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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

The Honorable R. Scott Sprouse
Circuit Court Judge

Appellate Case No. 2024-000057
Circuit Court 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,

and.

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

v.

A&J Framing, Inc.; A-Z, Inc.; AJ Landscaping & Grading, LLC, A/K/A AJ Landscaping & Grading, LLC; Allpro Textures, LLC; Alpha E.M.C.; Alpha Omega Construction Group, Inc.; American Concrete And precast, Inc.; A/K/A ACP Concrete, Inc.; Atlanta Floor Designs Center; A Grade Above Others, LLC; BFK Builders, Inc.; BMC East LLC D/B/A Coleman Floor, LLC; Brand-Vaughn Lumber Co, Inc.; Bravo Carpenters, Inc.; Builders Designhouse, LLC; Builders FirstSource Southeast Group, LLC, A/K/A Builders FirstSource, Inc.; Builders Services Group, LLC, F/K/A Masco Contractor Services Central Inc. F/K/A Gale Industries, Inc. D/B/A Gale Contractor Services; Cannaday Siding & Gutter, Inc.; Caryl Mechanics II, Inc., A/K/A Caryl Mechanicals, Inc.; CBU Enterprises, Inc.; Cortes Painting, LLC; CPI Security Systems, Inc.; Dom Group, LLC; Dupree Plumbing Company, Inc.; Ferguson Enterprises, Inc.; Five Star Construction Inc.; Five Star Foundations, LLC; Galloway-Bell, Inc. A/K/A Galloway-Bell Inc. II; GBS Building Supply – Us LBM, LLC, F/K/A/GBS Building Supply, Inc.; General Shale Brick Inc.; Get Floored, LLC; Greener Pastures, Inc., A/K/A Greener Pastures of Aiken, LLC; Installed Building Products, LLC A/K/A Installed Building Products II, LLC; IBP Asset, LLC D/B/A Blue Ridge Building Products; JLS Masonry,

Inc.; Kings Landscaping, LLC; L&M Electric, Inc.; Lade-Danlar, Inc.; Landshapers, LLC; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; M&L General Construction, LLC, A/K/A M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Manale Landscaping, LLC; MJ Cowboys, LLC; Nazareth Builders, LLC; NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&L Enterprises, LLC; P&T Construction, Inc., A/K/A P&T Construction, Inc.; 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; Silver Line Building Products Corporation; 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,

and.

Aaron D. Peris; Harrelson Painting, LLC, Huttig Building Products; et al, ... Fourth and Fifth-Party

of whom Defendants,

JLS Masonry, Inc. is the ..... Appellants.

and

Natalie Zitek, individually, and on behalf of all others similarly situated and as assignee of the claims of Third-Party Plaintiff D.R. Horton, Inc., ... Respondent,

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RECORD ON APPEAL VOLUME VI OF X

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

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

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

Plaintiffs,

v.

D.R. Horton, Inc.,

Defendant.

D.R. Horton, Inc.,

Third Party Plaintiff,

v.

JLS Masonry, Inc.; MJ Cowboys; M&L Reyna Construction, LLC; et. al.

Third Party Defendants.

JLS Masonry, Inc..

Fourth Party Plaintiff,

v.

Jesus Jimenez; and Jesus Robles Montes a/k/a Robles Construction,

Fourth Party Defendants.

JLS MASONRY INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

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MJ Cowboys, LLC, Fourth Party Plaintiff, v. Jesus Jimenez; and Jesus Robles Montes a/k/a Robles Construction, Fourth Party Defendants.
M&L Reyna Construction, LLC, Fourth Party Plaintiff, v. Jesus Jimenez; and Jesus Robles Montes a/k/a Robles Construction, Fourth Party Defendants.

