard	Gutter Install	ADD	MBYO5WHT	GT MITRE 5" BAY O/S HI GLOSS WHITE (80 DEG)	PC	4	4	0	Closed
400287353	Standard	Gutter Install	ADD	MSI5WHT	GT MITRE 5" STRIP I/S HI GLOSS WHITE (80 DEG)	PC	1	1	0	Closed
400287353	Standard	Gutter Install	ADD	MSO5WHT	GT MITRE 5 STRIP O/S HI GLOSS WHITE (80 DEG)	PC	1	1	0	Closed
400287353	Standard	Gutter Install	Exterior	C113427CLY	GT COIL 11 3/4 X 027 CLAY	LB	130	130	0	Closed
400287353	Standard	Gutter Install	Exterior	E23BCLY	GT ELBOW 2X3 B CLAY	PC	2	2	0	Closed
400287353	Standard	Gutter Install	Exterior	E23ACLY	GT ELBOW 2X3 A CLAY	PC	18	18	0	Closed
400287353	Standard	Gutter Install	Exterior	DS23CLY-LF	GT DOWNSPOUT 2X3 CLAY	DO	90	90	0	Closed
400287353	Standard	Gutter Install	ADD	MBYI5WHT	GT MITRE 5" BAY I/S HI GLOSS WHITE (80 DEG)	PC	2	2	0	Closed
400429692	Warranty	Gutter Install		ADDITIONALLABO	ADDITIONAL	DO	2	2	0	Closed

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Gale Contractor 1759

Line Summary and Status Section

SO #	Order Type	Trip	Work Area	Item Number	Item Description	UOM	Est. Qty	Shipped Qty	Diff.	Line Status
				R-GUTTER	LABOR-GUTTER					
400429692	Warranty	Gutter Install		E23BWHT	GT ELBOW 2X3 B HI GLOSS WHITE (80 DEG)	PC	1	0	1	Cancelled
400429692	Warranty	Gutter Install		E23BCLY	GT ELBOW 2X3 B CLAY	PC	1	0	1	Cancelled
400429692	Warranty	Gutter Install		E23AWHT	GT ELBOW 2X3 A HI GLOSS WHITE (80 DEG)	PC	1	0	1	Cancelled
400429692	Warranty	Gutter Install		E23ACLY	GT ELBOW 2X3 A CLAY	PC	1	0	1	Cancelled

Activity Details Section

Date	Trip	Work Area	SO #	Item # / DIV #	Item Description / Employee Name	UOM	Qty Ship	REV	Material	Labor
18-JUL-12	Gutter Install	Exterior	400287353	E23ACLY	GT ELBOW 2X3 A CLAY	PC	18	50.40	[redacted]	
18-JUL-12	Gutter Install	ADD	400287353	MBYI5WHT	GT MITRE 5" BAY I/S HI GLOSS WHITE (80 DEG)	PC	2	0.00		
18-JUL-12	Gutter Install	ADD	400287353	MSO5WHT	GT MITRE 5 STRIP O/S HI GLOSS WHITE (80 DEG)	PC	1	0.00		
18-JUL-12	Gutter Install	Exterior	400287353	E23BCLY	GT ELBOW 2X3 B CLAY	PC	2	5.50		
18-JUL-12	Gutter Install	ADD	400287353	MBYO5WHT	GT MITRE 5" BAY O/S HI GLOSS WHITE (80 DEG)	PC	4	0.00		
18-JUL-12	Gutter Install	ADD	400287353	MSI5WHT	GT MITRE 5" STRIP I/S HI GLOSS WHITE (80 DEG)	PC	1	0.00		
18-JUL-12	Gutter Install	Exterior	400287353	DS23CLY-LF	GT DOWNSPOUT 2X3 CLAY	LF	90	130.50		
18-JUL-12	Gutter Install	Exterior	400287353	C113427CLY	GT COIL 11 3/4 X 027 CLAY	LF	130	236.60		
18-JUL-12	Gutter Install		400287353	Div# 028	(50%) Kinman, Shannon Laverne	DO				
18-JUL-12	Gutter Install		400287353	Add Pay	(PIECE RATE ADJUSTMENT) Gonzalez, Jose Juan	DO				
18-JUL-12	Gutter Install		400287353	Add Pay	(PIECE RATE ADJUSTMENT) Kinman, Shannon Laverne	DO				
18-JUL-12	Gutter Install		400287353	Div# 028	(50%) Gonzalez, Jose Juan	DO				
08-AUG-12	Gutter Install		400429692	ADDITIONALLABOR-GUTTER	ADDITIONAL LABOR-GUTTER	DO	2	0.00		
08-AUG-12	Gutter Install		400429692	Add Pay	(LABOR NOT DEFINED) Kinman, Shannon Laverne	DO				
08-AUG-12	Gutter Install		400429692	Div# 028	(50%) Gonzalez, Jose Juan	DO				
08-AUG-12	Gutter Install		400429692	Div# 028	(50%) Kinman, Shannon Laverne	DO				
08-AUG-12	Gutter Install		400429692	Add Pay	(LABOR NOT DEFINED) Gonzalez, Jose Juan	DO				
						Total	250	423.00		

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Gale Contractor 1760

DATE 08-AUG-2012 05:52:49 AM

GUTTER WORK TICKET

SCHEDULE DATE 08-AUG-12

TRUCK# T14-028 / 28-4598

INSTALLER INFO	SPLIT
Gonzalez, Jose	50%
Kinman, Shannon	50%

WORK ORDER #: 400429692 Gutter Install **Shift #** 1

CUSTOMER NAME
DR HORTON
100 AUGUSTA ST
GREENVILLE SC
29601

From Yesterday

SALES PERSON:
Hudgins, Shawn

JOBSITE ADDRESS
ROSE HILL Phase NA/Lot 264/Block NA
6 DARTFORD COURT NA
EASLEY SC 29642

ADDITIONAL INFO
LOB Residential
UNIT TYPE Tract/Production

FINISHED / UNFINISHED

$20.00

TRANSACTION TYPE : MCS_Warranty_Order_Type

Job Site Superintendent Name :
Phone Number :

Trip : Reserved
Plan Number : FIELDSTONE

DIRECTIONS / INTERSECTION:

LINE NUMBER	WORK AREA	ITEM #	ITEM DESCRIPTION	UOM	UNITS NEEDED	INSTALLED QUANTITY	SF	USED	F/U	Reserved

*** LABOR ONLY ***

LINE NUMBER	AREA	ADDITIONAL MATERIAL/BRAND	FT/PACK	QTY. INSTALLED	FOOTAGE	F/U

INSTALLER INSTRUCTIONS:
ROBERT 704-913-9709, DONT FORGET, 2X3 DOWN SPOUTS DON'T BRING ANYTHING BACK INTO INVENTORY!!!! IF YOU WANT TO KEEP SOMETHING LEFT OVER, WRITE IT OFF AND KEEP IT IN BACK.

SCHEDULER NOTES:

SAFETY QUESTIONS:

Are you endangered by other sub's actions?	YES_____NO__/__
Do guardrails/toeboards need to be installed?	YES_____NO__/__
Do you additional/diffferent equipment?	YES_____NO__/__
Do you need to tape or barricade?	YES_____NO__/__
Is the worksite dirty or unclear?	YES_____NO__/__

Note: IF "YES" PLEASE PLACE COMMENTS ON THE BACK OF THE SHEET AND TAKE APPROPRIATE CORRECTIVE BEFORE STARTING ANY WORK

INSTALLER'S SIGNATURE: Jose J Gonzz **DATE:** 7-7-12 **TIME:**_____

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Header Section

SALES ORDER # 400248232

Div # & Name	028-PIEDMONT GCS - PIEDMONT	**Dispatch From Date**		**Summary To Date**	
Quote #	926877	**Dispatch To Date**			**Amount** / **% of Revenue**
Template Order #	1561255	**Prevailing Wage**	No	**Total Estimated Quantity**	2.00
Trade/Product Line	GARAGE DOOR	**Billing Details**		**Total Actual Quantity**	19.00
Status	FINISHED	Standard		**Estimated Material Cost**	[redacted]
Customer # & Name	20047 / DR HORTON	**Billing Type**	DRAW	**Actual Material Cost**	
Custom/Comm/Subdiv	ROSE HILL	**Garage Door Install**	435.00	**Estimated Labor Cost**	
Project Name/Lot/Block	Phase NA/Lot 264/Block NA	**Contract Amt**	435.00	**Actual Labor Cost**	
Job Address	6 DARTFORD COURT			**Estimated Additional Costs**	0.00 / 0.00
County	Pickens	**Change**	1229.02	**Actual Additional Costs**	0.00 / 0.00
City / State / Zip	EASLEY/ SC/ 29642/ US			**Total Revenue**	520.00
Salesman	Hudgins, Shawn	**Total Contract**	1664.02	**Earned Revenue**	520.00
Line of Business	Residential			**Billed Amount**	520.00
Unit Type	Custom			**Estimated DM**	[redacted]
Plan Number				**Actual DM**	

Billing Details Section

Date	SO #	Invoice #	Order Type	Billing Type	Billed Amount	%	Retainage	%
14-MAY-12	400248232	51538985	Standard	DRAW	435.00	83.65	0.00	0.00
12-AUG-12	400429763	51756294	Change	DRAW	85.00	16.35	0.00	0.00
				Total	520.00	100.00	0.00	0.00

Line Summary and Status Section

SO #	Order Type	Trip	Work Area	Item Number	Item Description	UOM	Est. Qty	Shipped Qty	Diff.	Line Status
400248232	Standard	Garage Door Install	ADD	100292	COMPONENT WD SCREW,LAG,5/16 X 1.63 ,HWH,STL,ZN	PC	8	8	0	Closed
400248232	Standard	Garage Door Install	ADD	251228	BOLT,HH,5/16-18X2 ,F3089	DO	8	8	0	Closed
400248232	Standard	Garage Door Install	ADD	741714117966	ANGLE, BULK PK, PERF (10PCS PER BDL), 1.25X1.25X10'00, 13GA	DO	1	1	0	Closed
400248232	Standard	Garage Door Install		WD91001600X0700 SNWH100117	MDL 9100 16'0" X 7'0" ,SONOMA,WHITE,SOLID,TORQUEMASTER,STD LIFT,12" R ,2" TRK,BRACKET MOUNT,OMIT LOCK	DO	1	1	0	Closed
400429763	Change	Garage Door		ROUNDING-GARA	PRICE ROUNDING ON	DO	8500	8500	0	Closed

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Gale Contractor 1762

Line Summary and Status Section

SO #	Order Type	Trip	Work Area	Item Number	Item Description	UOM	Est. Qty	Shipped Qty	Diff.	Line Status
		Install		GE DOOR	SALES ORDER					
400429763	Change	Garage Door Install		741714117768	319733 COMPONENT WD KIT,CARRIAGE HINGE/HANDLE,UNIVERSAL	PC	1	1	0	Closed

Activity Details Section

Date	Trip	Work Area	SO #	Item # / DIV #	Item Description / Employee Name	UOM	Qty Ship	REV	Material	Labor
04-MAY-12	Garage Door Install		400248232	Div# 028	(50%) Crook, Tommy Lee	DO			[redacted]	
04-MAY-12	Garage Door Install		400248232	Div# 028	(50%) Gregory, John Joseph	DO				
11-MAY-12	Garage Door Install	ADD	400248232	100292	COMPONENT WD SCREW,LAG,5/16 X 1.63 ,HWH,STL,ZN	PC	8	0.00		
11-MAY-12	Garage Door Install	ADD	400248232	741714117966	ANGLE, BULK PK, PERF (10PCS PER BDL), 1.25X1.25X10'00, 13GA	PC	1	0.00		
11-MAY-12	Garage Door Install		400248232	WD91001600X0700SN WH100117	MDL 9100 16'0" X 7'0" ,SONOMA,WHITE,SOLID,TORQUEMASTER,STD LIFT,12" R ,2" TRK,BRACKET MOUNT,OMIT LOCK	PC	1	435.00		
11-MAY-12	Garage Door Install	ADD	400248232	251228	BOLT,HH,5/16-18X2 ,F3089	PC	8	0.00		
11-MAY-12	Garage Door Install		400248232	Div# 028	(100%) Crook, Tommy Lee	DO				
11-MAY-12	Garage Door Install		400248232	Add Pay	(PIECE RATE ADJUSTMENT) Crook, Tommy Lee	DO				
10-AUG-12	Garage Door Install		400429763	741714117768	319733 COMPONENT WD KIT,CARRIAGE HINGE/HANDLE,UNIVERSAL	PC	1	0.00		
10-AUG-12	Garage Door Install		400429763	ROUNDING-GARAGE DOOR	PRICE ROUNDING ON SALES ORDER	DO	8500	85.00		
10-AUG-12	Garage Door Install		400429763	Div# 028	(100%) Gregory, John Joseph	DO				
10-AUG-12	Garage Door Install		400429763	Add Pay	(LABOR NOT DEFINED) Gregory, John Joseph	DO				
						Total	8519	520.00		

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John

DATE 10-AUG-2012 06:03:10 AM

GARAGE DOOR WORK TICKET

SCHEDULE DATE 10-AUG-12

WORK ORDER #: 400429763 Garage Door Install **Shift #** 1

CUSTOMER NAME
DR HORTON
100 AUGUSTA ST
GREENVILLE SC
29601

1ST

See e-mail

TRUCK# T10-028 / 28-7325

INSTALLER INFO	SPLIT
Gregory, John Joseph	100%

SALES PERSON:
Hudgins, Shawn

JOBSITE ADDRESS
ROSE HILL Phase NA/Lot 264/Block NA
6 DARTFORD COURT NA
EASLEY SC 29642

ADDITIONAL INFO
LOB Residential
UNIT TYPE Custom

FINISHED / UNFINISHED

TRANSACTION TYPE : MCS_Change-Orders_Order_Type

Job Site Superintendent Name :
Phone Number :

Trip : Reserved
Plan Number :

DIRECTIONS / INTERSECTION:

LINE NUMBER	WORK AREA	ITEM #	ITEM DESCRIPTION	UOM	UNITS NEEDED	INSTALLED QUANTITY	SF	USED	F/U	Reserved
2.1		741714117768	319733 COMPONENT WD KIT,CARRIAGE HINGE/HANDLE,UNIVERSAL	PC	1	0		2	F	R

****** Non-Stocked item items ******

LINE NUMBER	AREA	ADDITIONAL MATERIAL/BRAND	FT/PACK	QTY. INSTALLED	FOOTAGE	F/U

SCHEDULER NOTES:

SAFETY QUESTIONS:

Are you endangered by other sub's actions?	YES_____NO ✓
Do guardrails/toeboards need to be installed?	YES_____NO ✓
Do you additional/diffferent equipment?	YES_____NO ✓
Do you need to tape or barricade?	YES_____NO ✓
Is the worksite dirty or unclear?	YES_____NO ✓

Note: IF "YES" PLEASE PLACE COMMENTS ON THE BACK OF THE SHEET AND TAKE APPROPRIATE CORRECTIVE BEFORE STARTING ANY WORK

INSTALLER'S SIGNATURE: _____ **DATE:** 8/10/12 **TIME:** _____

Gale Contractor 1764

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Header Section

SALES ORDER # 400248232

Div # & Name	028-PIEDMONT GCS - PIEDMONT	**Dispatch From Date**		**Summary To Date**	
Quote #	926877	**Dispatch To Date**			**Amount** / **% of Revenue**
Template Order #	1561255	**Prevailing Wage**	No	**Total Estimated Quantity**	2.00
Trade/Product Line	GARAGE DOOR	**Billing Details**		**Total Actual Quantity**	19.00
Status	FINISHED	Standard		**Estimated Material Cost**	[redacted]
Customer # & Name	20047 / DR HORTON	**Billing Type**	DRAW	**Actual Material Cost**	
Custom/Comm/Subdiv	ROSE HILL	**Garage Door Install**	435.00	**Estimated Labor Cost**	
Project Name/Lot/Block	Phase NA/Lot 264/Block NA	**Contract Amt**	435.00	**Actual Labor Cost**	
Job Address	6 DARTFORD COURT			**Estimated Additional Costs**	0.00 / 0.00
County	Pickens	**Change**	85.00	**Actual Additional Costs**	0.00 / 0.00
City / State / Zip	EASLEY/ SC/ 29642/ US			**Total Revenue**	520.00
Salesman	Hudgins, Shawn	**Total Contract**	520.00	**Earned Revenue**	520.00
Line of Business	Residential			**Billed Amount**	520.00
Unit Type	Custom			**Estimated DM**	[redacted]
Plan Number				**Actual DM**	

Billing Details Section

Date	SO #	Invoice #	Order Type	Billing Type	Billed Amount	%	Retainage	%
14-MAY-12	400248232	51538985	Standard	DRAW	435.00	83.65	0.00	0.00
12-AUG-12	400429763	51756294	Change	DRAW	85.00	16.35	0.00	0.00
				Total	520.00	100.00	0.00	0.00

Line Summary and Status Section

SO #	Order Type	Trip	Work Area	Item Number	Item Description	UOM	Est. Qty	Shipped Qty	Diff.	Line Status
400248232	Standard	Garage Door Install	ADD	100292	COMPONENT WD SCREW,LAG,5/16 X 1.63 ,HWH,STL,ZN	PC	8	8	0	Closed
400248232	Standard	Garage Door Install	ADD	251228	BOLT,HH,5/16-18X2 ,F3089	DO	8	8	0	Closed
400248232	Standard	Garage Door Install	ADD	741714117966	ANGLE, BULK PK, PERF (10PCS PER BDL), 1.25X1.25X10'00, 13GA	DO	1	1	0	Closed
400248232	Standard	Garage Door Install		WD91001600X0700 SNWH100117	MDL 9100 16'0" X 7'0" ,SONOMA,WHITE,SOLID,TORQUEMASTER,STD LIFT,12" R ,2" TRK,BRACKET MOUNT,OMIT LOCK	DO	1	1	0	Closed
400429763	Change	Garage Door Install		ROUNDING-GARAGE DOOR	PRICE ROUNDING ON SALES ORDER	DO	8500	8500	0	Closed
400429763	Change	Garage Door		741714117768	319733 COMPONENT WD	PC	1	1	0	Closed

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Gale Contractor 1765

Line Summary and Status Section

SO #	Order Type	Trip	Work Area	Item Number	Item Description	UOM	Est. Qty	Shipped Qty	Diff.	Line Status
		Install			KIT,CARRIAGE HINGE/HANDLE,UNIVERSAL					

Activity Details Section

Date	Trip	Work Area	SO #	Item # / DIV #	Item Description / Employee Name	UOM	Qty Ship	REV	Material	Labor
04-MAY-12	Garage Door Install		400248232	Div# 028	(50%) Crook, Tommy Lee	DO			[redacted]	
04-MAY-12	Garage Door Install		400248232	Div# 028	(50%) Gregory, John Joseph	DO				
11-MAY-12	Garage Door Install	ADD	400248232	100292	COMPONENT WD SCREW,LAG,5/16 X 1.63 ,HWH,STL,ZN	PC	8	0.00		
11-MAY-12	Garage Door Install	ADD	400248232	741714117966	ANGLE, BULK PK, PERF (10PCS PER BDL), 1.25X1.25X10'00, 13GA	PC	1	0.00		
11-MAY-12	Garage Door Install		400248232	WD91001600X0700SN WH100117	MDL 9100 16'0" X 7'0" ,SONOMA,WHITE,SOLID,TORQUEMASTER,STD LIFT,12" R ,2" TRK,BRACKET MOUNT,OMIT LOCK	PC	1	435.00		
11-MAY-12	Garage Door Install	ADD	400248232	251228	BOLT,HH,5/16-18X2 ,F3089	PC	8	0.00		
11-MAY-12	Garage Door Install		400248232	Div# 028	(100%) Crook, Tommy Lee	DO				
11-MAY-12	Garage Door Install		400248232	Add Pay	(PIECE RATE ADJUSTMENT) Crook, Tommy Lee	DO				
10-AUG-12	Garage Door Install		400429763	741714117768	319733 COMPONENT WD KIT,CARRIAGE HINGE/HANDLE,UNIVERSAL	PC	1	0.00		
10-AUG-12	Garage Door Install		400429763	ROUNDING-GARAGE DOOR	PRICE ROUNDING ON SALES ORDER	DO	8500	85.00		
10-AUG-12	Garage Door Install		400429763	Div# 028	(100%) Gregory, John Joseph	DO				
10-AUG-12	Garage Door Install		400429763	Add Pay	(LABOR NOT DEFINED) Gregory, John Joseph	DO				
						Total	8519	520.00		

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Gale Contractor 1766

PURCHASE ORDER

D·R·HORTON® DHI Listed NYSE
America's Builder

Check Date	05/31/12
Check Number	27524
Invoice Date	05/22/12
Invoice Number	200171 264

VENDOR: 1311444 **OPEN AMOUNT:** 85.00

BUILDERS SERVICES GROUP INC
GALE CONTRACTOR SERVICES
1800 Piedmont Hwy
PIEDMONT SC 29673

Phone: (864) 299-5501 **Fax:** (864) 299-5201

Page	1
Purchase Order Date	01/06/12
Bid Contract Number	100031
FPO Requisition Number	
Purchase Order Number	200171 ON
Sub # / Lot #	70953 / 0264
Swing/Plan/Elevation	R / FIEL / B

Remit To
D.R. HORTON - GREENVILLE
,
Phone: Fax:

Work Description
45150.01 Garage Door

DELIVER TO:

Rose Hill 90'
4 Dartford Court
EASLEY, SC 29642
Lot/Block

Delivery Date

Description	Option	Qty	Unit Price	Extension
Garage Door Hardware		1	85.000	85.00
Garage Door 16x7 5120 Series		1	435.000	435.00
				520.00

PAID

SPECIAL INSTRUCTIONS:

1. We reserve the right to cancel if not filled as specified.
2. Place P.O. number on all invoices.
3. A copy of delivery ticket signed by D.R. Horton personnel and this signed P.O. must accompany each invoice submitted for payment with signed lien release.
4. Partial Shipments will not be accepted.
5. No liability will be assumed for materials placed on the job site that are not installed or that are in the excess of the amount specified on this P.O.
6. This P.O. is applicable only to the jobs indicated.
7. Receipt of this P.O. is binding on supplier for material at prices specified.
8. All terms and conditions of the signed contract and scope of work apply to this document.

Terms	Tax Percentage	Sales Tax	Total PO
			520.00

Superintendent: STOVER, JONATHAN **Phone:**

D.R. Horton Appr: _____ **DATE:** _____

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waiting for updated PO

Mary Ann Johnson - Greenville

From: Shawn Hudgins - Greenville
Sent: Thursday, August 09, 2012 5:34 PM
To: Tommy Farrow - Greenville; Mary Ann Johnson - Greenville
Subject: FW: rose hill 264- closng punch

$85.00

Needed to be done today (Thurs) some time.

sent Shawn email 8/13/12 @ 7:00 A.M.

From: Shawn Hudgins - Greenville
Sent: Tuesday, August 07, 2012 12:17 PM
To: Mary Ann Johnson - Greenville
Subject: Fwd: rose hill 264- closng punch

Also need to install garage door hardware on the garage door. Evidently on the 90' houses, they get carriage hardware. If not on PO, let me know and I will request a PO from Atl. Need dipole tomorrow. Thanks! $10 labor.

Sent from my iPad

Nothing yet
8/14/12
~~8/16/12~~
~~8/17/12~~
~~8/20/12~~
8/21/12 sent Shawn another email
~~8/23/12~~
~~8/27/12~~
Sent Shawn another email 8/28/12

Begin forwarded message:

From: John W Martin <JWMartin@drhorton.com>
Date: August 7, 2012 11:15:14 AM EDT
To: "Shawn Hudgins - Greenville (shawn.hudgins@mascocs.com)" <shawn.hudgins@mascocs.com>
Subject: rose hill 264- closng punch

Shawn ,
Need following done by Thursday the 9th.

1. Garage door accessories
2. Need 90 degree gutter on right rear side of home, so it does not drain onto patio extension

Thanks,
John

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INVOICE



Gale Contractor Services,
Division Code :028
1800 Piedmont Hwy,
Piedmont, SC 29673-9251,
United States,
(864) 299-5501

Customer Number	20047
Invoice Number	00517562948
Invoice Date	10-AUG-12
SalesPerson Name	Hudgins, Shawn
Product Trade	GARAGE DOOR

Customer Bill To Address
DR HORTON
100 AUGUSTA ST,
GREENVILLE,SC,29601,US

Remit To Address:
ATTN: AR, Gale Contractor Services,
P.O. Box 534451,
Atlanta, GA, 30353-4451

Line	PO#	SO#	Ship Address	Trip	Amount	Retainage	Tax	Total
1	200171 ON	400429763	Rose Hill Phase Na/Lot 264/Block Na 6 Dartford Cou, Easley, NaSC	Garage Door Install	85.00	0.00	0.00	85.00

Total Contract Amount	85.00

Completion to Date	85.00
Previous Billing	0.00
Previous Retainage Billing	0.00
Previous Retainage	0.00
Invoice Amount	85.00
Tax	0.00
Less: Current Retainage	0.00
Less: Payments	0.00
Total Due Upon Receipt	85.00

REMITTANCE COPY
PLEASE RETURN THIS PORTION WITH YOUR PAYMENT TO

Remit To Address:
ATTN: AR, Gale Contractor Services,
P.O. Box 534451,
Atlanta, GA, 30353-4451

Customer Number : 20047
Invoice Number : 00517562948
Invoice Date : 10-AUG-12
PO Number : 200171 ON
PO Date : NA
Sales Agent : Hudgins, Shawn
Division Code : 028

MCS Contract Number : 400429763

Total Due Upon Receipt : 85.00

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Mary Ann Johnson - Greenville

From: Mary Ann Johnson - Greenville
Sent: Tuesday, August 21, 2012 7:31 AM
To: Shawn Hudgins - Greenville
Subject: RE: D R Horton PO"s

Ok, it's me again!
Still nothing on the added hardware on Lot 264 Rose Hill. This was done almost 2 weeks ago

---

From: Shawn Hudgins - Greenville
Sent: Friday, August 17, 2012 7:08 AM
To: Mary Ann Johnson - Greenville
Subject: RE: D R Horton PO"s

I sent John the pricing for the garage walls Wed. He said that's been the hold up, so let's see if it populates next week. If it isn't there by say Tues / Wed, I'll send him another email. He's been good about getting back to me.

From: Mary Ann Johnson - Greenville
Sent: Friday, August 17, 2012 7:00 AM
To: Shawn Hudgins - Greenville
Subject: D R Horton PO"s

Shawn,

Good morning, I hate to be a pest but it's been 2 weeks since the walls have been billed at lot 36 Brentmoor and the PO has NOT been updated yet.
Also been waiting on lot 264 Rose Hill for the added hardware since the 10th.
Is there anyone you want me to call or email?

Mary Ann Johnson
Gale Contractor Services
1800 Piedmont Highway
Piedmont, SC 29673
phone: 864-299-5501
fax: 864-299-5201
Branch 028

EXHIBIT 21

ELECTRONICALLY FILED - 2023 Jul 10 2:28 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

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, v. D.R. Horton, Inc, Defendant.	
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.	**PLAINTIFF'S RESPONSES TO THIRD-PARTY DEFENDANT BUILDER SERVICES GROUP, INC. D/B/A GALE CONTRACTOR SERVICES' REQUESTS FOR ADMISSIONS AND SUPPLEMENTAL REQUESTS FOR PRODUCTION**
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.	

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TO: COUNSEL FOR THIRD-PARTY DEFENDANT BUILDER SERVICES GROUP, INC. D/B/A GALE CONTRACTOR SERVICES

Plaintiff, Natalie Zitek ("Plaintiff"), by and through her undersigned counsel, hereby answers Third-Party Defendant Builder Services Group, Inc. d/b/a Gale Contractor Services' ("Defendant") Requests for Admissions and Supplemental Requests for Production as follows:

REQUESTS FOR ADMISSIONS

1. Admit that you are not aware of any deficiencies with the batt and blown insulation installed at the subject properties. If denied, please provide the address, and location of the deficiencies for each property.

ANSWER:

Denied. The class's current claims include complaints relating to improperly installed insulation.

Plaintiff objects to the Supplemental Request for Production on the basis that it is overly broad and seeks discovery from absent class members. Subject thereto, Plaintiff does not possess a document responsive to this request at this time.

2. Admit that you have not identified any damages related to the batt and blown insulation installed at the subject properties. If denied, please provide an itemized statement of each damage, and what property it pertains to.

ANSWER:

Denied. The damages caused by improperly installed insulation includes repair costs and increased utility costs.

Plaintiff objects to the Supplemental Request for Production on the basis that it is overly broad and seeks discovery from absent class members. Subject thereto, Plaintiff does not possess a document responsive to this request at this time.

3. Admit that you know of no expert who has opined of any deficiencies to the batt and blown insulation installed at the subject properties. If denied, please provide a specific statement of each deficiency, and what property it pertains to.

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ANSWER:

Denied. D.R. Horton's expert Steve Moore noted "that insufficient insulation was observed" in his October 9, 2020 Report and that, in his opinion, this improper condition was the "insulation installer's responsibility".

Plaintiff objects to the Supplemental Request for Production on the basis that it is overly broad and seeks discovery from absent class members. Subject thereto, Plaintiff does not possess a document responsive to this request at this time.

4. Admit that you know of no expert who has opined that there are any damages related to improper installation of the batt and blown insulation installed at the subject properties. If denied, please provide an itemized statement of each damage, and what property it pertains to.

ANSWER:

Denied. D.R. Horton's expert Steve Moore recommended that insufficient insulation needed to be repaired. The cost of this repair is an insulation-related damage. Plaintiff further notes that there are many other experts identified in this case who may opine as to other insulation-related damages.

Plaintiff objects to the Supplemental Request for Production on the basis that it is overly broad and seeks discovery from absent class members. Subject thereto, Plaintiff does not possess a document responsive to this request at this time.

5. Admit that you are not aware of any deficiencies with the garage doors installed at the subject properties. If denied, please provide the address, and location of the deficiencies for each property.

ANSWER:

Admitted, as to deficiencies with the installation of just the garage doors themselves at the homes Plaintiff's experts have inspected on the inside.

6. Admit that you have not identified any damages related to the garage doors installed at the subject properties. If denied, please provide an itemized statement of each damage, and what property it pertains to.

ANSWER:

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Admitted, as to damages related to the installation of just the garage doors themselves at the homes Plaintiffs' experts have inspected on the inside.

7. Admit that you know of no expert who has opined of any deficiencies with the garage doors installed at the subject properties. If denied, please provide a specific statement of each deficiency, and what property it pertains to.

ANSWER:

Admitted.

8. Admit that you know of no expert who has opined that there are any damages related to the installation of the garage doors at the subject properties. If denied, please provide an itemized statement of each damage, and what property it pertains to.

ANSWER:

Admitted.

9. Admit that you are not aware of any deficiencies with the gutters and downspouts installed at the subject properties. If denied, please provide the address, and location of the deficiencies for each property.

ANSWER:

Denied. The class's current claims include complaints relating to improper drainage and other Defendants have, or are likely to argue, that the gutters and downspouts as installed and/or as modified during mitigation attempts are contributing to these drainage problems.

Plaintiff objects to the Supplemental Request for Production on the basis that it is overly broad and seeks discovery from absent class members. Subject thereto, Plaintiff does not possess a document responsive to this request at this time.

10. Admit that you have not identified any damages related to the gutters and downspouts installed at the subject properties. If denied, please provide an itemized statement of each damage, and what property it pertains to.

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ANSWER:

Denied. The damages related to improper drainage, gutters, and/or downspouts includes repair costs, flooding, erosion and water damaged patios and other property.

Plaintiff objects to the Supplemental Request for Production on the basis that it is overly broad and seeks discovery from absent class members. Subject thereto, Plaintiff does not possess a document responsive to this request at this time.

11. Admit that you know of no expert who has opined of any deficiencies to the gutters and downspouts installed at the subject properties. If denied, please provide a specific statement of each deficiency and what property it is pertaining to.

ANSWER:

Denied. See Responses to Requests for Admissions 9 and 10 above, which are hereby incorporated by reference.

12. Admit that you know of no expert who has opined that there are any damages related to the gutters and downspouts installed at the subject properties. If denied, please provide an itemized statement of each damage, and what property it pertains to.

ANSWER:

Denied. See Responses to Requests for Admissions 9 and 10 above, which are hereby incorporated by reference.

SUPPLEMENTAL REQUESTS FOR PRODUCTION

29. If Plaintiff's answer to Request to Admit No. 1 is anything other than an unqualified "Admit", please produce documents supporting the answer.

RESPONSE:

Objection, each above admission request already included the supplemental discovery request (and response) and have already been responded to. See above responses, which are hereby incorporated by reference.

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30. If Plaintiff's answer to Request to Admit No. 2 is anything other than an unqualified "Admit", please produce documents supporting the answer.

RESPONSE:

See Plaintiff's Response to Supplemental Request for Production No. 29.

31. If Plaintiff's answer to Request to Admit No. 3 is anything other than an unqualified "Admit", please produce documents supporting the answer.

RESPONSE:

See Plaintiff's Response to Supplemental Request for Production No. 29.

32. If Plaintiff's answer to Request to Admit No. 4 is anything other than an unqualified "Admit", please produce documents supporting the answer.

RESPONSE:

See Plaintiff's Response to Supplemental Request for Production No. 29.

33. If Plaintiff's answer to Request to Admit No. 5 is anything other than an unqualified "Admit", please produce documents supporting the answer.

RESPONSE:

See Plaintiff's Response to Supplemental Request for Production No. 29.

34. If Plaintiff's answer to Request to Admit No. 6 is anything other than an unqualified "Admit", please produce documents supporting the answer.

RESPONSE:

See Plaintiff's Response to Supplemental Request for Production No. 29.

35. If Plaintiff's answer to Request to Admit No. 7 is anything other than an unqualified "Admit", please produce documents supporting the answer.

RESPONSE:

See Plaintiff's Response to Supplemental Request for Production No. 29.

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36. If Plaintiff's answer to Request to Admit No. 8 is anything other than an unqualified "Admit", please produce documents supporting the answer.

RESPONSE:

See Plaintiff's Response to Supplemental Request for Production No. 29.

37. If Plaintiff's answer to Request to Admit No. 9 is anything other than an unqualified "Admit", please produce documents supporting the answer.

RESPONSE:

See Plaintiff's Response to Supplemental Request for Production No. 29.

38. If Plaintiff's answer to Request to Admit No. 10 is anything other than an unqualified "Admit", please produce documents supporting the answer.

RESPONSE:

See Plaintiff's Response to Supplemental Request for Production No. 29.

39. If Plaintiff's answer to Request to Admit No. 11 is anything other than an unqualified "Admit", please produce documents supporting the answer.

RESPONSE:

See Plaintiff's Response to Supplemental Request for Production No. 29.

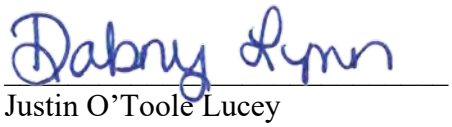
40. If Plaintiff's answer to Request to Admit No. 12 is anything other than an unqualified "Admit", please produce documents supporting the answer.

RESPONSE:

See Plaintiff's Response to Supplemental Request for Production No. 29.

[SIGNATURE ON NEXT PAGE]

JUSTIN O'TOOLE LUCEY, P.A.



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August 11, 2022
Mount Pleasant, South Carolina

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing ***Plaintiff's Responses to Third-Party Defendant Builder Services Group, Inc. d/b/a Gale Contractor Services' Requests for Admissions and Supplemental Requests for Production*** 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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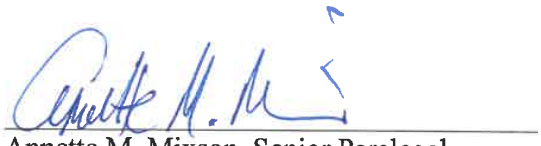
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EXHIBIT 22

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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, v. D.R. Horton, Inc., et al., Defendants.	
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.	**PLAINTIFF'S RESPONSE TO DEFENDANT GALE CONTRACTOR SERVICES' REQUESTS FOR ADMISSION**
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.	

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TO: COUNSEL FOR DEFENDANT GALE CONTRACTOR SERVICES

Plaintiff, Natalie Zitek ("Plaintiff"), by and through her undersigned counsel, hereby answers Defendant Builder Services Group, Inc d/b/a Gale Contractor Services' ("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:

Plaintiff objects on the basis that these Requests for Admission were sent less than thirty (30) days before this Court's current discovery deadline of June 9, 2023, and are therefore untimely.[1] Subject to said objection, admitted as to blown and batt insulation.

2. Admit that you have not identified any damage related to the insulation.

ANSWER:

See Answer to Request No. 1.

3. Admit that you know of no expert who has opined that there were any deficiencies with the installation of insulation.

ANSWER:

Plaintiff objects on the basis that these Requests for Admission were sent less than thirty (30) days before this Court's current discovery deadline of June 9, 2023, and are therefore untimely. Subject to said objection, Plaintiff has insufficient information to admit or deny this allegation, and therefore denies the same.

[1] *See* Rule 6, SCRCP ("In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run **is not to be included.** The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday.") (emphasis added). Here, Defendant served its Requests for Admission on May 31, 2023. The clock for Plaintiff's response started to run the next day, on June 1, 2023. Pursuant to Rule 36, SCRCP, Plaintiff has thirty (30) days to respond. Thirty (30) days from June 1, 2023 is Saturday, July 1, 2023. With the last day of the period being a Saturday, that puts Plaintiff's response deadline to the following Monday, July 3, 2023.