NOW COMES JLS Masonry, Inc, (hereinafter "JLS") pursuant to Rule 56, SCRCP, submits this Memorandum in Support of its Motion for Summary Judgment (filed May 1, 2023), and states:

I. INTRODUCTION

JLS moves for summary judgment against Defendant/Third-Party Plaintiff D.R. Horton, Inc. ("DRH") on three bases:

1. DRH's claims for Breach of Contract, Breach of Express Warranties, Breach of Implied Warranties, and Negligence/Gross Negligence/Recklessness derive entirely from the prospective damages that DRH faces vis-à-vis Plaintiff's claims against DRH, and are therefore veiled claims for indemnity which are duplicative of DRH's existing Equitable Indemnity claim. Accordingly, pursuant to the Court of Appeals' holdings in *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Constr., LLC*, 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015), and *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-S.E. Grp.*, 413 S.C. 630, 776 S.E.2d 434 (Ct. App. 2015), JLS is entitled to summary judgment in its favor on DRH's claims for Breach of Contract, Breach of Express

Warranties, Breach of Implied Warranties, and Negligence/Gross Negligence/Recklessness.

2. Sections 10.1 and 6.4 of DRH's South Carolina Independent Contractor Agreement with JLS (hereinafter the "Agreement," and attached as Exhibit A), specifically, the contractual indemnity provisions of the Agreement, are unenforceable as a matter of law pursuant to the Court of Appeals' holding in *Concord & Cumberland Horizontal Property Regime v. Concord & Cumberland, LLC*, 424 S.C. 639 (S.C. Ct. App. 2018). Sections 10.1. and 6.4 seek to hold JLS responsible for damages caused by DRH's concurrent negligence. The language of Sections 10.1 and 6.4 fails to satisfy the clear and unequivocal standard required in the construction and expression of such indemnity provisions, and is thus, unenforceable. As such, JLS is entitled to summary judgment in its favor on DRH's claim for Contractual Indemnity.

3. Sections 10.1 and 6.4 of the Agreement are invalid, violate public policy, and are unenforceable pursuant to S.C. Code Ann. § 32-2-10 and *D.R. Horton, Inc. v. Builders FirstSource-Southeast Grp., LLC*, 422 S.C. 144, 810 S.E.2d 41 (Ct. App. 2018).

II. RELEVANT FACTS

JLS is a masonry contractor. Established by Jose Luis Sanchez in the 1990s, JLS performs masonry work for general contractors all over North Carolina, and the Charlotte-region areas of South Carolina. It is a fairly small company whose fieldwork is directly managed by Mr. Sanchez, and a general manager.

On or about February 11, 2010, DRH presented a pre-drafted, non-negotiable, form, adhesion contract to JLS's then-general manager Christopher De La Torre, who signed it. The contract (also referred to as the Agreement, above) contains two contractual provisions that would seek to impose upon JLS an obligation to indemnify DRH for, not only the sole negligence of JLS, but DRH's concurrent negligence as well. These two contractual provisions are found in Sections 6.4 and 10.1 of the Agreement/Exhibit A. For convenience, these two sections have been copied and pasted in their original form, below.

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Section 6.4:

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.

Section 10.1:

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.

Section 10.1 contains such an egregious amount of surplus legalese, that it makes understanding the actual substance of this section practically impossible. When one removes the surplus language (by blacking out the superfluous language) and distills the substance into digestible form, it becomes obvious that this indemnity provision purports to relieve DRH from the consequences of its own negligence, and shift those consequences onto JLS.

JLS was hired DRH to perform the following construction tasks at the Rose Hill subdivision:

1. Brick Installation Labor;
2. Manufactured Stone Veneer (hereinafter “MSV”) Installation Labor and Supply of

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Materials;[1]

3. Concrete Monolithic Slab Foundation Installation; and

4. Concrete Flatwork Installation.[2]

JLS performed its work from 2011 to 2014 and performed one or more of the above tasks on roughly 102 houses. DRH was responsible for performing all of the architectural design and engineering work, for providing all of the architectural and engineering drawings necessary for each house, for selecting and providing all materials needed for the installation of the brick veneer, for the management of the subcontractors as it relates to timing and sequencing, and for any direction and/or instruction it gave to JLS.