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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:

See Answer to Response No. 3.

5. Admit that you are not aware of any deficiencies with gutter and downspout installation.

ANSWER:

Plaintiff objects on the basis that these Requests for Admission were sent less than thirty (30) days before this Court's current discovery deadline of June 9, 2023, and are therefore untimely. Subject to said objection, admitted as to the gutters and downspouts themselves. As for damage that exists in areas where the gutters and downspouts intersect with other components of the subject properties (*i.e.*, downspouts potentially causing settlement of the foundation as testified to by Derek Hodgin), denied.

6. Admit that you have not identified any damage related to gutter and downspouts.

ANSWER:

See Answer to Request No. 5.

7. Admit that you know of no expert who has opined that there were any deficiencies with the installation of gutter and downspouts.

ANSWER:

See Answer to Request No. 5.

8. Admit that you know of no expert who has opined that there is any damage related to improper installation of gutter and downspouts at any project that is at issue in this suit.

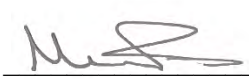
ANSWER:

See Answer to Request No. 5.

[Signatures on following page]

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing ***Plaintiff's Answers to Defendant Gale's Requests for Admission to Plaintiff*** 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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STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS Civil Action No. 2019-CP-04-01942
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. vs. D.R. HORTON, INC., Third-Party Plaintiff, vs. AJ LANDSCAPING & GRADING, LLC, A/K/A A J LANDSCAPING & GRADING; 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	**D.R. HORTON, INC.'S RESPONSES TO THIRD-PARTY DEFENDANT BUILDERS SERVICES GROUP, INC. D/B/A GALE CONTRACTOR SERVICES' FIRST SET OF REQUESTS FOR ADMISSION**

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TO: THIRD-PARTY DEFENDANT BUILDERS SERVICES GROUP, INC. D/B/A GALE CONTRACTOR SERVICES, BY AND THROUGH ITS COUNSEL OF RECORD

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the undersigned attorney for the Defendant D.R. Horton, Inc. ("D.R. Horton"), hereby provides its responses to Third-Party Defendant Builders Services Group, Inc. d/b/a Gale Contractor Services' First Set of Requests for Admission as follows:

GENERAL OBJECTIONS

1. D.R. Horton objects to the Interrogatories to the extent that they purport to impose obligations beyond those imposed by the South Carolina Rules of Civil Procedure.

2. D.R. Horton objects to the Interrogatories to the extent that they request information which is protected by the attorney-client privilege and/or the work product doctrine and/or any other applicable law, rule or privilege.

3. D.R. Horton objects to the Interrogatories to the extent that the requested information is equally available to the Defendant, on the grounds that producing such information is unnecessary, unduly burdensome and harassing.

4. D.R. Horton objects to the Interrogatories to the extent Defendant seeks information which is in the possession of the Defendant or persons or entities other than D.R. Horton.

5. D.R. Horton objects to the Interrogatories to the extent that they seek information which is not relevant to issues in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence and to the extent that they are overbroad, oppressive, vague, and unduly burdensome and would impose upon D.R. Horton an unreasonable burden of inquiry.

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6. D.R. Horton objects to the Interrogatories to the extent that they seek information without regard to any time period limitation and are therefore not reasonably calculated to lead to the discovery of admissible evidence.

7. D.R. Horton objects to the Interrogatories to the extent that they seek information which calls for a legal conclusion by D.R. Horton.

OBJECTIONS AND PRIVILEGES NOT WAIVED

The responses given below are made without waiving, or intending to waive, but to the contrary, intending to preserve and preserving:

(a) The right to object, on the grounds of competency, privilege, relevancy or materiality, or any other proper grounds, to the use of this information for any purpose, in whole or in part, in any subsequent proceeding in this action or any other action;

(b) The right to object, on any and all grounds, at any time, to other discovery procedures involving or relating to the subject matter of the Interrogatories to which D.R. Horton has responded herein; and

(c) The right at any time to revise, correct, add to or clarify any of the responses propounded herein.

RESPONSES TO REQUESTS FOR ADMISSION

1. Admit that you are not aware of any deficiencies with the insulation installation.

RESPONSE: Denied.

2. Admit that you have not identified any damage related to the insulation.

RESPONSE: Denied.

3. Admit that you know of no expert who has opined that there were any deficiencies with the installation of the insulation.

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RESPONSE: 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.

RESPONSE: Denied.

5. Admit that you are not aware of any deficiencies with gutter and downspout installation.

RESPONSE: Denied.

6. Admit that you have not identified any damage related to gutter and downspouts.

RESPONSE: Denied.

7. Admit that you know of no expert who has opined that there were any deficiencies with the installation of gutter and downspouts.

RESPONSE: Denied.

8. Admit that you know of no expert who has opined that there is any damage related to improper installation of gutter and downspouts at any project that is at issue in this suit.

RESPONSE: Denied.

9. Admit that you are not aware of any deficiencies with garage door and/or garage door opener installation.

RESPONSE: Upon information and belief, admitted.

10. Admit that you have not identified any damage related to garage doors and/or garage door openers.

RESPONSE: Upon information and belief, admitted.

11. Admit that you know of no expert who has opined that there were any deficiencies with the installation of garage doors and/or garage door openers.

RESPONSE: Upon information and belief, admitted.

12. Admit that you know of no expert who has opined that there is any damage related to improper installation of garage doors and/or garage door openers at any project that is at issue in this suit.

RESPONSE: Upon information and belief, admitted.

KENISON, DUDLEY & CRAWFORD, LLC

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May 24, 2023

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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, v. D.R. Horton, Inc.; Jane Doe #1-10; and John Doe #1-50, Defendants.	**CERTIFICATE OF SERVICE**
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 Design House, 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.: Cannady Siding & Gutter, Inc.; Coleman Floor, LLC; Cortes Painting, LLC; CBU Enterprises, Inc.; CPI Security Systems, Inc.; DOM Group, LLC; Rodney Howard 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	

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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 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.	)

I, the undersigned, of the law offices of Kenison, Dudley & Crawford, LLC for the Defendant D.R. Horton, Inc. do hereby certify that I have served the below listed **D.R. HORTON, INC.'S RESPONSES TO THIRD-PARTY DEFENDANT BUILDERS SERVICES GROUP, INC. D/B/A GALE CONTRACTOR SERVICES' FIRST SET OF REQUESTS FOR ADMISSION** upon counsel of record *via email* in this action this 24th day of May, 2023.

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s/ Stephanie Simpson
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EXHIBIT 25

BK

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FIRST AMENDMENT TO MASTER ADDENDUM TO INDEPENDENT CONTRACTOR AGREEMENT

This First Amendment ("First Amendment") to Master Addendum to Independent Contractor Agreement effective as of January 1, 2006 ("Master Addendum"), by and between D. R. Horton, Inc. and its subsidiaries and affiliates ("Builder") and the direct and indirect subsidiaries and related companies of Masco Corporation listed on Exhibit B to the Master Addendum, amends the Master Addendum effective as of the dates stated below as follows:

1. Effective as of October 1, 2007, Masco Framing Corp. and its subsidiaries are added to Exhibit "B" to the Master Addendum.

2. Effective as of January 1, 2008, Masco's cabinet companies, Merillat LP, Texwood Industries, L.P. and Merillat Industries, LLC listed on Exhibit "B" to the Master Addendum are replaced by their successor by merger, Masco Builder Cabinet Group.

3. Effective as of January 1, 2008, Masco Contractor Services of California, Inc, formerly known as Schmid Insulation Contractors, Inc. is added to Exhibit "B" to the Master Addendum. Schmid Insulation Contractors, Inc. (now known as Masco Contractor Services of California, Inc.) is no longer a union company, and so the Master Addendum with D.R. Horton for Masco union companies entered into concurrently with the Master Addendum amended hereby will no longer apply to it.

4. Except as amended by this First Amendment, all other terms and conditions of the Master Addendum shall remain in full force and effect.

By _____
John G. Sznewajs
Vice President of Builder Services Group, Inc. and its subsidiaries, Masco Builder Cabinet Group, Masco Contractor Services of California, Inc., Masco Framing Corp. and its subsidiaries, and Milgard Manufacturing, Incorporated

Builder: By _____ 5/21/08
Name Brad Conlon
Title VP, Dir. of Nat'l Accts

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Master Addendum to Independent Contractor Agreement

This Master Addendum to Contractor Agreement ("Master Addendum") effective as of January 1, 2006, is by and between D.R. Horton, Inc. and its direct and indirect subsidiaries and related companies, listed on Exhibit A (individually and collectively "Builder") and the direct and indirect subsidiaries and related companies of Masco Corporation, listed on Exhibit B (individually and collectively "Contractor").

Builder and Contractor agree as follows:

This Master Addendum modifies the terms of any Builder preprinted standard contractor/subcontractor agreement (including its attached exhibits) ("Standard Agreement") entered into between Builder and Contractor for the provision of goods and/or services by Contractor (the "Work") to a Builder building project ("Project"). This Master Addendum will supersede and control any conflicting terms or conditions of the Standard Agreement (the Standard Agreement as modified by the Master Addendum is referred to as the "Contract"). Therefore, notwithstanding anything to the contrary in the Standard Agreement, the following provisions will apply to any Contract:

Indemnity and Insurance. Any defense, indemnification, hold harmless or similar obligation (collectively "Indemnification") [1] imposed on Contractor under the Standard Agreement shall be limited to any claims, demands, damages, defense expenses (including attorneys' fees and litigation costs) or liabilities (collectively "Loss") covered by the terms of the Indemnification in the Standard Agreement that are caused by Contractor's negligence or the negligence of its subcontractors or its Work (including any liability of Builder for its supervision of Contractor, Contractor's subcontractors, or Contractor's Work). Other than as set forth above, Contractor's Indemnification shall not apply (based on indemnity, insurance, warranty, strict liability or otherwise) to the extent that the Loss arises out of the work, negligence or misconduct of Builder or any other indemnitee as defined in the Standard Agreement, third parties, or Builder's (or any other indemnitee's) activities related to supervision of third parties. Except as set forth above, Contractor shall not be responsible to the extent that the Loss arises out of (a) accident, misuse, abuse or neglect by someone other than Contractor or its agents; or (b) alteration, repair or attempted alteration or repair by anyone other than Contractor or its authorized agent.

Where Builder or other indemnitee as defined under the Standard Agreement (collectively "Indemnitee") demands indemnification for Loss falling within the terms of this indemnity, Builder may retain counsel of Builder's own choosing that is reasonably acceptable to Contractor. Contractor shall then have the duty to reimburse Builder only for the proportion of Builder's defense expenses that are attributable to Loss caused by Contractor and not excluded from indemnification in the preceding paragraph. The proportion of Builder's defense costs to be reimbursed by Contractor shall be calculated by Builder based upon Builder's reasonable and good faith allocation of the proportion of the Loss attributable to Contractor's conduct for which indemnity is owed in the preceding paragraph. Contractor's proportion of the defense costs may be subject to reasonable adjustment (upward or downward) in the event the original allocation provided for in this paragraph proves to be inequitable. In such case, the parties shall reimburse each other accordingly. In the event of a judgment or award against an Indemnitee, Contractor shall indemnify Indemnitee for that portion of the judgment or award attributable to Loss caused by Contractor and not excluded from indemnification in the preceding paragraph. In the event of a settlement, Contractor shall only be responsible for that portion of the settlement attributable to Loss allegedly caused by Contractor and not

[1] All Indemnification and Additional Insured Endorsement requirements imposed on Contractor by the Standard Agreement as modified by this Master Addendum do not apply to any Project that was or is covered by a Wrap Insurance Program (including without limitation an OCIP or CCIP).

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excluded from indemnification in the preceding paragraph; but no such settlement shall be entered into without Contractor's consent, such consent not to be unreasonably withheld.

Any disputes regarding allocation of defense costs or indemnity shall be resolved with a "baseball" arbitration, whereby each party shall submit to the arbitrator and exchange with each other 45 days in advance of the hearing their last, best offers for allocation. The arbitrator shall be limited to awarding only one or the other of the two figures submitted, with the prevailing party to collect all costs and expenses of arbitration.

Builder shall endeavor to give notice, in writing, to Contractor of any claims (including without limitation any notices received by Builder under "right to repair" legislation) brought against Builder that are related to Contractor's Work and for which Indemnification or Additional Insured coverage might be sought. Builder shall endeavor to assure that Contractor has a meaningful opportunity to participate in any inspection or testing (destructive or otherwise). The failure to provide such written notice or provide such rights of inspection to Contractor shall not void Builder's Indemnification rights under the Standard Agreement as modified by this Master Addendum except to the extent that Contractor has been prejudiced thereby.

Insurance. Contractor will not provide certified copies of any insurance policies. Contractor will name Builder as an additional insured on Contractor's CGL policy pursuant to an Additional Insured Endorsement[1] in the form attached as Schedule 1. Notwithstanding anything to the contrary in the Standard Agreement, Contractor shall not be obligated to carry completed operations coverage on a Project for more than ten years after completion of the Work or out to the statute of repose in that jurisdiction, whichever is sooner. Builder acknowledges that the policy's deductible is greater than $25,000. Builder may not exercise any right to purchase insurance on behalf of Contractor or impose any penalty on Contractor for failure to provide a current certificate of insurance unless Builder has given at least thirty (30) days prior written notice and an opportunity to cure such failure.

Time and Schedule of the Work. At the request of Contractor, Builder shall give any notices to proceed or change orders in writing. Builder shall give Contractor reasonable notice of changes in schedule or changes in the Work. Neither party shall be responsible for any loss, damage, detention or delay caused by any event beyond the reasonable control of either party. Dates for the performance or completion of the Work shall be extended by delay of time as may be reasonably necessary to compensate for such delay.

Warranty, Defect, Default. Builder shall endeavor to give Contractor or Contractor's agent or supply chain partner reasonable notice and opportunity to correct any breach or default under the Contract or defect in the Work, before making such corrections itself or through others. Contractor shall be allowed a reasonable period of time to complete correction of such breach, default or defect, subject to product lead times where practicable.

Remedies for Contractor's breach of a Contract as to a particular Project shall be allowed only with regard to that specific Project and shall not apply to other Projects or agreements between Builder and Contractor.

In no event shall either party be liable to the other for any incidental (including but not limited to overhead and administrative expenses), consequential, liquidated or special damages, including without limitation, lost revenues, profits or loss of use, even if it has been advised of the possibility of such damages. The foregoing limitation shall not apply to damages that Builder is obligated to pay a third party for a Loss that is indemnified by Contractor pursuant to the provisions on Indemnification above.

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Rights and Liens. Contractor will not and does not waive (i) any legal rights provided under local, state or federal laws, statutes, rules, regulations or common law concerning the construction industry, including without limitation those enacted for the protection of contractors and subcontractors, or (2) under common law tort theories or in equity.

Payment. Contractor will use commercially reasonable efforts to invoice Builder for progress payments, final payments and for extras within any time deadlines imposed in the Standard Agreement; however, failure by Contractor to meet a deadline shall not relieve Builder of its obligation to pay the invoice. Notwithstanding anything in the Contract to the contrary, Contractor shall be paid 100% of the money for the Work under the Contract within thirty (30) days of invoice(s) submitted for payment, for each portion of its completed Work. Contractor shall have no duty to perform any Work if payment is not received as set forth herein.

Acts of Others. Contractor's obligation to inspect the work of others shall be limited to the obligation to discover and report to Builder patent defects that would be readily recognized by a contractor in Contractor's trade in prior work that directly affects or will be directly affected by Contractor's Work. Contractor will only be responsible for the safety of its own employees and agents and for conditions created by the Work at the Project site and not for safety of others or the Project site generally unless attributable to Contractor's work. Notwithstanding anything to the contrary in the Standard Agreement, in no event shall Contractor have any obligation of defense or indemnity for fines and penalties imposed upon Builder to the extent the amount of any such fines or penalties are based upon the prior history of Builder. To the extent that compliance with building codes, safety regulations, the Contract and/or best industry practices is impeded or prevented by Builder, Contractor shall have the right upon notice to Builder to walk off the job without liability to Builder.

Dispute Resolution. In the event of a dispute, only the decision of a third party neutral arbitrator(s) (e.g. not the architect, general contractor, etc.) or a competent court of law shall be binding on Contractor. In no event shall Contractor be bound by an award in an arbitration or other proceeding unless Contractor has received notice and an opportunity to participate in such proceeding.

Reciprocal Provisions. Provisions in the Standard Agreement in favor of Builder on non-waiver, confidentiality and entitlement to attorneys' fees shall be reciprocal between Builder and Contractor.

Choice of Law. The Standard Agreement as modified by this Addendum for each Project shall be governed by the internal laws of the State in which the Project is located, except to the extent the Federal Arbitration Act applies.

Effective Date. For each Project, the Standard Agreement as modified by this Addendum shall be deemed entered into by Builder and Contractor on the date that the Standard Agreement for that Project is entered into.

Termination. This Addendum may be cancelled by either party after January 1, 2007 with 30 days written notice to the signatories below, copy to Stephan Perison at sperison@drhorton.com and Barbara Ross at barbara_ross@mascohq.com, along with a hard copy to Masco Corporation, 21001 Van Born Road, Taylor, MI 48180 Attn: General Counsel. Cancellation of the Addendum is only effective for Standard Agreements entered into after the effective date of such cancellation; the Addendum shall continue in full force and effect for any Standard Agreements entered into prior to the effective date of such cancellation.

Except for incentive agreements between the parties for products supplied by Contractor to Builder, and except for the scope of the Work and pricing provided by Contractor for each Project, the Standard

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Agreement between Builder and Contractor for that Project as modified by this Master Addendum shall constitute the entire agreement between the parties concerning Contractor's Work on that Project. This Master Addendum may only be modified by a written agreement signed by both parties that specifically references this Master Addendum; however electronic signatures shall not be effective for such a modification. For any modification to this Master Addendum to be binding upon Contractor, the Vice President signing on behalf of the applicable Masco subsidiary must also be a vice president of Masco Corporation. This Master Addendum shall be binding upon each party's successors and assigns. This Master Addendum shall extend to all future subsidiaries of the parties listed below. Each Contractor shall be individually and not jointly liable to Builder under this Master Addendum or any Contract.

Accepted and agreed to by Builder:

By: _____
Printed Name: Brad Conlon
Title: V.P., Dir. of Nat. Accounts of DHI Date: 3/20/06

Accepted and agreed to by Contractor:

By: _____
Printed Name: William T. Anderson
Title: Vice President, Coast Insulation Contractors, Inc, Sacramento Insulation Contractors, Schmid Insulation Contractors, Inc., Insulpro Projects, Inc., and Superior Contracting Corporation Date: 3-8-06

DHI CORPORATE APPROVAL:

By: _____
Printed Name: Donald J. Tomnitz
Title: President & CEO Date: 4/21/06

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Exhibit A

D.R. Horton, Inc. and its subsidiaries and affiliates.

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Exhibit B

Masco Companies

1. Coast Insulation Contractors, Inc
2. Sacramento Insulation Contractors
3. Schmid Insulation Contractors, Inc.
4. Insulpro Projects, Inc.
5. Superior Contracting Corporation

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FIRST AMENDMENT TO MASTER ADDENDUM TO INDEPENDENT CONTRACTOR AGREEMENT

This First Amendment ("First Amendment") to Master Addendum to Independent Contractor Agreement effective as of January 1, 2006 ("Master Addendum"), by and between D. R. Horton, Inc. and its subsidiaries and affiliates ("Builder") and the direct and indirect subsidiaries and related companies of Masco Corporation listed on Exhibit B to the Master Addendum, amends the Master Addendum effective as of the dates stated below as follows:

1. Effective as of October 1, 2007, Masco Framing Corp. and its subsidiaries are added to Exhibit "B" to the Master Addendum.

2. Effective as of January 1, 2008, Masco's cabinet companies, Merillat LP, Texwood Industries, L.P. and Merillat Industries, LLC listed on Exhibit "B" to the Master Addendum are replaced by their successor by merger, Masco Builder Cabinet Group.

3. Effective as of January 1, 2008, Masco Contractor Services of California, Inc, formerly known as Schmid Insulation Contractors, Inc. is added to Exhibit "B" to the Master Addendum. Schmid Insulation Contractors, Inc. (now known as Masco Contractor Services of California, Inc.) is no longer a union company, and so the Master Addendum with D.R. Horton for Masco union companies entered into concurrently with the Master Addendum amended hereby will no longer apply to it.

4. Except as amended by this First Amendment, all other terms and conditions of the Master Addendum shall remain in full force and effect.

By _____
John G. Sznewajs
Vice President of Builder Services Group, Inc. and its subsidiaries, Masco Builder Cabinet Group, Masco Contractor Services of California, Inc., Masco Framing Corp. and its subsidiaries, and Milgard Manufacturing, Incorporated

Builder:

By _____ 5/21/08
Name Brad Conlon
Title VP, Dir. of Nat'l Accts

129733

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Master Addendum to Independent Contractor Agreement

This Master Addendum to Contractor Agreement ("Master Addendum") effective as of January 1, 2006, is by and between D.R. Horton, Inc. and its direct and indirect subsidiaries and related companies, listed on Exhibit A (individually and collectively "Builder") and the direct and indirect subsidiaries and related companies of Masco Corporation, listed on Exhibit B (individually and collectively "Contractor").

Builder and Contractor agree as follows:

This Master Addendum modifies the terms of any Builder preprinted standard contractor/subcontractor agreement (including its attached exhibits) ("Standard Agreement") entered into between Builder and Contractor for the provision of goods and/or services by Contractor (the "Work") to a Builder building project ("Project"). This Master Addendum will supersede and control any conflicting terms or conditions of the Standard Agreement (the Standard Agreement as modified by the Master Addendum is referred to as the "Contract"). Therefore, notwithstanding anything to the contrary in the Standard Agreement, the following provisions will apply to any Contract:

Indemnity and Insurance. Any defense, indemnification, hold harmless or similar obligation (collectively "Indemnification") [1] imposed on Contractor under the Standard Agreement shall he limited to any claims, demands, damages, defense expenses (including attorneys' fees and litigation costs) or liabilities (collectively "Loss") covered by the terms of the Indemnification in the Standard Agreement that are caused by Contractor's negligence or the negligence of its subcontractors or its Work (including any liability of Builder for its supervision of Contractor, Contractor's subcontractors, or Contractor's Work). Other than as set forth above, Contractor's Indemnification shall not apply (based on indemnity, insurance, warranty, strict liability or otherwise) to the extent that the Loss arises out of the work, negligence or misconduct of Builder or any other indemnitee as defined in the Standard Agreement, third parties, or Builder's (or any other indemnitee's) activities related to supervision of third parties. Except as set forth above, Contractor shall not be responsible to the extent that the Loss arises out of (a) accident, misuse, abuse or neglect by someone other than Contractor or its agents; or (b) alteration, repair or attempted alteration or repair by anyone other than Contractor or its authorized agent.

Where Builder or other indemnitee as defined under the Standard Agreement (collectively "Indemnitee") demands indemnification for Loss falling within the terms of this indemnity, Builder may retain counsel of Builder's own choosing that is reasonably acceptable to Contractor. Contractor shall then have the duty to reimburse Builder only for the proportion of Builder's defense expenses that are attributable to Loss caused by Contractor and not excluded from indemnification in the preceding paragraph. The proportion of Builder's defense costs to be reimbursed by Contractor shall be calculated by Builder based upon Builder's reasonable and good faith allocation of the proportion of the Loss attributable to Contractor's conduct for which indemnity is owed in the preceding paragraph. Contractor's proportion of the defense costs may be subject to reasonable adjustment (upward or downward) in the event the original allocation provided for in this paragraph proves to be inequitable. In such case, the parties shall reimburse each other accordingly. In the event of a judgment or award against an Indemnitee, Contractor shall indemnify Indemnitee for that portion of the judgment or award attributable to Loss caused by Contractor and not excluded from indemnification in the preceding paragraph. In the event of a settlement, Contractor shall only be responsible for that portion of the settlement attributable to Loss allegedly caused by Contractor and not

[1] All Indemnification and Additional Insured Endorsement requirements imposed on Contractor by the Standard Agreement as modified by this Master Addendum do not apply to any Project that was or is covered by a Wrap Insurance Program (including without limitation an OCIP or CCIP).

excluded from indemnification in the preceding paragraph; but no such settlement shall be entered into without Contractor's consent, such consent not to be unreasonably withheld.

Any disputes regarding allocation of defense costs or indemnity shall be resolved with a "baseball" arbitration, whereby each party shall submit to the arbitrator and exchange with each other 45 days in advance of the hearing their last, best offers for allocation. The arbitrator shall be limited to awarding only one or the other of the two figures submitted, with the prevailing party to collect all costs and expenses of arbitration.

Builder shall endeavor to give notice, in writing, to Contractor of any claims (including without limitation any notices received by Builder under "right to repair" legislation) brought against Builder that are related to Contractor's Work and for which Indemnification or Additional Insured coverage might be sought. Builder shall endeavor to assure that Contractor has a meaningful opportunity to participate in any inspection or testing (destructive or otherwise). The failure to provide such written notice or provide such rights of inspection to Contractor shall not void Builder's Indemnification rights under the Standard Agreement as modified by this Master Addendum except to the extent that Contractor has been prejudiced thereby.

Insurance. Contractor will not provide certified copies of any insurance policies. Contractor will name Builder as an additional insured on Contractor's CGL policy pursuant to an Additional Insured Endorsement[1] in the form attached as Schedule 1. Notwithstanding anything to the contrary in the Standard Agreement, Contractor shall not be obligated to carry completed operations coverage on a Project for more than ten years after completion of the Work or out to the statute of repose in that jurisdiction, whichever is sooner. Builder acknowledges that the policy's deductible is greater than $25,000. Builder may not exercise any right to purchase insurance on behalf of Contractor or impose any penalty on Contractor for failure to provide a current certificate of insurance unless Builder has given at least thirty (30) days prior written notice and an opportunity to cure such failure.

Time and Schedule of the Work. At the request of Contractor, Builder shall give any notices to proceed or change orders in writing. Builder shall give Contractor reasonable notice of changes in schedule or changes in the Work. Neither party shall be responsible for any loss, damage, detention or delay caused by any event beyond the reasonable control of either party. Dates for the performance or completion of the Work shall be extended by delay of time as may be reasonably necessary to compensate for such delay.

Warranty, Defect, Default. Builder shall endeavor to give Contractor or Contractor's agent or supply chain partner reasonable notice and opportunity to correct any breach or default under the Contract or defect in the Work, before making such corrections itself or through others. Contractor shall be allowed a reasonable period of time to complete correction of such breach, default or defect, subject to product lead times where practicable.

Remedies for Contractor's breach of a Contract as to a particular Project shall be allowed only with regard to that specific Project and shall not apply to other Projects or agreements between Builder and Contractor.

In no event shall either party be liable to the other for any incidental (including but not limited to overhead and administrative expenses), consequential, liquidated or special damages, including without limitation, lost revenues, profits or loss of use, even if it has been advised of the possibility of such damages. The foregoing limitation shall not apply to damages that Builder is obligated to pay a third party for a Loss that is indemnified by Contractor pursuant to the provisions on Indemnification above.

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Rights and Liens. Contractor will not and does not waive (i) any legal rights provided under local, state or federal laws, statutes, rules, regulations or common law concerning the construction industry, including without limitation those enacted for the protection of contractors and subcontractors, or (2) under common law tort theories or in equity.

Payment. Contractor will use commercially reasonable efforts to invoice Builder for progress payments, final payments and for extras within any time deadlines imposed in the Standard Agreement; however, failure by Contractor to meet a deadline shall not relieve Builder of its obligation to pay the invoice. Notwithstanding anything in the Contract to the contrary, Contractor shall be paid 100% of the money for the Work under the Contract within thirty (30) days of invoice(s) submitted for payment, for each portion of its completed Work. Contractor shall have no duty to perform any Work if payment is not received as set forth herein.

Acts of Others. Contractor's obligation to inspect the work of others shall be limited to the obligation to discover and report to Builder patent defects that would be readily recognized by a contractor in Contractor's trade in prior work that directly affects or will be directly affected by Contractor's Work. Contractor will only be responsible for the safety of its own employees and agents and for conditions created by the Work at the Project site and not for safety of others or the Project site generally unless attributable to Contractor's work. Notwithstanding anything to the contrary in the Standard Agreement, in no event shall Contractor have any obligation of defense or indemnity for fines and penalties imposed upon Builder to the extent the amount of any such fines or penalties are based upon the prior history of Builder. To the extent that compliance with building codes, safety regulations, the Contract and/or best industry practices is impeded or prevented by Builder, Contractor shall have the right upon notice to Builder to walk off the job without liability to Builder.

Dispute Resolution. In the event of a dispute, only the decision of a third party neutral arbitrator(s) (e.g. not the architect, general contractor, etc.) or a competent court of law shall be binding on Contractor. In no event shall Contractor be bound by an award in an arbitration or other proceeding unless Contractor has received notice and an opportunity to participate in such proceeding.

Reciprocal Provisions. Provisions in the Standard Agreement in favor of Builder on non-waiver, confidentiality and entitlement to attorneys' fees shall be reciprocal between Builder and Contractor.

Choice of Law. The Standard Agreement as modified by this Addendum for each Project shall be governed by the internal laws of the State in which the Project is located, except to the extent the Federal Arbitration Act applies.

Effective Date. For each Project, the Standard Agreement as modified by this Addendum shall be deemed entered into by Builder and Contractor on the date that the Standard Agreement for that Project is entered into.

Termination. This Addendum may be cancelled by either party after January 1, 2007 with 30 days written notice to the signatories below, copy to Stephan Perison at sperison@drhorton.com and Barbara Ross at barbara_ross@mascohq.com, along with a hard copy to Masco Corporation, 21001 Van Born Road, Taylor, MI 48180 Attn: General Counsel. Cancellation of the Addendum is only effective for Standard Agreements entered into after the effective date of such cancellation; the Addendum shall continue in full force and effect for any Standard Agreements entered into prior to the effective date of such cancellation.

Except for incentive agreements between the parties for products supplied by Contractor to Builder, and except for the scope of the Work and pricing provided by Contractor for each Project, the Standard

Agreement between Builder and Contractor for that Project as modified by this Master Addendum shall constitute the entire agreement between the parties concerning Contractor's Work on that Project. This Master Addendum may only be modified by a written agreement signed by both parties that specifically references this Master Addendum; however electronic signatures shall not be effective for such a modification. For any modification to this Master Addendum to be binding upon Contractor, the Vice President signing on behalf of the applicable Masco subsidiary must also he a vice president of Masco Corporation. This Master Addendum shall be binding upon each party's successors and assigns. This Master Addendum shall extend to all future subsidiaries of the parties listed below. Each Contractor shall be individually and not jointly liable to Builder under this Master Addendum or any Contract.

Accepted and agreed to by Builder:

By: _____
Printed Name: Brad Conlon
Title: V.P., Dir. of Nat. Accounts of DHI Date: 3/20/06

Accepted and agreed to by Contractor:

By: _____
Printed Name: William T. Anderson
Title: Vice President, Coast Insulation Contractors, Inc, Sacramento Insulation Contractors, Schmid Insulation Contractors, Inc., Insulpro Projects, Inc., and Superior Contracting Corporation Date: 3-8-06

DHI CORPORATE APPROVAL:

By: _____
Printed Name: Donald J. Tomnitz
Title: President & CEO Date: 4/24/06

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Exhibit A

D.R. Horton, Inc. and its subsidiaries and affiliates.

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Exhibit B

Masco Companies

1. Coast Insulation Contractors, Inc
2. Sacramento Insulation Contractors
3. Schmid Insulation Contractors, Inc.
4. Insulpro Projects, Inc.
5. Superior Contracting Corporation

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Master Addendum to Independent Contractor Agreement

This Master Addendum to Contractor Agreement ("Master Addendum"), effective as of July 1, 2015, is by and between D.L. Horton and its direct and indirect subsidiaries and related companies, listed on Exhibit A (individually and collectively "Builder") and Builder Services Group, Inc., TruTeam of California, Inc. (f/k/a Masco Contractor Services of California, Inc.) and American National Services, Inc. and its subsidiaries (individually and collectively "Contractor"). This Agreement is entered into in contemplation of the announced transaction involving spin-off of Masco Corporation's services businesses in mid-2015 to TopBuild Corp. Home Services

Builder and Contractor agree as follows:

This Master Addendum modifies the terms of any Builder preprinted standard contractor/subcontractor agreement (including its attached exhibits) ("Standard Agreement") entered into between Builder and Contractor for the provision of goods and/or services by Contractor (the "Work") to a Builder building project ("Project"). This Master Addendum will supersede and control any conflicting terms or conditions of the Standard Agreement (the Standard Agreement as modified by the Master Addendum is referred to as the "Contract"). Therefore, notwithstanding anything to the contrary in the Standard Agreement, the following provisions will apply to any Contract:

Indemnity and Insurance. Any defense, indemnification, hold harmless or similar obligation (collectively "Indemnification")[1] imposed on Contractor under the Standard Agreement shall be limited to any claims, demands, damages, defense expenses (including attorneys' fees and litigation costs) or liabilities (collectively "Loss") covered by the terms of the Indemnification in the Standard Agreement that are caused by Contractor's negligence or the negligence of its subcontractors or its Work (including any liability of Builder for its supervision of Contractor, Contractor's subcontractors, or Contractor's Work). Other than as set forth above, Contractor's Indemnification shall not apply (based on indemnity, insurance, warranty, strict liability or otherwise) to the extent that the Loss arises out of the work, negligence or misconduct of Builder or any other indemnitee as defined in the Standard Agreement, third parties, or Builder's (or any other indemnitee's) activities related to supervision of third parties. Except as set forth above, Contractor shall not be responsible to the extent that the Loss arises out of (a) accident, misuse, abuse or neglect by someone other than Contractor or its agents; or (b) alteration, repair or attempted alteration or repair by anyone other than Contractor or its authorized agent.

Where Builder or other indemnitee as defined under the Standard Agreement (collectively "Indemnitee") demands indemnification for Loss falling within the terms of this indemnity, Builder may retain counsel of Builder's own choosing that is reasonably acceptable to Contractor. Contractor shall then have the duty to reimburse Builder only for the proportion of Builder's defense expenses that are attributable to Loss caused by Contractor and not excluded from indemnification in the preceding paragraph. The proportion of Builder's defense costs to be reimbursed by Contractor shall be calculated by Builder based upon Builder's reasonable and good faith allocation of the proportion of the Loss attributable to Contractor's conduct for which indemnity is owed in the preceding paragraph. Contractor's proportion of the defense costs may be subject to reasonable

[1] All Indemnification and Additional Insured Endorsement requirements imposed on Contractor by the Standard Agreement as modified by this Master Addendum do not apply to any Project that was or is covered by a Wrap Insurance Program (including without limitation an OCIP or CCIP).

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adjustment (upward or downward) in the event the original allocation provided for in this paragraph proves to be inequitable. In such case, the parties shall reimburse each other accordingly. In the event of a judgment or award against an Indemnitee, Contractor shall indemnify Indemnitee for that portion of the judgment or award attributable to Loss caused by Contractor and not excluded from indemnification in the preceding paragraph. In the event of a settlement, Contractor shall only be responsible for that portion of the settlement attributable to Loss allegedly caused by Contractor and not excluded from indemnification in the preceding paragraph; but no such settlement shall be entered into without Contractor's consent, such consent not to be unreasonably withheld.

Any disputes regarding allocation of defense costs or indemnity shall be resolved with a "baseball" arbitration, whereby each party shall submit to the arbitrator and exchange with each other 45 days in advance of the hearing their last, best offers for allocation. The arbitrator shall be limited to awarding only one or the other of the two figures submitted, with the prevailing party to collect all costs and expenses of arbitration.

Builder shall endeavor to give notice, in writing, to Contractor of any claims (including without limitation any notices received by Builder under "right to repair" legislation) brought against Builder that are related to Contractor's Work and for which Indemnification or Additional Insured coverage might be sought. Builder shall endeavor to assure that Contractor has a meaningful opportunity to participate in any inspection or testing (destructive or otherwise). The failure to provide such written notice or provide such rights of inspection to Contractor shall not void Builder's Indemnification rights under the Standard Agreement as modified by this Master Addendum except to the extent that Contractor has been prejudiced thereby.

Insurance. Contractor will not provide certified copies of any insurance policies. Contractor will name Builder as an additional insured on Contractor's CGL policy pursuant to an Additional Insured Endorsement in the form attached as Schedule 1. Notwithstanding anything to the contrary in the Standard Agreement, Contractor shall not be obligated to carry completed operations coverage on a Project for more than ten years after completion of the Work or out to the statute of repose in that jurisdiction, whichever is sooner. Builder acknowledges that the policy's deductible is greater than $25,000. Builder may not exercise any right to purchase insurance on behalf of Contractor or impose any penalty on Contractor for failure to provide a current certificate of insurance unless Builder has given at least thirty (30) days prior written notice and an opportunity to cure such failure.

Time and Schedule of the Work. At the request of Contractor, Builder shall give any notices to proceed or change orders in writing. Builder shall give Contractor reasonable notice of changes in schedule or changes in the Work. Neither party shall be responsible for any loss, damage, detention or delay caused by any event beyond the reasonable control of either party. Dates for the performance or completion of the Work shall be extended by delay of time as may be reasonably necessary to compensate for such delay.