III. LEGAL STANDARD

Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Rule 56(b), SCRCP. "Rule 56(e), SCRCP, states, a party 'may not rest upon the mere allegations or denials of his pleading[s]." *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382 (Ct. App. 2010) "Summary judgment is appropriate in those cases where plain, palpable, and undisputable facts exist on which reasonable minds cannot differ." *Main v. Corley*, 281 S.C. 525, 526 (1984). When the non-moving party bears the burden of proof as to an issue, a party seeking summary judgment may meet this standard by pointing out to the trial court "that there is an absence of evidence to support the nonmoving party's case." *Richards v. The State Record Co., Inc.*, 330 S.C. 562 (Ct. App. 1998). "[I]n cases applying a preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary

[1] In reality, D.R. Horton selected the MSV characteristics, the local MSV supplier, and coordinated the availability of the MSV, whereas JLS and other masons simply picked up the MSV from the supplier, paid for it, and brought it to the job site.

[2] Flatwork is industry jargon for driveways, walkways and patios.

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judgment." *Hancock v. Mid–South Mgmt. Co.*, 381 S.C. 326, 330 (2009). A scintilla of evidence is material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror. *Gibson v. Epting*, Op. No. 5612 (Ct. App. Jan. 9, 2019). "[A] scintilla is a perceptible amount. There still must be a verifiable spark, not something conjured by shadows." *Id*.

The Court must view the facts and inferences in the light most favorable to the nonmoving party. *See Thomas v. Waters*, 315 S.C. 524, 445 S.E.2d 659 (Ct. App. 1994). However, a nonmoving party cannot evade summary judgment by creating and relying on "an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477 (2013). Moreover, if a motion has been properly made and supported in accordance with Rule 56, the non-moving party may not rest on its pleadings but must come forward with specific facts showing that there is a genuine issue for trial. Rule 56(e), SCRCP; *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 580 (2004). This showing must be based on evidence that would be admissible at trial. *Hall v. Fedor*, 349 S.C. 169, 175 (Ct. App. 2002).

IV. ARGUMENT

1. DRH'S CLAIMS FOR BREACH OF CONTRACT, BREACH OF EXPRESS WARRANTIES, BREACH OF IMPLIED WARRANTIES, AND NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS ARE VEILED AND DUPLICATIVE INDEMNITY CLAIMS.

DRH has alleged the following third-party claims against JLS: (1) contractual indemnity; (2) equitable indemnity; (3) breach of contract; (4) breach of express warranties; (5) breach of implied warranties; and (6) negligence/gross negligence/recklessness. *See generally* DRH's Second Amended Answer and Third-Party Complaint ("Third-Party Complaint") pp. 16-27 (filed Feb. 23, 2022). Counts two (2) through six (6) fail as a matter of law.

In its Third-Party Complaint, DRH alleges the following:

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- "If subcontractors' work was defective, subcontractors breached their contractual and common law duties to D.R. Horton and caused it damages at the time it preformed [sic] its work." *Id.* ¶ 87 (general allegations).

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

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

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

- "If the materials, installation, and/or workmanship were not in accordance with contract requirements, industry standards, and/or building code requirements, then Subcontractors have materially breached their express warranties." *Id.* ¶ 119 (breach of express warranties claim)

- "If the materials, installation, and/or workmanship were not in accordance with contract requirements, construction plans, industry standards, and/or building code requirements, then Subcontractors . . . have materially breached their [implied] warranties." *Id.* ¶ 123 (breach of implied warranties claim).

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

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(negligence/gross negligence/recklessness claim).

In its prayer for relief, DRH alleges:

> (b) On D.R. Horton's First Cause of Action [Contractual Indemnity], judgment in favor of D.R. Horton and against the Subcontractors in the amount of any liability D.R. Horton is found to have to the Plaintiff in this action and requiring the D.R. Horton Subcontractors to defend and indemnify D.R. Horton against any liability which D.R. Horton may be liable for and for any costs, losses, or damages D.R. Horton may incur as it relates to the Plaintiff in this action, to include D.R. Horton's attorneys' fees, costs, and any and all other expenses incurred in defending this action;
>
> (c) On D.R. Horton's Second Cause of Action [Equitable Indemnity], judgment in favor of D.R. Horton and against Third-Party Defendants in the amount of any liability D.R. Horton is found to have to the Plaintiff in this action and requiring the Third-Party Defendants to defend and indemnify D.R. Horton against any liability which D.R. Horton may be liable for and for any costs, losses, or damages D.R. Horton may incur as it relates to the Plaintiff in this action, to include D.R. Horton's attorneys' fees, costs, and any and all other expenses incurred in defending this action.
>
> (d) On D.R. Horton's Third and Fourth Causes of Action [Breach of Contract and Breach of Express Warranties, respectively], judgment for D.R. Horton and against the Subcontractors in an amount to be determined at trial;
>
> (e) On D.R. Horton's Fifth Cause of Action [Breach of Implied Warranties], judgment for D.R. Horton and against the Third-Party Defendants in an amount to be determined at trial;
>
> (f) On D.R. Horton's Sixth Cause of Action [Negligence/Gross Negligence/Recklessness], judgment for D.R. Horton and against Third-Party Defendants awarding actual, special, consequential and punitive damages in an amount to be determined at trial;

Id. pp. 26-27.

DRH's alleged damages arise only if DRH is found to have liability to Plaintiff. Further, DRH claims that it is entitled to judgment against JLS for the costs DRH must expend to defend itself. DRH's claims against JLS are nothing more than claims for equitable indemnity and should

be dismissed. *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Constr., LLC*, 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015) [hereinafter *Stoneledge I*]; *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-S.E. Grp.*, 413 S.C. 630, 776 S.E.2d 434 (Ct. App. 2015) [hereinafter *Stoneledge* II]. Quoting from these seminal cases on the issue of "disguised" or "veiled" indemnity claims, (S.C. App. 2015) and inserting the parties' from the instant case:

"Under [DRH's] own allegations, its negligence [third-party] claim arose only when it faced potential liability for [Plaintiff's] damages and incurred fees and costs defending against [Plaintiff's] lawsuit. [DRH's] negligence [third-party] claim is nothing more than a claim for equitable indemnity. *Stoneledge I* at 622, 776 S.E.2d at 430. Accordingly, "[w]e find the circuit court properly granted summary judgment on [DRH's] negligence [third-party] claim because it is not an independent cause of action from [DRH's] equitable indemnity claim. The court correctly ruled that the only potential claim for the damages [DRH] incurred defending against [Plaintiff's] lawsuit is for equitable indemnity." *Stoneledge I* at 624, 776 S.E.2d at 431.

"Under [DRH's] own allegations, its [third-party] claims arose only when it faced potential liability for [Plaintiff's] damages and incurred fees and costs defending against [Plaintiff's] lawsuit. [DRH's] breach of contract and breach of warranty [third-party] claims are nothing more than claims for equitable indemnity." *Stoneledge II* at 637, 776 S.E.2d at 438. Accordingly, "[w]e find the circuit court properly granted summary judgment on [DRH's] breach of contract and breach of warranty [third-party] claims because they are not independent causes of action from [DRH's] equitable indemnity claim." *Stoneledge II* at 639, 776 S.E.2d at 439.

As *Stoneledge I* and *Stoneledge II* are precisely on point and controlling, the Court should grant summary judgment to JLS on DRH's claims for breach of contract, breach of express warranties, breach of implied warranties, and negligence/gross negligence/recklessness claims.

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See also Bei-Beach, LLC v. Christman, 2023 S.C. App. LEXIS 45 (Ct. App. Apr. 26, 2023) ("Under South Carolina law, a claimant cannot maintain derivative tort or breach of warranty claims arising only from the claimant's potential liability for another party's damages and the claimant's need to defend itself in litigation; such contingent claims properly lie in indemnity.") (citing *Stoneledge I* and *Stoneledge II*).

2. DRH'S CONTRACTUAL INDEMNITY PROVISIONS ARE UNENFOREABLE AS A MATTER OF LAW AND JLS IS THEREFORE ENTITLED TO SUMMARY JUDGMENT ON DRH'S CONTRACTUAL INDEMNITY CLAIM.

DRH's contractual indemnity provisions seek to shift the consequences and the responsibility for its own negligent acts onto JLS, in a form of writing that is nearly impossible to follow and understand. The contractual indemnity provisions are woefully inadequate and insufficient and fail to meet the heightened standard of clear and unequivocal that is required for such an indemnity provision to be enforceable. Because the language is not clear and unequivocal, it is, by law, unenforceable and the Court should grant summary judgment in favor of JLS on DRH's Contractual Indemnity claim.