Warranty, Defect, Default. Builder shall endeavor to give Contractor or Contractor's agent or supply chain partner reasonable notice and opportunity to correct any breach or default under the Contract or defect in the Work, before making such corrections itself or through others. Contractor shall be allowed a reasonable period of time to complete correction of such breach, default or defect, subject to product lead times where practicable.

Remedies for Contractor's breach of a Contract as to a particular Project shall be allowed only with regard to that specific Project and shall not apply to other Projects or agreements between Builder and Contractor.

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In no event shall either party be liable to the other for any incidental (including but not limited to overhead and administrative expenses), consequential, liquidated or special damages, including without limitation, lost revenues, profits or loss of use, even if it has been advised of the possibility of such damages. The foregoing limitation shall not apply to damages that Builder is obligated to pay a third party for a Loss that is indemnified by Contractor pursuant to the provisions on Indemnification above.

Rights and Liens. Contractor will not and does not waive (i) any legal rights provided under local, state or federal laws, statutes, rules, regulations or common law concerning the construction industry, including without limitation those enacted for the protection of contractors and subcontractors, or (2) under common law tort theories or in equity.

Payment. Contractor will use commercially reasonable efforts to invoice Builder for progress payments, final payments and for extras within any time deadlines imposed in the Standard Agreement; however, failure by Contractor to meet a deadline shall not relieve Builder of its obligation to pay the invoice. Notwithstanding anything in the Contract to the contrary, Contractor shall be paid 100% of the money for the Work under the Contract within thirty (30) days of invoice(s) submitted for payment, for each portion of its completed Work. Contractor shall have no duty to perform any Work if payment is not received as set forth herein.

Acts of Others. Contractor's obligation to inspect the work of others shall be limited to the obligation to discover and report to Builder patent defects that would be readily recognized by a contractor in Contractor's trade in prior work that directly affects or will be directly affected by Contractor's Work. Contractor will only be responsible for the safety of its own employees and agents and for conditions created by the Work at the Project site and not for safety of others or the Project site generally unless attributable to Contractor's work. Notwithstanding anything to the contrary in the Standard Agreement, in no event shall Contractor have any obligation of defense or indemnity for fines and penalties imposed upon Builder to the extent the amount of any such fines or penalties are based upon the prior history of Builder. To the extent that compliance with building codes, safety regulations, the Contract and/or best industry practices is impeded or prevented by Builder, Contractor shall have the right upon notice to Builder to walk off the job without liability to Builder.

Dispute Resolution. In the event of a dispute, only the decision of a third party neutral arbitrator(s) (e.g. not the architect, general contractor, etc.) or a competent court of law shall be binding on Contractor. In no event shall Contractor be bound by an award in any arbitration or other proceeding unless Contractor has received notice and an opportunity to participate in such proceeding.

Reciprocal Provisions. Provisions in the Standard Agreement in favor of Builder on non-waiver, confidentiality and entitlement to attorneys' fees shall be reciprocal between Builder and Contractor.

Choice of Law. The Standard Agreement as modified by this Addendum for each Project shall be governed by the internal laws of the State in which the Project is located, except to the extent the Federal Arbitration Act applies.

Effective Date. For each Project, the Standard Agreement as modified by this Addendum shall be deemed entered into by Builder and Contractor on the date that the Standard Agreement for that Project is entered into.

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Termination. This Addendum may be cancelled by either party after with 30 days written notice to the signatories below, copy to Stephan Perison at sperison@drhorton.com and TopBuild Corp., 260 Jimmy Ann Drive, Daytona Beach, Florida 32114, Attn: General Counsel. Cancellation of the Addendum is only effective for Standard Agreements entered into after the effective date of such cancellation; the Addendum shall continue in full force and effect for any Standard Agreements entered into prior to the effective date of such cancellation.

Except for incentive agreements between the parties for the products and/or services supplied by Contractor to Builder, and except for the scope of the Work and pricing provided by Contractor for each Project, the Standard Agreement between Builder and Contractor for that Project as modified by this Master Addendum shall constitute the entire agreement between the parties concerning Contractor's Work on that Project. The parties acknowledge and agree that that certain Master Addendum to Independent Contractor Agreement effective January 1, 2006 by and between D.L. Horton and its direct and indirect subsidiaries and related companies and the following subsidiaries of Masco Corporation: Coast Insulation Contractors, Inc., Sacramento Insulation Contractor, Insulpro Projects, Inc., and Superior Contractor Corporation terminated effective April 1, 2015. This Master Addendum may only be modified by a written agreement signed by both parties that specifically references this Master Addendum; however electronic signatures shall not be effective for such a modification. For any modification to this Master Addendum to be binding upon Contractor, the President must sign on behalf of the applicable Contractor. This Master Addendum shall be binding upon each party's successors and assigns. This Master Addendum shall extend to all future subsidiaries of the parties listed below. Each Contractor shall be individually and not jointly liable to Builder under this Master Addendum or any Contract.

Accepted and agreed to by Builder:

By: _____
Printed Name: Brad Conlon
Title: VP
Date: 7/30/15

Accepted and agreed to by Builder Services Group, Inc.:

By: _____
Printed Name:
Title:
Date:

Accepted and agreed to by TruTeam of California, Inc.:

By: _____
Printed Name:
Title:
Date:

DHI Corporate Approval:

By: _____
Printed Name:
Title: VP
Date: 7/30/15

Accepted and agreed to by American National Services, Inc. and its subsidiaries:

By: _____
Printed Name:
Title:
Date:

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Exhibit A

Horton, Inc. and its subsidiaries and affiliates.

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Schedule 1

Additional Insured Endorsement

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Amendment No. 1 to Master Addendum to Independent Contractor Agreement

WHEREAS, on or about July 1, 2015, D.R. Horton and its direct and indirect subsidiaries and related companies (individually and collectively "Builder"), and Builder Services Group, Inc., TruTeam of California, Inc. (f/k/a Masco Contractor Services of California, Inc.) and American National Services, Inc. and its subsidiaries (individually and collectively "Contractor") entered into that certain Master Addendum to Contractor Agreement ("Master Addendum");

WHEREAS, the parties to the Master Addendum desire to add TopBuild Home Services, Inc. as a party to the Master Addendum; and

WHEREAS, TopBuild Home Services, Inc. desires to be made a party to the Master Addendum.

THEREFORE, the parties agree as follows:

1. Effective September 21, 2015, TopBuild Home Services, Inc. shall be included within the definition of "Contractor" within the Master Addendum, shall be considered a party to the Master Addendum, and shall have all rights, duties, obligations and remedies of "Contractor" under the Master Addendum.

2. Except as set forth in this Amendment, the Master Addendum is unaffected and shall continue in full force and effect in accordance with its terms.

Accepted and agreed to by Builder:

By: _____
Printed Name: Brad Conlon
Title: VP, Director of National Accounts
Date: October 13, 2015

Accepted and agreed to by Builder Services Group, Inc.:

By: _____
Printed Name: ROBERT BUCK
Title: PRESIDENT
Date: OCT 23, 2015

Accepted and agreed to by TruTeam of California, Inc.:

By: _____
Printed Name: ROBERT BUCK
Title: PRESIDENT
Date: OCT 23, 2015

Accepted and agreed to by American National Services, Inc. and its subsidiaries:

By: _____
Printed Name: Jennifer A. Hanson
Title: Assistant Secretary
Date: 10/23/2015

Accepted and agreed to by TopBuild Home Services, Inc.:

By: _____
Printed Name: DAVE BELL
Title: VP - BUILDING SCIENCE
Date: 10/23/15

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EXHIBIT 26

CT Corporation

Service of Process Transmittal

12/16/2019
CT Log Number 536819784

TO: David Morice
D.R. Horton, Inc.
1341 Horton Circle
Arlington, TX 76011

RE: **Process Served in South Carolina**

FOR: D.R. Horton, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	RE: Rose Hill Subdivision in Anderson County, South Carolina // To: D.R. Horton, Inc.
DOCUMENT(S) SERVED:	Letter
COURT/AGENCY:	None Specified Case # None Specified
NATURE OF ACTION:	Letter of Intent - Improper construction conditions and resulting damages
ON WHOM PROCESS WAS SERVED:	CT Corporation System, Columbia, SC
DATE AND HOUR OF SERVICE:	By Certified Mail on 12/16/2019 postmarked on 12/11/2019
JURISDICTION SERVED :	South Carolina
APPEARANCE OR ANSWER DUE:	Within 30 days from the date of this letter
ATTORNEY(S) / SENDER(S):	Dabny Lynn Justin OToole Lucey, PA 415 Mill Street Mount Pleasant, SC 29464 843-849-8400
ACTION ITEMS:	SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780136683645
	Image SOP
	Email Notification, David Morice dmorice@drhorton.com
	Email Notification, Shari Hart SHart@drhorton.com
	Email Notification, Nan McCosky nlmccosky@drhorton.com
	Email Notification, LaDonna Sampsell LDSampsell@drhorton.com
	Email Notification, CAMMY KENNEDY ckennedy@drhorton.com
	Email Notification, DAVID FLEURY drfleury@drhorton.com
SIGNED: **ADDRESS:**	CT Corporation System 1999 Bryan Street Suite 900 Dallas, TX 75201

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

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CT Corporation

Service of Process Transmittal

12/16/2019
CT Log Number 536819784

TO: David Morice
D.R. Horton, Inc.
1341 Horton Circle
Arlington, TX 76011

RE: **Process Served in South Carolina**

FOR: D.R. Horton, Inc. (Domestic State: DE)

For Questions: 866-665-5799
SouthTeam2@wolterskluwer.com

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

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CERTIFIED MAIL

JUSTIN O'TOOLE LUCEY
ATTORNEYS AT LAW
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D.R. Horton, Inc.
c/o C T Corporation System
2 Office Park Court Suite 103
Columbia, South Carolina 29223

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JUSTIN O'TOOLE LUCEY, PA

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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;

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

Dabny Lynn
Sohayla Townes

DL/dl

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EXHIBIT 27

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KDC KENISON, DUDLEY & CRAWFORD, LLC
ATTORNEYS AT LAW

John T. Crawford, Jr.
Managing Member
Licensed in SC
704 East McBee Avenue
Greenville, SC 29601
864.242.4899
crawford@conlaw.com

March 17, 2023

Via First Class Mail and Email
Old Republic Insurance Company
631 Excel Drive, Suite 200
Mt. Pleasant, PA 15666
Accounting@orinsco.com

Via First Class Mail and Email
Builder Services Group, Inc., d/b/a Gale Contractor Services
c/o N. Keith Emge, Jr., Esq.
Jessica W. Stratta, Esq.
Resnick & Louis, P.C.
146 Fairchild Street, Suite 130
Charleston, South Carolina 29492
cemge@rlattorneys.com
jstratta@rlattorneys.com

Re: *Natalie Zitek, et. al. v. D.R. Horton, Inc., et. al.,* Anderson County Court of Common Pleas, CA No. 2019-CP-04-1942

To Whom It May Concern:

This firm represents D.R. Horton, Inc., ("D.R. Horton") with respect to the above action. D.R. Horton hereby tenders its defense and demands indemnification from Builder Services Group, Inc. d/b/a Gale Contractor Services f/k/a Masco Contractor Services Central Inc. ("Builder Services Group") and defense by Builder Services Group's insurance carriers with respect to the claims asserted against D.R. Horton in the above-referenced lawsuit (the "Lawsuit"). The Lawsuit concerns itself homes located in the Rose Hill subdivision in Anderson County, South Carolina ("Rose Hill"). Rose Hill homeowners ("Homeowners") have brought claims asserting deficiencies in the design, development, construction and repair of their homes in Rose Hill. A copy of the Complaint (**See Exhibit A**) and the Notice of Right to Cure (**See Exhibit B**) are enclosed for your records.

Our records indicate that Builder Services Group performed siding work (the "Work") for Rose Hill. Our understanding is that Builder Services Group's Work has been implicated by Homeowners' claims and may have led in whole or in part to the injuries alleged by Homeowners. Builder Services Group's Work was subject to and performed under a South Carolina Independent Contractor Agreement ("ICA") with D.R. Horton.

Under the ICA, Builder Services Group owes a contractual duty to defend and indemnify D.R. Horton from these claims. Generally, the ICA states:

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To the fullest extent remitted 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, action, 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 ay 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 plead, 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.

Further, Builder Services Group had a contractual duty to list D.R. Horton as an additional insured for this matter. Generally, the ICA states that Builder Services Group agreed as follows:

To the fullest extent permitted by law, Contractor shall add Horton as Additional Insureds, specifically identifying Horton, on the GCL Policy covering both ongoing operations and completed operations . . .

Builder Services Group was issued a certificate of liability insurance. D.R. Horton is listed as an additional insured under Builder Services Group's General Liability Insurance policy, providing the following:

D.R. Horton, Inc., its affiliates and subsidiaries are listed as additional insured as respects [sic] to the General Liability . . .

A copy of the Certificate of Liability Insurance is enclosed herein as **Exhibit C**.

As stated previously, Builder Services Group's work has been implicated and ***it is expected for Builder Services Group and its insurers to take the lead with regards to defending claims related to its scope of work in the referenced lawsuit***. As such, D.R. Horton expects Builder Services Group's insurance carriers to respond to this request in good faith, perform an investigation and agree to defend D.R. Horton in this matter.

We hope that D.R. Horton, Builder Services Group and its insurance carriers can work together to defend against Plaintiffs' allegations in this matter. Immediately upon receipt of this correspondence, please contact me to discuss this matter further.

Sincerely,



John T. Crawford, Jr.

Enclosures

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Exhibit A

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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-_____
Natalie Zitek, individually, and on behalf of all others similarly situated,	)	
Plaintiff,	)	**SUMMONS**
	)	**(Defective Construction)**
v.	)	**(Class Action)**
	)	**(Jury Trial Demanded)**
D.R. Horton, Inc.; Jane Doe #1-10; and, John Doe #1-50,	)	
Defendants.	)	

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

Justin O'Toole Lucey
Dabny Lynn, Esq.
Sohayla R. Townes, Esq.
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Mount Pleasant, SC 29465-0806
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stownes@lucey-law.com
Attorneys for Plaintiff

September 25, 2019
Mount Pleasant, South Carolina

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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-_____
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.	)	**COMPLAINT** **(Defective Construction)** **(Class Action)** **(Jury Trial Demanded)**

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

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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.

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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.

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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

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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:

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> 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;

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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.

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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

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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").

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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.

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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;

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ELECTRONICALLY FILED - 2019 Sep 25 5:48 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

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.

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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

Justin O'Toole Lucey
Dabny Lynn, Esq.
Sohayla R. Townes, Esq.
415 Mill Street (29464)
Post Office Box 806
Mount Pleasant, SC 29465-0806
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(843) 849-8406 fax
jlucey@lucey-law.com
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stownes@lucey-law.com
Attorneys for Plaintiff

September 25, 2019
Mount Pleasant, South Carolina

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ELECTRONICALLY FILED - 2020 Jul 29 3:20 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401486

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	CASE NO.: 2019-CP-04-_____
Madeline Jean Smith,	
Plaintiff,	**SUMMONS (Defective Construction) (Jury Trial Demanded)**
v.	
D.R. Horton, Inc.,	
Defendant.	

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

Justin O'Toole Lucey
Dabny Lynn, Esq.
Sohayla R. Townes, Esq.
415 Mill Street (29464)
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax
jlucey@lucey-law.com
dlynn@lucey-law.com
stownes@lucey-law.com
Attorneys for Plaintiff

July 29, 2020
Mount Pleasant, South Carolina

ELECTRONICALLY FILED - 2023 Jul 10 2:34 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942
ELECTRONICALLY FILED - 2020 Jul 29 3:20 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401486

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE NO.: 2019-CP-04-____
	)	
Madeline Jean Smith,	)	
	)	
Plaintiff,	)	**COMPLAINT**
	)	**(Defective Construction)**
v.	)	**(Jury Trial Demanded)**
	)	
D.R. Horton, Inc.,	)	
	)	
Defendant.	)	

Plaintiff, Madeline Jean Smith, complaining of the above-named Defendant, 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 Madeline Jean Smith ("Plaintiff Smith") is a citizen and resident of Anderson County, South Carolina.

3. Plaintiff Smith owns a home within Rose Hill that is located at 20 Duxbury Lane, Easley, South Carolina, 29462.

4. Plaintiff Smith purchased her home from the prior homeowner on or about October 5, 2018.

Developer Defendant

5. 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.

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6. D.R. Horton is the developer, builder, and seller of the Plaintiff Smith's home in Rose Hill ("the Residence"). 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 Residence.

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

8. Venue is proper in Anderson County as the most substantial part of Plaintiff Smith's injuries and D.R. Horton's alleged acts or omissions took place in Anderson County.

FACTUAL ALLEGATIONS

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

10. The Residence contains latent and undisclosed defects which emanate from the original design and construction of the Residence. 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 Residence and other property.

11. D.R. Horton should have known of the existence of the latent defects for many reasons, including their post-construction repair efforts at various residences in Rose Hill.

12. A preliminary inspection of the Residence evidences failure in exterior cladding systems; water intrusion into and through windows, doors, and the exterior building envelope; other defects; 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.

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13. On June 22, 2020, D.R. Horton inspected the Residence in response to a right to cure letter sent by or on behalf of Plaintiff Smith.

14. D.R. Horton failed to timely submit an offer to cure the Residence; and it has not otherwise rectified the Residence's deficiencies.

15. D.R. Horton had a duty to design, develop, and construct the Residence 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.

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

17. D.R. Horton's acts and omissions have resulted in building deficiencies, consequential damages, and partial loss of use and enjoyment.

18. These deficiencies and resulting damages show that D.R. Horton breached its duties to Plaintiff Smith.

19. Remedying these wrongs will result in additional consequential damages and loss of use.

20. As a direct and proximate result of D.R. Horton's violation of its legal duties, Plaintiff Smith has been proximately damaged in an amount to be determined by the trier of fact, and has had to incur reasonable attorneys' fees and costs for the retention of experts to determine the damage and scope of work for repair.

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21. Upon information and belief, the occurrences of water intrusion and resulting consequential property damage commenced after completion of the Residence and have occurred and have been occurring since commencement.

ESTOPPEL FROM PLEADING AND TOLLING OF APPLICABLE STATUTES OF LIMITATIONS

22. D.R. Horton is estopped from relying on any statutes of limitations or repose by virtue of their acts. Upon information and belief, D.R. Horton should have known the Residence was defectively constructed and failed to alert purchasers of the Residence's defective condition.

23. D.R. Horton had a duty to inform purchasers of the defects described herein, which they should have known. Notwithstanding its duty, D.R. Horton never disclosed these defects.

24. Despite exercising reasonable diligence, Plaintiff Smith could not have discovered the defective condition of the Residence.