South Carolina courts "have consistently defined indemnity as 'that form of compensation in which a first party is liable to pay a second party for loss or damage the second party incurs to a third party.'" *Laurens Emergency Med. Specialists, PA v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 109, 584 S.E.2d 375, 377 (2003) (quoting *Campbell v. Beacon Mfg. Co.*, 313 S.C. 451, 454, 438 S.E.2d 271, 272 (Ct. App. 1993)). "A right to indemnity may arise by contract (express or implied) or by operation of law as a matter of equity between the first and second party." *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 60, 518 S.E.2d 301, 305 (Ct. App. 1999) (quoting *Town of Winnsboro v. Wiedeman-Singleton, Inc.* (*Winnsboro I*), 303 S.C. 52, 56, 398 S.E.2d 500, 502 (Ct. App. 1990), *aff'd*, 307 S.C. 128, 414 S.E.2d 118 (*Winnsboro II*)).

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"Contractual indemnity involves a transfer of risk for consideration, and the contract itself establishes the relationship between the parties." *Rock Hill Tel. Co. v. Globe Commc'ns, Inc.*, 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005). Typically, courts will construe an indemnification contract "in accordance with the rules for the construction of contracts generally." *Campbell*, 313 S.C. at 453, 438 S.E.2d at 272. However, when an indemnity clause purports "to relieve an indemnitee from the consequences of its own negligence," our case law requires strict construction of the clause. *Laurens*, 355 S.C. at 111, 584 S.E.2d at 378-79. "Indeed, most courts agree with the basic rule that a contract of indemnity will not be construed to indemnify the indemnitee against losses resulting from its own negligent acts unless such intention is expressed in clear and unequivocal terms." *Fed. Pac. Elec. v. Carolina Prod. Enters.*, 298 S.C. 23, 26, 378 S.E.2d 56, 57 (Ct. App. 1989).

The clear and unequivocal standard applies any time a purported indemnitee (such as DRH) is seeking indemnification for its own negligence, whether sole or concurrent. *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 649, 819 S.E. 2d 166, 172 (Ct. App. 2018). The analysis hinges on whether the language of the indemnification provision meets or fails to meet the clear and unequivocal standard. If it does meet the standard, than the provision is enforceable. If it does not meet the standard, then the provision must be disregarded. In this case, the language contained in DRH's section 10.1 and 6.4 fail to meet this clear and unequivocal standard.

The issue is determining what constitutes clear and unequivocal language. As the Court of Appeals stated in *Concord & Cumberland*, as it evaluated a previous decision it had made in *Federal Pacific Electric*, "'general terms' although broad and comprehensive, [are] inadequate to satisfy the clear and unequivocal standard. *Concord & Cumberland* at 651 (citing *Federal Pacific*

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Electric at 29). The indemnification language in *Federal Pacific Electric* contained a general, broadly worded indemnification provision that the Indemnitor would indemnify the Indemnitee for "any damage suffered or liability incurred . . . or any loss or damage of any kind in connection with [the subject of the parties' transaction]." *Id*. The Court in *Concord & Cumberland*, also evaluated the provision at issue in *Laurens*, which read "The [Indemnitor] will indemnify and hold [Indemnitee] . . . harmless from and against any and all claims, actions, liability or expenses . . . caused by or resulting from allegations or wrongful acts or omissions of [Indemnitor's employees and agents]. *Laurens* at 110. This language was found to have been broad and comprehensive. *Id*. In *Laurens*, the Supreme Court found that "this 'standard language' did not 'disclose an intention by the parties to relieve [Indemnitee] of the consequences of its own negligence." *Concord and Cumberland* at 651 (citing *Laurens* at 112).