25. Given D.R. Horton's failure to disclose this non-public information about the defective nature of the Residence – information over which they had exclusive control – and because Plaintiff Smith could not reasonably have known of the Residence's defective nature, D.R. Horton is estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

26. The equitable tolling doctrine further precludes D.R. Horton from relying on a statute of limitations defense.

ESTOPPEL FROM ASSERTING SOUTH CAROLINA NOTICE AND OPPORTUNITY TO CURE CONSTRUCTION DWELLING DEFECTS ACT

27. D.R. Horton is estopped/barred from asserting South Carolina's Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code § 40-59-810 *et. seq*., because Plaintiff Smith complied with the Act prior to filing this lawsuit.

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

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

29. D.R. Horton, either on its own or through its agents, servants, and employees undertook and owed duties to Plaintiff Smith in connection with the work it performed at the Residence.

30. D.R. Horton had a duty to perform its work at the Residence in accordance with applicable codes, approved plans and specifications, industry standards, and in a careful, diligent, and workmanlike manner, free from defects.

31. D.R. Horton also had a duty to provide accurate information about the Residence's condition and to disclose defective conditions.

32. D.R. Horton breached its duties to Plaintiff Smith 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 Residence;

b. In failing to provide adequate exterior claddings, windows, doors, structural components and/or other building components for the Residence;

c. In failing to develop the Residence 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 Residence;

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 Residence;

h. In failing to make proper repairs; and,

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i. Other deficiencies or failures as will be proven at trial.

33. Plaintiff Smith has been damaged as a direct and proximate result of the negligence, carelessness, recklessness, gross negligence, willfulness, and wantonness of D.R. Horton.

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

35. If it is shown that said failures were committed with gross negligence and/or reckless disregard for the rights of others, Plaintiff Smith is entitled to an award of punitive damages against D.R. Horton.

36. As a result of D.R. Horton's negligence and/or gross negligence, Plaintiff Smith is entitled to a judgment against D.R. Horton 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 Defendant)

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

38. D.R. Horton implicitly warranted that the Residence 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.

39. D.R. Horton implicitly warranted that the Residence would be habitable, merchantable, free from latent defects, and fit for the particular purpose.

40. D.R. Horton breached its implied warranties by developing the Residence in a defective manner as set forth above.

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

WHEREFORE, Plaintiff Smith demands a trial by jury and prays for actual and consequential damages 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

Justin O'Toole Lucey
Dabny Lynn, Esq.
Sohayla R. Townes, Esq.
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stownes@lucey-law.com
Attorneys for Plaintiff

July 29, 2020
Mount Pleasant, South Carolina

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Exhibit B

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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

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;

8. Vinyl Siding: Insufficient/improperly installed vinyl siding, waviness, water damage, and cost to repair;

9. Hardi Siding: Insufficient/improperly installed Hardi siding, cracking, water damage, efflorescence, and cost to repair;

10. Concrete/Soil: Insufficiently supported concrete/inadequate soil, cracking, water damage, and cost to repair;

11. Grading/Drainage: Insufficient/improperly installed grading and resulting water damage, ponding, unevenness, landscaping difficulties, and cost;

12. MEP: Inadequate free air space, improper duct work, insulation in attics, plumbing/HVAC leaks, insufficient PEX piping, non-galvanized holes in roof sheathing at plumbing penetrations, inadequate outlets, insufficient power surges, and resulting cracking, water damage/leakage, cost to repair, and utility bills; and

13. Poor Work: Sloppy workmanship throughout Rose Hill homes and cost to repair.

Time is of the essence and extensions will not be granted. Thereafter, all 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

Dabny Lynn
Sohayla Townes

DL/dl

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Exhibit C

OLD REPUBLIC INSURANCE COMPANY
Greensburg, Pennsylvania
A Stock Company

COMMERCIAL GENERAL LIABILITY DECLARATIONS

POLICY NUMBER

MWZY 55525-10
MWZY 55525-09
RENEWAL OF NUMBER

POLICYHOLDER SERVICE OFFICE:
Old Republic Risk Management, Inc.
445 South Moorland Road, Suite 300
Brookfield, WI 53005
(877) 797-3400

PRODUCER #319
Aon Risk Services Central, Inc.
Chicago, IL

NAMED INSURED AND MAILING ADDRESS:
Masco Corporation (See Broad Form Named Insured Endorsement, GL 319 008 0609)
21001 Van Born Road
Taylor, MI 48180

POLICY PERIOD: FROM 6-30-10 **TO** 6-30-11 AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

EACH OCCURRENCE LIMIT	$ * See Form GL 319 041 0610	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	$ *	Any one premises
MEDICAL EXPENSE LIMIT	$ *	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ *	Any one person or organization
GENERAL AGGREGATE LIMIT	$ *	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	$ *	

RETROACTIVE DATE (CG 00 02 ONLY)

THIS INSURANCE DOES NOT APPLY TO "BODILY INJURY", "PROPERTY DAMAGE" OR "PERSONAL AND ADVERTISING INJURY" WHICH OCCURS BEFORE THE RETROACTIVE DATE, IF ANY, SHOWN BELOW.
RETROACTIVE DATE: None
(ENTER DATE OR "NONE" IF NO RETROACTIVE DATE APPLIES)

DESCRIPTION OF BUSINESS

FORM OF BUSINESS:
☐ INDIVIDUAL ☐ JOINT VENTURE ☐ LIMITED LIABILITY COMPANY
☒ ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY) ☐ PARTNERSHIP ☐ TRUST
BUSINESS DESCRIPTION: Products & Services for the Home & Family. Services include but not limited to construction contracting operations

ALL PREMISES YOU OWN, RENT OR OCCUPY

LOCATION NUMBER	ADDRESS OF ALL PREMISES YOU OWN, RENT OR OCCUPY
	On File With Company

CLASSIFICATION AND PREMIUM

LOCATION NUMBER	CLASSIFICATION	CODE. NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
				Prem/ Ops	Prod/Comp Ops	Prem/ Ops	Prod/Comp Ops
On File With Company			$	$	$	$ [redacted]	$ Included

STATE TAX OR OTHER (IF APPLICABLE) $ [redacted]
TOTAL PAYABLE (SUBJECT TO AUDIT) $ [redacted]

TOTAL SHOWN IS PAYABLE: $ [redacted] AT INCEPTION $ AT EACH ANNIVERSARY (IF POLICY PERIOD IS MORE THAN ONE YEAR AND PREMIUM IS PAID IN ANNUAL INSTALLMENTS)

AUDIT PERIOD (IF APPLICABLE) ☐ ANNUALLY ☐ SEMI-ANNUALLY ☐ QUARTERLY ☐ MONTHLY

ENDORSEMENTS

ENDORSEMENTS ATTACHED TO THIS POLICY: See Forms Index

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

Countersigned (Date): 9-7-10 By (Authorized Representative): Gary Nico
9-7-10

CG DEC GN 0000 08 08

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IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITS OF INSURANCE
(Masco Form QQ)

It is hereby agreed and understood that the Limits of Insurance for the Commercial General Liability Declarations is as follows:

	LIMITS OF INSURANCE	
EACH OCCURRENCE LIMIT	$ 2,000,000	
EACH OCCURRENCE LIMIT (as respects Product Liability/Completed Operations)	$ 3,000,000	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	$ 2,000,000	Any one premises
MEDICAL EXPENSE LIMIT	$ 25,000	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ 2,000,000	Any one person or organization
GENERAL AGGREGATE LIMIT		$ 5,000,000
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT		$ 10,000,000

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IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

BROAD FORM NAMED INSURED
(Masco Form B)

Masco Corporation including any subsidiary corporation thereof, of any tier, as now or hereafter constituted and any other legal entity in which you have more than fifty percent ownership or over which you exercise management or financial control.

OLD REPUBLIC INSURANCE COMPANY
Greensburg, Pennsylvania
A Stock Company

COMMERCIAL GENERAL LIABILITY DECLARATIONS

POLICY NUMBER

MWZY 55525-11
MWZY 55525-10
RENEWAL OF NUMBER

POLICYHOLDER SERVICE OFFICE:
Old Republic Risk Management, Inc.
445 South Moorland Road, Suite 300
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(877) 797-3400

PRODUCER #319
Aon Risk Services Central, Inc.
Chicago, IL

NAMED INSURED AND MAILING ADDRESS:
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21001 Van Born Road
Taylor, MI 48180

POLICY PERIOD: FROM 6-30-11 **TO** 6-30-12 AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

EACH OCCURRENCE LIMIT	$	* See Limits of Insurance (Masco Form QQ) Form GL 319 041 0610
DAMAGE TO PREMISES RENTED TO YOU LIMIT	$ *	Any one premises
MEDICAL EXPENSE LIMIT	$ *	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ *	Any one person or organization
GENERAL AGGREGATE LIMIT	$ *	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	$ *	

RETROACTIVE DATE (CG 00 02 ONLY)

THIS INSURANCE DOES NOT APPLY TO "BODILY INJURY", "PROPERTY DAMAGE" OR "PERSONAL AND ADVERTISING INJURY" WHICH OCCURS BEFORE THE RETROACTIVE DATE, IF ANY, SHOWN BELOW.
RETROACTIVE DATE: None
(ENTER DATE OR "NONE" IF NO RETROACTIVE DATE APPLIES)

DESCRIPTION OF BUSINESS

FORM OF BUSINESS:
☐ INDIVIDUAL ☐ JOINT VENTURE ☐ LIMITED LIABILITY COMPANY
☒ ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY) ☐ PARTNERSHIP ☐ TRUST
BUSINESS DESCRIPTION: Products & Services for the Home & Family. Services include but not limited to construction contracting operations

ALL PREMISES YOU OWN, RENT OR OCCUPY

LOCATION NUMBER	ADDRESS OF ALL PREMISES YOU OWN, RENT OR OCCUPY
	On File With Company

CLASSIFICATION AND PREMIUM

LOCATION NUMBER	CLASSIFICATION	CODE. NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
				Prem/ Ops	Prod/Comp Ops	Prem/ Ops	Prod/Comp Ops
On File With Company			$	$	$	$ [redacted]	$ Included

STATE TAX OR OTHER (IF APPLICABLE) $ [redacted]
TOTAL PAYABLE (SUBJECT TO AUDIT) $ [redacted]

TOTAL SHOWN IS PAYABLE: $ [redacted] AT INCEPTION $ AT EACH ANNIVERSARY (IF POLICY PERIOD IS MORE THAN ONE YEAR AND PREMIUM IS PAID IN ANNUAL INSTALLMENTS)

AUDIT PERIOD (IF APPLICABLE) ☐ ANNUALLY ☐ SEMI-ANNUALLY ☐ QUARTERLY ☐ MONTHLY

ENDORSEMENTS

ENDORSEMENTS ATTACHED TO THIS POLICY: See Forms Index

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

Countersigned (Date): 8-23-11 By (Authorized Representative): Gary Nico

CG DEC GN 0000 08 08

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Gale Contractor 0001939

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ELECTRONICALLY FILED - 2023 Jul 10 2:34 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITS OF INSURANCE
(Masco Form QQ)

It is hereby agreed and understood that the Limits of Insurance for the Commercial General Liability Declarations is as follows:

	LIMITS OF INSURANCE	
EACH OCCURRENCE LIMIT	$ 2,000,000	
EACH OCCURRENCE LIMIT (as respects Product Liability/Completed Operations)	$ 3,000,000	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	$ 2,000,000	Any one premises
MEDICAL EXPENSE LIMIT	$ 25,000	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ 2,000,000	Any one person or organization
GENERAL AGGREGATE LIMIT		$ 5,000,000
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT		$ 10,000,000

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IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

BROAD FORM NAMED INSURED
(Masco Form B)

Masco Corporation including any subsidiary corporation thereof, of any tier, as now or hereafter constituted and any other legal entity in which you have more than fifty percent ownership or over which you exercise management or financial control.

OLD REPUBLIC INSURANCE COMPANY
Greensburg, Pennsylvania
A Stock Company

COMMERCIAL GENERAL LIABILITY DECLARATIONS

POLICY NUMBER

MWZY 55525-12
MWZY 55525-11
RENEWAL OF NUMBER

POLICYHOLDER SERVICE OFFICE:
Old Republic Risk Management, Inc.
445 South Moorland Road, Suite 300
Brookfield, WI 53005
(877) 797-3400

PRODUCER #319
Aon Risk Services Central, Inc.
Chicago, IL

NAMED INSURED AND MAILING ADDRESS:

Masco Corporation (See Broad Form Named Insured Endorsement, GL 319 008 0609)
21001 Van Born Road
Taylor, MI 48180

POLICY PERIOD: FROM 06/30/12 **TO** 06/30/13 AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

EACH OCCURRENCE LIMIT	$ *	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	$ *	Any one premises
MEDICAL EXPENSE LIMIT	$ *	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ *	Any one person or organization
GENERAL AGGREGATE LIMIT	$ *	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	$ *	

* See Limits of Insurance (Masco Form QQ) Form GL 319 041 0610

RETROACTIVE DATE (CG 00 02 ONLY)

THIS INSURANCE DOES NOT APPLY TO "BODILY INJURY", "PROPERTY DAMAGE" OR "PERSONAL AND ADVERTISING INJURY" WHICH OCCURS BEFORE THE RETROACTIVE DATE, IF ANY, SHOWN BELOW.
RETROACTIVE DATE: None
(ENTER DATE OR "NONE" IF NO RETROACTIVE DATE APPLIES)

DESCRIPTION OF BUSINESS

FORM OF BUSINESS:
☐ INDIVIDUAL ☐ JOINT VENTURE ☐ LIMITED LIABILITY COMPANY
☒ ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY) ☐ PARTNERSHIP ☐ TRUST
BUSINESS DESCRIPTION: Products & Services for the Home & Family. Services include but not limited to construction contracting operations

ALL PREMISES YOU OWN, RENT OR OCCUPY

LOCATION NUMBER	ADDRESS OF ALL PREMISES YOU OWN, RENT OR OCCUPY
	On File With Company

CLASSIFICATION AND PREMIUM

LOCATION NUMBER	CLASSIFICATION	CODE. NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
				Prem/ Ops	Prod/Comp Ops	Prem/ Ops	Prod/Comp Ops
	On File With Company		$	$	$	$ [redacted]	$ Included

STATE TAX OR OTHER (IF APPLICABLE) $ [redacted]
TOTAL PAYABLE (SUBJECT TO AUDIT) $ [redacted]

TOTAL SHOWN IS PAYABLE: $ [redacted] AT INCEPTION $ AT EACH ANNIVERSARY (IF POLICY PERIOD IS MORE THAN ONE YEAR AND PREMIUM IS PAID IN ANNUAL INSTALLMENTS)

AUDIT PERIOD (IF APPLICABLE) ☐ ANNUALLY ☐ SEMI-ANNUALLY ☐ QUARTERLY ☐ MONTHLY

ENDORSEMENTS

ENDORSEMENTS ATTACHED TO THIS POLICY: See Forms Index

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

Countersigned (Date): 05/24/12 By (Authorized Representative): [signature]

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Gale Contractor 0001942

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ELECTRONICALLY FILED - 2023 Jul 10 2:34 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITS OF INSURANCE
(Masco Form QQ)

It is hereby agreed and understood that the Limits of Insurance for the Commercial General Liability Declarations is as follows:

	LIMITS OF INSURANCE	
EACH OCCURRENCE LIMIT	$ 2,000,000	
EACH OCCURRENCE LIMIT (as respects Product Liability/Completed Operations)	$ 4,000,000	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	$ 2,000,000	Any one premises
MEDICAL EXPENSE LIMIT	$ 25,000	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ 2,000,000	Any one person or organization
GENERAL AGGREGATE LIMIT	$ 5,000,000	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	$ 10,000,000	

GL 319 041 0610

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IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

BROAD FORM NAMED INSURED
(Masco Form B)

Masco Corporation including any subsidiary corporation thereof, of any tier, as now or hereafter constituted and any other legal entity in which you have more than fifty percent ownership or over which you exercise management or financial control.

GL 319 008 0609

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OLD REPUBLIC INSURANCE COMPANY
Greensburg, Pennsylvania
A Stock Company

COMMERCIAL GENERAL LIABILITY DECLARATIONS

POLICY NUMBER

MWZY 55525 13
MWZY 55525 12
RENEWAL OF NUMBER

POLICYHOLDER SERVICE OFFICE:
Old Republic Risk Management, Inc.
445 South Moorland Road, Suite 300
Brookfield, WI 53005
(877) 797-3400

PRODUCER #319
Aon Risk Services Central, Inc.
Chicago, IL

NAMED INSURED AND MAILING ADDRESS:

Masco Corporation (See Broad Form Named Insured Endorsement, GL 319 008 0609)
21001 Van Born Road
Taylor, MI 48180

POLICY PERIOD: FROM 06/30/13 **TO** 06/30/14 AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

EACH OCCURRENCE LIMIT	$ *	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	$ *	Any one premises
MEDICAL EXPENSE LIMIT	$ *	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ *	Any one person or organization
GENERAL AGGREGATE LIMIT	$ *	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	$ *	

* See Limits of Insurance (Masco Form QQ) Form GL 319 041 0610

RETROACTIVE DATE (CG 00 02 ONLY)

THIS INSURANCE DOES NOT APPLY TO "BODILY INJURY", "PROPERTY DAMAGE" OR "PERSONAL AND ADVERTISING INJURY" WHICH OCCURS BEFORE THE RETROACTIVE DATE, IF ANY, SHOWN BELOW.
RETROACTIVE DATE: None
(ENTER DATE OR "NONE" IF NO RETROACTIVE DATE APPLIES)

DESCRIPTION OF BUSINESS

FORM OF BUSINESS:
☐ INDIVIDUAL ☐ JOINT VENTURE ☐ LIMITED LIABILITY COMPANY
☒ ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY) ☐ PARTNERSHIP ☐ TRUST
BUSINESS DESCRIPTION: Products & Services for the Home & Family. Services include but not limited to construction contracting operations

ALL PREMISES YOU OWN, RENT OR OCCUPY

LOCATION NUMBER	ADDRESS OF ALL PREMISES YOU OWN, RENT OR OCCUPY
	On File With Company

CLASSIFICATION AND PREMIUM

LOCATION NUMBER	CLASSIFICATION	CODE. NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
				Prem/ Ops	Prod/Comp Ops	Prem/ Ops	Prod/Comp Ops
	On File With Company		$	$	$	$ [redacted]	$ Included

STATE TAX OR OTHER (IF APPLICABLE) $ [redacted]
TOTAL PAYABLE (SUBJECT TO AUDIT) $ [redacted]

TOTAL SHOWN IS PAYABLE: $ [redacted] AT INCEPTION $ AT EACH ANNIVERSARY (IF POLICY PERIOD IS MORE THAN ONE YEAR AND PREMIUM IS PAID IN ANNUAL INSTALLMENTS)

AUDIT PERIOD (IF APPLICABLE) ☐ ANNUALLY ☐ SEMI-ANNUALLY ☐ QUARTERLY ☐ MONTHLY

ENDORSEMENTS

ENDORSEMENTS ATTACHED TO THIS POLICY: See Forms Index

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

Countersigned (Date): 07/02/13 By (Authorized Representative): Gary Nico

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Gale Contractor 0001945

IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITS OF INSURANCE
(Masco Form QQ)

It is hereby agreed and understood that the Limits of Insurance for the Commercial General Liability Declarations is as follows:

	LIMITS OF INSURANCE	
EACH OCCURRENCE LIMIT	$ 2,000,000	
EACH OCCURRENCE LIMIT (as respects Product Liability/Completed Operations)	$ 4,000,000	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	$ 2,000,000	Any one premises
MEDICAL EXPENSE LIMIT	$ 25,000	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ 2,000,000	Any one person or organization
GENERAL AGGREGATE LIMIT	$ 5,000,000	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	$ 10,000,000	

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IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

BROAD FORM NAMED INSURED
(Masco Form B)

Masco Corporation including any subsidiary corporation thereof, of any tier, as now or hereafter constituted and any other legal entity in which you have more than fifty percent ownership or over which you exercise management or financial control.

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OLD REPUBLIC INSURANCE COMPANY
Greensburg, Pennsylvania
A Stock Company

COMMERCIAL GENERAL LIABILITY DECLARATIONS

POLICY NUMBER

MWZY 55525 14
MWZY 55525 13
RENEWAL OF NUMBER

POLICYHOLDER SERVICE OFFICE:
Old Republic Risk Management, Inc.
445 South Moorland Road, Suite 300
Brookfield, WI 53005
(877) 797-3400

PRODUCER #319
Aon Risk Services Central, Inc.
Chicago, IL

NAMED INSURED AND MAILING ADDRESS:

Masco Corporation (See Broad Form Named Insured Endorsement, GL 319 008 0609)
21001 Van Born Road
Taylor, MI 48180

POLICY PERIOD: FROM 06/30/14 **TO** 06/30/15 AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

EACH OCCURRENCE LIMIT	$ *	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	$ *	Any one premises
MEDICAL EXPENSE LIMIT	$ *	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ *	Any one person or organization
GENERAL AGGREGATE LIMIT	$ *	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	$ *	

* See Limits of Insurance (Masco Form QQ) Form GL 319 041 0610

RETROACTIVE DATE (CG 00 02 ONLY)

THIS INSURANCE DOES NOT APPLY TO "BODILY INJURY", "PROPERTY DAMAGE" OR "PERSONAL AND ADVERTISING INJURY" WHICH OCCURS BEFORE THE RETROACTIVE DATE, IF ANY, SHOWN BELOW.
RETROACTIVE DATE: None
(ENTER DATE OR "NONE" IF NO RETROACTIVE DATE APPLIES)

DESCRIPTION OF BUSINESS

FORM OF BUSINESS:
☐ INDIVIDUAL ☐ JOINT VENTURE ☐ LIMITED LIABILITY COMPANY
☒ ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY) ☐ PARTNERSHIP ☐ TRUST
BUSINESS DESCRIPTION: Products & Services for the Home & Family. Services include but not limited to construction contracting operations

ALL PREMISES YOU OWN, RENT OR OCCUPY

LOCATION NUMBER	ADDRESS OF ALL PREMISES YOU OWN, RENT OR OCCUPY
	On File With Company

CLASSIFICATION AND PREMIUM

LOCATION NUMBER	CLASSIFICATION	CODE. NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
				Prem/ Ops	Prod/Comp Ops	Prem/ Ops	Prod/Comp Ops
	On File With Company		$	$	$	$ [redacted]	$ Included

STATE TAX OR OTHER (IF APPLICABLE) $ [redacted]
TOTAL PAYABLE (SUBJECT TO AUDIT) $ [redacted]

TOTAL SHOWN IS PAYABLE: $ [redacted] AT INCEPTION $ AT EACH ANNIVERSARY (IF POLICY PERIOD IS MORE THAN ONE YEAR AND PREMIUM IS PAID IN ANNUAL INSTALLMENTS)

AUDIT PERIOD (IF APPLICABLE) ☐ ANNUALLY ☐ SEMI-ANNUALLY ☐ QUARTERLY ☐ MONTHLY

ENDORSEMENTS

ENDORSEMENTS ATTACHED TO THIS POLICY: See Forms Index

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

Countersigned (Date): 07/28/13 By (Authorized Representative): [signature]

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Gale Contractor 0001948

IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITS OF INSURANCE
(Masco Form QQ)

It is hereby agreed and understood that the Limits of Insurance for the Commercial General Liability Declarations is as follows:

	LIMITS OF INSURANCE	
EACH OCCURRENCE LIMIT	$ 2,000,000	
EACH OCCURRENCE LIMIT (as respects Product Liability/Completed Operations)	$ 4,000,000	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	$ 2,000,000	Any one premises
MEDICAL EXPENSE LIMIT	$ 25,000	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ 2,000,000	Any one person or organization
GENERAL AGGREGATE LIMIT	$ 5,000,000	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	$ 10,000,000	

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IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

BROAD FORM NAMED INSURED
(Masco Form B)

Masco Corporation including any subsidiary corporation thereof, of any tier, as now or hereafter constituted and any other legal entity in which you have more than fifty percent ownership or over which you exercise management or financial control.

OLD REPUBLIC INSURANCE COMPANY
Greensburg, Pennsylvania
A Stock Company

COMMERCIAL GENERAL LIABILITY DECLARATIONS

POLICY NUMBER

MWZY 304834
NEW
RENEWAL OF NUMBER

POLICYHOLDER SERVICE OFFICE:
Old Republic Risk Management, Inc.
445 South Moorland Road, Suite 300
Brookfield, WI 53005
(877) 797-3400

PRODUCER #672
Aon Risk Services Central, Inc
Chicago IL

NAMED INSURED AND MAILING ADDRESS:

TopBuild Corp (See Broad Form Named Insured Endorsement, GL 672 008 0615)
260 Jimmy Ann Dr
Dayton Beach, FL 32114

POLICY PERIOD: FROM 06/30/15 **TO** 06/30/16 AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

EACH OCCURRENCE LIMIT	$ *	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	$ *	Any one premises
MEDICAL EXPENSE LIMIT	$ *	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ *	Any one person or organization
GENERAL AGGREGATE LIMIT	$ *	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	$ *	

*See Limits of Insurance (TopBuild Form QQ) Form #GL 672 041 0615

RETROACTIVE DATE (CG 00 02 ONLY)

THIS INSURANCE DOES NOT APPLY TO "BODILY INJURY", "PROPERTY DAMAGE" OR "PERSONAL AND ADVERTISING INJURY" WHICH OCCURS BEFORE THE RETROACTIVE DATE, IF ANY, SHOWN BELOW.
RETROACTIVE DATE: None
(ENTER DATE OR "NONE" IF NO RETROACTIVE DATE APPLIES)

DESCRIPTION OF BUSINESS

FORM OF BUSINESS:
☐ INDIVIDUAL ☐ JOINT VENTURE ☐ LIMITED LIABILITY COMPANY
☒ ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY) ☐ PARTNERSHIP ☐ TRUST
BUSINESS DESCRIPTION: Insulation Installation Services

ALL PREMISES YOU OWN, RENT OR OCCUPY

LOCATION NUMBER	ADDRESS OF ALL PREMISES YOU OWN, RENT OR OCCUPY
	On File With Company

CLASSIFICATION AND PREMIUM

LOCATION NUMBER	CLASSIFICATION	CODE. NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
				Prem/ Ops	Prod/Comp Ops	Prem/ Ops	Prod/Comp Ops
	On File With Company		$	$	$	$ [redacted]	$ Included

STATE TAX OR OTHER (IF APPLICABLE) $
TOTAL PAYABLE (SUBJECT TO AUDIT) $ [redacted]

TOTAL SHOWN IS PAYABLE: $ [redacted] AT INCEPTION $ AT EACH ANNIVERSARY (IF POLICY PERIOD IS MORE THAN ONE YEAR AND PREMIUM IS PAID IN ANNUAL INSTALLMENTS)

AUDIT PERIOD (IF APPLICABLE) ☐ ANNUALLY ☐ SEMI-ANNUALLY ☐ QUARTERLY ☐ MONTHLY

ENDORSEMENTS

ENDORSEMENTS ATTACHED TO THIS POLICY:

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

Countersigned (Date): 07/13/15 By (Authorized Representative):

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Gale Contractor 0001951

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IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITS OF INSURANCE
(TopBuild Form QQ)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

It is hereby agreed and understood that the Limits of Insurance for the Commercial General Liability Declarations is as follows:

	LIMITS OF INSURANCE	
EACH OCCURRENCE LIMIT	$ 2,000,000	
EACH OCCURRENCE LIMIT (as respects Product Liability/Completed Operations)	$ 2,000,000	
DAMAGES TO PREMISES RENTED TO YOU LIMIT	$ 2,000,000	Any one premises
MEDICAL EXPENSE LIMIT	$ 25,000	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ 2,000,000	Any one person or organization
GENERAL AGGREGATE LIMIT	$ 4,000,000	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	$ 4,000,000	

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IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BROAD FORM NAMED INSURED
(TopBuild Form B)

TopBuild Corp including any subsidiary corporation thereof, of any tier, as now or hereafter constituted and any other legal entity in which you have more than fifty percent ownership or over which you exercise management or financial control.

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OLD REPUBLIC INSURANCE COMPANY

COMMERCIAL GENERAL LIABILITY DECLARATIONS

POLICY NUMBER

MWZY 307518
MWZY 304834
RENEWAL OF NUMBER

POLICYHOLDER SERVICE OFFICE:

Old Republic Risk Management, Inc.
445 South Moorland Road, Suite 300
Brookfield, WI 53005
(877) 797-3400

PRODUCER #672

Aon Risk Services Inc.
Southfield, MI 48075

NAMED INSURED AND MAILING ADDRESS:

TopBuild Corp. (See Broad Form Named Insured Endorsement, GL 672 008 0615)
260 Jimmy Ann Dr
Dayton Beach, FL 32114

POLICY PERIOD: FROM 06/30/16 **TO** 06/30/17 AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

EACH OCCURRENCE LIMIT	$ *	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	$ *	Any one premises
MEDICAL EXPENSE LIMIT	$ *	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ *	Any one person or organization
GENERAL AGGREGATE LIMIT	$ *	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	$ *	

*See Limits of Insurance (TopBuild Form QQ) Form #GL 672 041 0615

RETROACTIVE DATE (CG 00 02 ONLY)

THIS INSURANCE DOES NOT APPLY TO "BODILY INJURY", "PROPERTY DAMAGE" OR "PERSONAL AND ADVERTISING INJURY" WHICH OCCURS BEFORE THE RETROACTIVE DATE, IF ANY, SHOWN BELOW.
RETROACTIVE DATE: None
(ENTER DATE OR "NONE" IF NO RETROACTIVE DATE APPLIES)

DESCRIPTION OF BUSINESS

FORM OF BUSINESS:
☐ INDIVIDUAL ☐ JOINT VENTURE ☐ LIMITED LIABILITY COMPANY
☒ ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY) ☐ PARTNERSHIP ☐ TRUST
BUSINESS DESCRIPTION: Insulation Installation Services

ALL PREMISES YOU OWN, RENT OR OCCUPY

LOCATION NUMBER	ADDRESS OF ALL PREMISES YOU OWN, RENT OR OCCUPY
	On File With Company

CLASSIFICATION AND PREMIUM

LOCATION NUMBER	CLASSIFICATION	CODE. NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
				Prem/ Ops	Prod/Comp Ops	Prem/ Ops	Prod/Comp Ops
	On File With Company		$	$	$	$ [redacted]	$ Included

STATE TAX OR OTHER (IF APPLICABLE) $ [redacted]
TOTAL PAYABLE (SUBJECT TO AUDIT) $ [redacted]

TOTAL SHOWN IS PAYABLE: $ [redacted] AT INCEPTION $ AT EACH ANNIVERSARY (IF POLICY PERIOD IS MORE THAN ONE YEAR AND PREMIUM IS PAID IN ANNUAL INSTALLMENTS)

AUDIT PERIOD (IF APPLICABLE) ☐ ANNUALLY ☐ SEMI-ANNUALLY ☐ QUARTERLY ☐ MONTHLY

ENDORSEMENTS

ENDORSEMENTS ATTACHED TO THIS POLICY: See Forms Index

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

Countersigned (Date): 07/06/16 By (Authorized Representative): Gary Hies

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DocuSign Envelope ID: BE31AED1-026C-4C2E-B5D7-A60FF7A23985

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IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITS OF INSURANCE
(TopBuild Form QQ)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

It is hereby agreed and understood that the Limits of Insurance for the Commercial General Liability Declarations is as follows:

	LIMITS OF INSURANCE	
EACH OCCURRENCE LIMIT	$ 2,000,000	
EACH OCCURRENCE LIMIT (as respects Product Liability/Completed Operations)	$ 2,000,000	
DAMAGES TO PREMISES RENTED TO YOU LIMIT	$ 2,000,000	Any one premises
MEDICAL EXPENSE LIMIT	$ 25,000	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ 2,000,000	Any one person or organization
GENERAL AGGREGATE LIMIT	$ 4,000,000	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	$ 4,000,000	

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IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BROAD FORM NAMED INSURED
(TopBuild Form B)

TopBuild Corp including any subsidiary corporation thereof, of any tier, as now or hereafter constituted and any other legal entity in which you have more than fifty percent ownership or over which you exercise management or financial control.

OLD REPUBLIC INSURANCE COMPANY

COMMERCIAL GENERAL LIABILITY DECLARATIONS

POLICY NUMBER

MWZY 310455
MWZY 307518
RENEWAL OF NUMBER

POLICYHOLDER SERVICE OFFICE:

Old Republic Risk Management, Inc.
445 South Moorland Road, Suite 300
Brookfield, WI 53005
(877) 797-3400

PRODUCER #672

Aon Risk Services Inc.
Southfield, MI 48075

NAMED INSURED AND MAILING ADDRESS:

TopBuild Corp. (See Form GL 672 008 0615)
475 N Williamson Blvd
Daytona Beach, FL 32114

POLICY PERIOD: FROM 06/30/17 **TO** 06/30/18 AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

EACH OCCURRENCE LIMIT	$ *	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	$ *	Any one premises
MEDICAL EXPENSE LIMIT	$ *	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ *	Any one person or organization
GENERAL AGGREGATE LIMIT	$ *	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	$ *	

*See Limits of Insurance (TopBuild Form QQ) Form #GL 672 041 0615

RETROACTIVE DATE (CG 00 02 ONLY)

THIS INSURANCE DOES NOT APPLY TO "BODILY INJURY", "PROPERTY DAMAGE" OR "PERSONAL AND ADVERTISING INJURY" WHICH OCCURS BEFORE THE RETROACTIVE DATE, IF ANY, SHOWN BELOW.
RETROACTIVE DATE: None
(ENTER DATE OR "NONE" IF NO RETROACTIVE DATE APPLIES)

DESCRIPTION OF BUSINESS

FORM OF BUSINESS:
☐ INDIVIDUAL ☐ JOINT VENTURE ☐ LIMITED LIABILITY COMPANY
☒ ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY) ☐ PARTNERSHIP ☐ TRUST
BUSINESS DESCRIPTION: Insulation Installation Services

ALL PREMISES YOU OWN, RENT OR OCCUPY

LOCATION NUMBER	ADDRESS OF ALL PREMISES YOU OWN, RENT OR OCCUPY
	On File With Company

CLASSIFICATION AND PREMIUM

LOCATION NUMBER	CLASSIFICATION	CODE. NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
				Prem/ Ops	Prod/Comp Ops	Prem/ Ops	Prod/Comp Ops
	On File With Company		$	$	$	$ [redacted]	$ Included

STATE TAX OR OTHER (IF APPLICABLE) $ [redacted]
TOTAL PAYABLE (SUBJECT TO AUDIT) $ [redacted]

TOTAL SHOWN IS PAYABLE: $ [redacted] AT INCEPTION $ AT EACH ANNIVERSARY (IF POLICY PERIOD IS MORE THAN ONE YEAR AND PREMIUM IS PAID IN ANNUAL INSTALLMENTS)

AUDIT PERIOD (IF APPLICABLE) ☐ ANNUALLY ☐ SEMI-ANNUALLY QUARTERLY ☐ MONTHLY

ENDORSEMENTS

ENDORSEMENTS ATTACHED TO THIS POLICY: See Forms Index

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

Countersigned (Date): 06/22/17 By (Authorized Representative):

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Gale Contractor 0001957
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITS OF INSURANCE
(TopBuild Form QQ)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

It is hereby agreed and understood that the Limits of Insurance for the Commercial General Liability Declarations is as follows:

	LIMITS OF INSURANCE	
EACH OCCURRENCE LIMIT	$ 2,000,000	
EACH OCCURRENCE LIMIT (as respects Product Liability/Completed Operations)	$ 2,000,000	
DAMAGES TO PREMISES RENTED TO YOU LIMIT	$ 2,000,000	Any one premises
MEDICAL EXPENSE LIMIT	$ 25,000	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ 2,000,000	Any one person or organization
GENERAL AGGREGATE LIMIT	$ 4,000,000	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	$ 4,000,000	

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IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

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BROAD FORM NAMED INSURED
(TopBuild Form B)

TopBuild Corp including any subsidiary corporation thereof, of any tier, as now or hereafter constituted and any other legal entity in which you have more than fifty percent ownership or over which you exercise management or financial control.

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independent contractor agreement.

A. I can see it, yes.

Q. Do you know if this amendment would apply to the construction at the Rose Hill project?

A. No, ma'am. No.

Q. Why do you not know whether or not that addendum or amendment applies to the construction at Rose Hill?

A. Because I'm not familiar with what work they did in Rose Hill.

Q. But looking at that contract alone, you don't know if it applied to the work at Rose Hill?

A. Correct.

MS. STRATTA: Those are all the questions I have for you. Thank you so much. Appreciate your time today.

THE WITNESS: You're welcome.

EXAMINATION

BY MR. GRIMBALL:

Q. Just real quick, the SWPPP -- it's the stormwater drawings that you-all have to do for municipal approval -- do you know what I'm talking about?

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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-04-1942 **DEFENDANT D.R. HORTON, INC.'S MEMORANDUM IN OPPOSITION TO ALL THIRD-PARTY DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**
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	

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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

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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

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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

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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 nay 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.

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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, an 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, "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 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 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

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> 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

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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), SCRCP. 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."

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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.

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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.

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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 &*

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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.

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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.