In this case, DRH's indemnification provisions would have JLS indemnify DRH for any negligence caused by JLS, and any negligence concurrently caused by DRH. The indemnification provision in Section 10.1 of the Agreement expressly excludes an obligation of JLS to indemnify DRH for DRH's sole negligence. If you remove the voluminous surplus language of Section 10.1 of the Agreement, it reads:

> TO THE FULLEST EXTENT PERMITTED BY LAW, [JLS] HEREBY AGREES TO [. . .] INDEMNIFY [. . .] [DRH] [. . .] FROM AND AGAINST ANY [. . .] LAWSUITS [. . .] FOR DAMAGES FROM [. . .] THE DESTRUCTION OR LOSS OF PROPERTY [. . .] RESULTING FROM OR RELATED IN ANY WAY TO THE WORK PERFORMED [. . .] REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY INDEMNITEE . . .

Agreement, Section 10.1. Section 10.1 then continues, in general terms, to describe that the instances invoking indemnification will be instances of JLS's negligence, and other elements of the work over which JLS possessed and/or exercised control. In this case, the Work Performed is

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defined in Section 1 of the Agreement and entitled "Scope of Work," as being that described within Exhibit A to the Agreement. Exhibit A establishes the tasks constituting work performed.

Concord and Cumberland rests on the issue of whether an indemnification provision allowing an Indemnitee to recover from an Indemnitor the damages resulting from the Indemnitee's negligence can be enforced. The Court in *Concord and Cumberland* dedicates a significant amount of analysis to whether a specific clause in the indemnification provision renders the entire indemnification provision insufficient in light of the clear and unequivocal standard. In *Concord and Cumberland*, the essence of the ruling was whether the clause "to the extent caused . . . by any negligent act or omission of the [Indemnitor]" contained within the indemnification provision scuppered the remaining portion that did otherwise allow the indemnitee to seek indemnification for its own negligence. The conflicting clauses of the indemnification provision essentially rendered the entire indemnification provision as inadequate in view of the clear and unequivocal standard. *Concord and Cumberland* at 654.

The facts in this case are essentially analogous to the facts in *Concord and Cumberland*. While the operative language in the *Concord and Cumberland* agreement does not have an identical counterpart in the language in the Agreement here, the wording in the Agreement engenders substantially the same effect as the language in *Concord and Cumberland*. By stating that it may seek indemnification "FOR DAMAGES FROM [. . .] THE DESTRUCTION OR LOSS OF PROPERTY [. . .] RESULTING FROM OR RELATED IN ANY WAY TO THE WORK PERFORMED" and as Work Performed is defined in the Agreement, and then by stating in the Agreement that it is entitled to indemnification for "ANY NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK," DRH has created a conflict in contract construction

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that is identical to the conflict that the Court identified in *Concord and Cumberland*. This conflict pulls the construction of this provision below the threshold of the clear and unequivocal standard that DRH's indemnification provision MUST surpass in order to be enforceable. Because DRH's indemnification provisions in Sections 10.1 and 6.4 of the Agreement do not satisfy the clear and unequivocal standard, they are unenforceable, and JLS is entitled to summary judgment on DRH's claim for Contractual Indemnity.

3. DRH'S CONTRACTUAL INDEMNITY PROVISIONS ARE INVALID AND, VIOLATE PUBLIC POLICY, AND ARE THEREFORE UNENFORCEABLE.

Sections 10.1 and 6.4 of the Agreement are invalid, violate public policy, and are unenforceable pursuant to S.C. Code Ann. § 32-2-10 and *D.R. Horton, Inc. v. Builders FirstSource-Southeast Grp., LLC*, 422 S.C. 144, 810 S.E.2d 41 (Ct. App. 2018). Pursuant to Rule 10(c), SCRCP, JLS incorporates in full the arguments (and referenced exhibits) on this point as set forth in Third-Party Defendant M&L Reyna Construction, LLC's Memorandum in Support of its Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment (filed July 11, 2023). *See id.* pp. 8-12 (Section I.a.). This argument may be supplemented at the hearing on this matter.

V. CONCLUSION

Based on the arguments set forth herein, as well as JLS's Motion for Summary Judgment, the common and statutory law of South Carolina, and forthcoming oral argument, JLS respectfully asks this Court to grant summary judgment to JLS and against DRH.