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> 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

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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-Part 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 andall 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

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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*

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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

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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:

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> [u]nder [the general contractor's] own allegations, its cross-clams 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

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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'

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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

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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

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D·R·HORTON America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR AJ landscaping and grading LLC ("Contractor")

✓ Sole Proprietorship ___ Partnership ___ Corporation ___ L.L.C ___ 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: 864 304 0388 Fax: 864-349-9036 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:
By: AJ landscaping & grading LLC
Name: Antonio Jimenez
Title: Owner
Division President

Contractor:
By: EDMOND G. JEANFREAU, JR
Name: D.R. HORTON INC
Title: PURCHASE

INITIALS: OWNER CAJ CONTRACTOR EGJ

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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 [illegible], CONTRACTOR [illegible]

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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

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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 Contract 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, PENALITES, 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 that $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 that $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 CJ. CONTRACTOR

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.

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EXHIBIT A

SCOPE OF WORK

INITIALS: OWNER [illegible], CONTRACTOR ____

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D·R·HORTON

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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. 56-2163705

Name of Owner(s)/Officer(s): Michael T. Green

Division Name: _____ Area Name: _____ Assigned Vendor No.: _____

Address for All Notices: PO Box 1160

City: Duncan State: SC Zip Code: 29334

Telephone: (864) 303-3089 Fax: (864) 576-9053 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:	Contractor:
By:	By: Michael T. Green A-2 Inc
Name: William McCullough	Name: Michael T Green
Title: ~~Division President~~ Controller, AVP	Title: Pres

INITIALS: OWNER WMM, CONTRACTOR MTG

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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.

INITIALS: OWNER WMM, CONTRACTOR MZ.

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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

INITIALS: OWNER WMM, CONTRACTOR MTG

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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 offset 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

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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.

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SCOPE OF WORK

The following is a description of Basic Services performed by the Independent Contractor:

(1) Bathtub repairs

(2) Cultured marble repairs

(3) Vinyl window repairs

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D·R·HORTON NYSE
America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR MJ Cowboy LLC ("Contractor")

___ Sole Proprietorship ___ Partnership X Corporation ___ L.L.C ___ Other (ATTACH W-9)

Social Security No. or Tax ID No.: 464331473

Name of Owner(s)/Officer(s): Mauricio Reyna

Division Name: Greenville Area Name: 7090 Assigned Vendor No.: 1956708

Address for All Notices: 7740 Augusta Rd Ste 1A #139

City: Piedmont State: SC Zip Code: 29673

Telephone: 864 506-8510 Fax: 704 882-7562 E-Mail Address: MJCowboy420@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 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 16 day of MAY 2014.

Owner
By:
Name: MARK T. MARTENS
Title: ~~Division President~~ CFO

Contractor
By: Mauricio Reyna
Name: MJ Cowboys LLC
Title: Owner

INITIALS: OWNER ___ CONTRACTOR MR

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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, 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

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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 lien, affidavit, stop payment notice, or lis pendon 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 lis pendon, 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 lis pendon 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 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 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

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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 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 offset 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,

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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 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

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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.

43024 Foundation Concrete
43040 masonry
43060 stone
45530 FLATWORK Labor

INITIALS: OWNER ✓ CONTRACTOR MR.

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D·R·HORTON
America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Kings landscaping LLC ("Contractor")

___ Sole Proprietorship ___ Partnership ___ Corporation ___ L.L.C X ___ Other (ATTACH W-9)

Social Security No. or Tax ID No.: 910 74 0311 2016 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: (864 304 0388 Fax: ( ) _____ E-Mail Address: Kingslandscapingllc@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 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

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA, IF ANY.

Executed this 5th day of October, 2016

Owner:
By: _____
Name: _____
Title: Division President

Contractor:
By: _____
Name: Antonio Jimenez & Maria Jimenez
Title: Owner

INITIALS: OWNER _____, CONTRACTOR AV & MJ

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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

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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 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.

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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.

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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

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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 offset 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 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.

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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 and 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

INITIALS: OWNER [illegible] CONTRACTOR AJ & MJ

D·R·HORTON DHI NYSE
America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Five Star Foundation LLC ("**Contractor**")

____ Sole Proprietorship ____Partnership ____ Corporation X L.L.C ____ Other **(ATTACH W-9)**

Social Security No. or Tax ID No.: 58 - 2445381

Name of Owner(s)/Officer(s): Brian Foscier

Division Name: GVL Area Name: 709 Assigned Vendor No.: 518749

Address for All Notices: PO Box 2139

City: Greer State: SC Zip Code: 29652

Telephone: 864 877 - 3265 Fax: 864 877 - 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 7 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 7 day of October, 2019.

Owner:
By: _____
Name: _____
Title: Division President
OPS Manager

Contractor:
By: _____
Name: Brian Foscier
Title: Owner

INITIALS: OWNER _____, CONTRACTOR BF.

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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 _____, 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.

INITIALS: OWNER _____, CONTRACTOR BF.

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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

INITIALS: OWNER _____, CONTRACTOR BF.

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 offset 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 BF.

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.

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America's Builder

MASTER NATIONAL ACCOUNTS INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR: ProBuild Holdings, Inc. and its wholly-owned subsidiaries ("Contractor")

___ Sole Proprietorship __Partnership __X___ 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 Hylbert – CEO, ProBuild Holdings, Inc.

Division Name: All ProBuild Locations Area Name: All ProBuild Locations Assigned Vendor No.: 173743

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: _____
Name: _____
Title: _____

Contractor:
By: Kamlin K.H. Nedved
Name: Kamlin K. H. Nedved
Title: Director of National Accounts

INITIALS: OWNER _____, CONTRACTOR _____.

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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.

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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, PENALITES, 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 (COLLECTIVLEY, "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 OMMISIONS OF

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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 DEMONINATOR 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 that $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 similiar 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 of 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,

INITIALS: OWNER _____ CONTRACTOR _____.

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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: Karen Hedved
Its: Director of National Accts.
Dated: 5/8/08

ACCEPTED:
D. R. HORTON, INC.
By:
Its: VP, Dir of Nat'l Accts.
Dated: 5/20/08

INITIALS: OWNER ____, CONTRACTOR ____.

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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

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1. Five Star Foundation, LLC

Version 6 of the ICA

1. Probuild Company a/k/a Probuilding Holdings, Inc.

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STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2019-CP-04-01942
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.	**IBP ASSET, LLC d/b/a BLUE RIDGE BUILDING PRODUCTS' MEMORANDUM IN SUPPORT OF ITS SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT AS TO D.R. HORTON, INC.'S THIRD-PARTY COMPLAINT**
D.R. Horton, Inc. Third-Party Plaintiff v. IBP Asset, LLC d/b/a Blue Ridge Building Products, et al., Third-Party Defendants.	

Third-Party Defendant IBP Asset, LLC d/b/a Blue Ridge Building Products ("Blue Ridge") submits this Memorandum of Law in support of its Supplemental Motion for Summary Judgment, filed on May 1, 2023, as to Third-Party Plaintiff D.R. Horton, Inc.'s ("Horton") Third-Party Complaint against Blue Ridge.

Blue Ridge's initial Motion for Summary Judgment was argued in full on April 21, 2023. During the hearing, Plaintiff's counsel and counsel for Horton agreed that claims related to the installation of gutters and attic insulation were not part of the class claims. At that time, those

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were the only potential issues within Blue Ridge's scope of work known to counsel. However, during the hearing, Plaintiff's counsel stated that there was a potential issue related to a leak that was discovered through a doorknob on one of the patio doors tested by Plaintiff's expert. Based on that, undersigned counsel requested an opportunity to review that allegation and supplement its previous Motion.

For brevity, the factual basis and legal standards that were included in the previous filings by Blue Ridge are incorporated herein:

- Motion for Summary Judgment, filed August 1, 2022
- Memorandum in Support of Motion for Summary Judgment, filed September 2, 2022
- Supplemental Memorandum in Support of Motion for Summary Judgment filed April 19, 2023
- Supplemental Motion for Summary Judgment, filed May 1, 2023

SUMMARY OF ARGUMENT

- Blue Ridge was a subcontractor to DR Horton and installed a variety of products on some but not all of the houses in the class.
- Blue Ridge did not perform any work on the Zitek residence.
- The work performed by Blue Ridge is not part of the class claims.
- Therefore, D.R. Horton has no claim against Blue Ridge that is derivative of the Plaintiff's claims, and therefore the Third-Party Complaint fails to meet the threshold requirements of Rule 14.

SUPPLEMENTAL STATEMENT OF FACTS

In her November 11, 2019, letter to Horton entitled "Notice and Opportunity to Cure Improper Construction Conditions and Resulting Damages," Plaintiff included a very general

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description of problems with patio doors.[1] On October 20, 2020, Plaintiff Zitek moved for an Order certifying the Class under SCRCP Rule 23, wherein she re-alleged that her claims are "typical of the Class members' claims."[2] These claims included leaky patio doors. On November 23, 2020, Plaintiff Zitek filed a memorandum in support of her motion for class certification[3] along with a letter and three affidavits from her engineering expert, Dr. Rhett Whitlock[4] that described damaged patio doors and trim with insufficient water resistance. Ultimately, On January 27, 2021, this Court certified the Class.

On March 11, 2021, Horton filed an Amended Answer and Third-Party Complaint, naming Blue Ridge as a Third-Party Defendant.[5] On February 23, 2022, Horton filed a Second Amended Answer and Third-Party Complaint.[6] In its Third-Party Complaint, Horton demands that Blue Ridge defend Horton in this lawsuit and indemnify Horton for the damages it has and will sustain as a result of Blue Ridge's work in the Rose Hill subdivision.

At the time Horton filed its original Third-Party Complaint on March 11, 2011, the only class-wide defect, as alleged by Plaintiff Zitek and her experts, that could remotely be attributed to Blue Ridge was the installation of doorknobs and deadbolts. However, as explained below, Plaintiff Zitek and her experts have not alleged a class-wide defect relating to the installation or provision of doorknobs and deadbolts and thus, Horton cannot demand that Blue Ridge defend and indemnify Horton in this case.

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[1] Exhibit 1, Zitek Notice and Opportunity to Cure.
[2] Exhibit 2, Zitek Motion for Class Certification.
[3] Exhibit 3, Zitek Memorandum in Support of Motion for Class Certification.
[4] Exhibit 4, Whitlock Letter; Exhibit 5, Whitlock Affidavits: April 30, 2020 Affidavit; May 28, 2020 Reply Affidavit; November 20, 2020 Supplemental Affidavit.
[5] Exhibit 6, Horton Amended Answer and Third-Party Complaint. Blue Ridge was improperly identified as Installed Building Products, LLC a/k/a Installed Building Products II, LLC.
[6] Exhibit 7, Horton Second Amended Answer and Third-Party Complaint.

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On September 1, 2021, Dr. Whitlock issued a PowerPoint Report that provides more detailed opinions on the alleged class-wide defects.[7] According to the PowerPoint, Dr. Whitlock spray tested two patio doors in the Rose Hill subdivision – 206 Buxton and 8 Duxbury – to test for leaks and the doorknob at 8 Duxbury leaked during the spray test.[8]

Dr. Whitlock was deposed for eight (8) days by Horton and the third-, fourth-, and fifth-party defendants. Not once during Dr. Whitlock's countless hours of deposition testimony were doorknobs identified as a class-wide defect. Dr. Whitlock did, however, make various comments about the doorknobs in the neighborhood. During his November 18, 2022 and January 17, 2023 depositions, with the questioning led by Horton's counsel, Dr. Whitlock testified that he only spray tested two (2) doors,[9] that one doorknob leaked,[10] that he did not investigate whether the leaky doorknob was due to an installation or a product defect,[11] and, when asked how the single leaky doorknob fits into the grand scheme of the case, that: "Well, it was just something I noticed, and I thought I should report it."[12]

During his April 12, 2023 deposition, with the questioning led by the door and window subcontractors, Dr. Whitlock was questioned for approximately twenty (20) pages about the exterior patio doors in the Rose Hill neighborhood and not once did he mention doorknobs.[13]

[7] Exhibit 8, Whitlock PowerPoint.
[8] *Id*., p. 173.
[9] Exhibit 9, Whitlock Deposition Transcript excerpts, November 18, 2022.
[10] Exhibit 10, Whitlock Deposition Transcript excerpts, January 17, 2023.
[11] *Id*.
[12] *Id*.
[13] Exhibit 11, Whitlock Deposition Transcript (rough), April 12, 2023.

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SUPPLEMENTAL ARGUMENT

A. D.R. Horton has no claim against Blue Ridge that *derives* from the Class Claims brought by Zitek.

Granting this Motion does not require this Court to determine that Horton has no contractual indemnity claim against Blue Ridge. That is not the question. The question is whether Horton has a contractual indemnity claim that is derivative of the claim asserted by this Plaintiff in this lawsuit. Because there is no such derivative claim, the Third-Party Complaint fails and should be dismissed.

Plaintiff Zitek's experts have performed numerous inspections, issued numerous affidavits and reports identifying the defects common to the class of plaintiff homeowners in the Rose Hill subdivision, and sat for numerous days of depositions. None of Plaintiff Zitek's experts have identified a defect common to the class that implicates Blue Ridge's work. Specifically, none of Plaintiff Zitek's experts have identified any class-wide defect related to gutters; attic, wall, or crawl space insulation; pre-fabricated fireplaces or fireplace mantles; doorknobs or deadbolts; door numbers; closet shelves; bathroom mirrors; or shower doors. The only defect identified by Plaintiff Zitek's experts that remotely touches on Blue Ridge's scope of work is Dr. Whitlock's testimony that one doorknob at 8 Duxbury leaked during spray testing. Importantly, however, none of Plaintiff Zitek's experts have identified leaky doorknobs as a class-wide defect, even after observing the leaky doorknob at 8 Duxbury.

Blue Ridge did not install the doorknob at 8 Duxbury.[14]

[14] See Exhibit 1, Excerpt of Horton's Vendor Spend showing all work performed by Blue Ridge on the subject project, attached to Blue Ridge's September 2, 2023 Memorandum in Support of its Motion for Summary Judgment. At the Court's request, Blue Ridge will provide the entire Vendor Spend in Excel format so the Court can search for the installer of the particular doorknob at 8 Duxbury.

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Horton cannot expand Plaintiff's claim beyond what the Plaintiff is pursuing in order to create an indemnity obligation.

Plaintiff Zitek brought a class action lawsuit against Horton alleging class-wide defects in the construction of the Rose Hill subdivision. Plaintiff Zitek, in her pleadings, affidavits, and expert reports, has identified those class-wide defects. This Court granted class certification based upon those class-wide defects. Those specific class-wide defects are the defects that Horton is defending itself against in this lawsuit. Blue Ridge's work is not implicated in those specific class-wide defects. As such, Horton is not facing liability or damages for Blue Ridge's work in this lawsuit and cannot compel Blue Ridge to defend and indemnify it in this lawsuit.

B. The Contractual Indemnity clause in the contract is unenforceable as a matter of law.

If the Court finds that there is a derivative claim for which Horton may be able to seek indemnity, the claim for contractual indemnity should be dismissed because the contractual provision is unenforceable. Horton cannot satisfy the "clear and unequivocal" standard set forth by the South Carolina Court of Appeals in *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 642, 819 S.E.2d 166, 168 (Ct. App. 2018) and thus cannot demand that Blue Ridge defend and indemnify Horton in this case.

In addition to the failure of the language itself, the contract proffered by Horton is facially defective because it does not include the material terms of the contract. Specifically, it does not contain an agreed-to scope of work.[15]

[15] Exhibit 12, Blue Ridge Contract.

Since the contractual indemnification provision specifically relates to the "scope of work performed . . . under this contract," the failure to identify the work at the time of the contract is manifestly not "clear and unequivocal."

CONCLUSION

WHEREFORE, for the reasons stated above, Third-Party Defendant IBP Asset, LLC d/b/a Blue Ridge Building Products prays that the Court grant its Supplemental Motion for Summary Judgment as to Third-Party Plaintiff D.R. Horton, Inc.'s Third-Party Complaint and dismiss all claims and causes of action against Third-Party Defendant IBP Asset, LLC d/b/a Blue Ridge Building Products.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

/s/ Scott W. Giblin
Everett A. Kendall, II, SC Bar No. 8450
Scott W. Giblin, SC Bar No. 105368
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260
(803) 782-4100
Attorneys for IBP Asset, LLC d/b/a Blue Ridge Building Products

Columbia, South Carolina
July 11, 2023

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D·R·HORTON
America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR IBP Asset, LLC dba: BlueRidge Building Products ("Contractor")

____ Sole Proprietorship ____ Partnership ____ Corporation X LLC ____ Other (ATTACH W-9)

Social Security No. or Tax ID No 31-1795875

Name of Owner(s)/Officer(s) See Attached List

Division Name: _____ Area Name _____ Assigned Vendor No. _____

Address for All Notices PO Box 587

City Greer, State S.C Zip Code 29652

Telephone 864-895-9138 864-877-7449 E-Mail Address ron.bates@installed.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.R. Horton, Inc. its affiliates & subsidiaries ("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 January, 2010

Owner:
By D. R. HORTON, INC
Name ED JEANFREAU JR
Title PURCHASING Division President

Contractor:
IBP Asset, LLC dba: BlueRidge Building Products
By
Name Gaa Albers
Title Regional Manager

INITIALS: OWNER _____, CONTRACTOR GA.

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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 governmental 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.

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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 Contract 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, PENALITES, 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 that $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 that $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 return 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 _____.

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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.

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ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 11/06/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:
Willis Towers Watson Southeast, Inc. fka Willis of Tennessee, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191 USA	PHONE (A/C, No, Ext): 1-877-945-7378 FAX (A/C, No): 1-888-467-2378 E-MAIL ADDRESS: certificates@willis.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Old Republic Insurance Company	24147
INSURER B: American Guarantee and Liability Insurance	26247
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
IBP Asset, LLC
dba Blue Ridge Building Products Prime Energy Group
605 Apple Valley Road
Duncan, SC 29334-0000

COVERAGES **CERTIFICATE NUMBER:** W13767720 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT X LOC OTHER:	Y	Y	MWZY 314253 19	10/01/2019	10/01/2020	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 1,000,000 $ 10,000 $ 2,000,000 $ 4,000,000 $ 4,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO X OWNED AUTOS ONLY X HIRED AUTOS ONLY SCHEDULED AUTOS X NON-OWNED AUTOS ONLY	Y	Y	MWTB 314252 19	10/01/2019	10/01/2020	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 5,000,000 $ $ $
B	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 0	Y	Y	AUC 9314206-08	10/01/2019	10/01/2020	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $ 10,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: No If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	MWC 314250 19	10/01/2019	10/01/2020	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
This Voids and Replaces Previously Issued Certificate Dated 10/02/2019 WITH ID: W13269178.

D.R. Horton, Inc., its affiliates and subsidiaries is named as an Additional Insured as respects to General Liability coverage as required by written contract.

General Liability coverage includes a Waiver of Subrogation in favor of D.R. Horton, Inc., its affiliates and

CERTIFICATE HOLDER

DR HORTON INC.
ITS AFFILIATES AND SUBSIDIARIES INSURANCE
Attn: INSURANCE COMPLIANCE
PO BOX 100085 -DR
DULUTH, GA 30096

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Kevin Glasgow

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