Respectfully submitted,

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D·R HORTON America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR JES MASONRY, INC ("Contractor")

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

Social Security No. or Tax ID No. 56-2131548

Name of Owner(s)/Officer(s): JOSE LUIS SANCHEZ

Division Name _____ Area Name _____ Assigned Vendor No. 1195192

Address for All Notices PO Box 78410

City CHARLOTTE State NC Zip Code: 28271

Telephone 704 624-7471 Fax 704 248-7469 E-Mail Address jlsmasonryinc@hotmail.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 FEB, 2010, between D R HORTON INC. JES MASONRY, 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 this 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: D.R. HORTON, INC
By _____
Name: EDMOND G JEANFREAU, JR
Title PURCHASE Division President

Contractor
By _____
Name: CHRISTOPHER DE LA TORRE
Title GENERAL MANAGER

INITIALS OWNER _____ CONTRACTOR TDLT

SF = 1392311 MF = 1392312 MACON = 1392313
GREENVILLE = 1392314

PLAINTIFF'S EXHIBIT 18

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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. (e) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, conveators 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: MASONRY

PERFORMANCE REQUIREMENTS
All masonry shall be installed in a uniform manner. All walls will be plumb and level. Mortar joints shall not be larger than 1/2". Mortar cracks are not to exceed 1/8". Weep holes are to be properly installed per Masonry Institute specifications. All necessary flashing will be properly installed to prevent leaks. An unobstructed gap of 1" shall separate the masonry from the framed wall. All areas of workmanship will remain defect free and maintain their structural integrity for a minimum of ten (10) years.

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 subcontractor will repair and/or replace any defects resulting from work not meeting the performance requirements. All repairs include labor and material. D.R. Horton, Inc. will make the final determination on any remedial action

SPECIFICATIONS AND SCOPE OF WORK

1. The Subcontractor shall furnish all necessary labor, tools, equipment, scaffolding, and incidentals to install masonry per plans and specifications.
2. Leave one (1) inch air space between brick and sheathing.
3. Laid in running bond, anchored with ties minimum 22 gauge, 7/8" wide, corrugated, corrosion resistant, imbedded at least two (2) inches in mortar and nailed with #8 nails.
4. Install ties two (2) feet O.C. horizontally and every fifth course vertically.
5. Mortar joints tooled and brushed, not to exceed 1/2". Type of joint to be concave or rodded (or from written specification change by Builder).
6. Mortar mix to be uniform in color and selected by D.R. Horton, Inc (Buff is standard).
7. Brick sills below windows and doors on brick elevations per drawings with pitch of 1/4" for run off.
8. Brick mason is responsible to replace any faulty brickwork, and will properly blend random mixtures to achieve uniformity per manufacturer's specs.
9. Mortar mixture shall adhere to Portland Cement Association specifications per applicable job.
10. All brick walls are to be plumb and level and mortar joints over 1/2" will not be accepted.
11. Provide protection so that mortar does not get any other building products. Damage to any other products caused by mortar spillage will be the responsibility of the mason contractor.
12. No brick wall will be laid when the temperature is thirty-two (32) degrees Fahrenheit or lower.
13. Brick mason will install all lintels and flashing per CABO specifications. See Builder for specifications (Bolted with carriage bolts)
14. Mason to hard rake excess mortar @ base of brick.
15. Subcontractor is to place all debris caused by his operation in designated areas.

Contractor agrees to comply with all applicable building codes, ordinances and OSHA regulations

ACKNOWLEDGMENT

These specifications are a part of the subcontract 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 subcontractor as soon as any change is initiated.

Contractor: JLS MASONRY, INC
By: C.L.O. Li
Date: 02/17/10

Builder:
D.R. Horton, Inc
By: EDMOND G. JEANFREAU JR
Date: 2/23/10

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PERFORMANCE REQUIREMENTS AND SPECIFICATIONS
Exhibit "A"

DESCRIPTION FRAMING LABOR

PERFORMANCE REQUIREMENTS
The framing structure and components shall be assembled according to plans, specifications, and details provided with the plans and are plumb, level, and square. Bearing connections shall be tight and bearing members (posts) continuous from the top of its bearing point to the bottom of the foundation. Frame assembly must meet the applicable codes for the area and use approved fasteners and connectors. Equipment used to transport framing members shall not adversely affect the design characteristics of the framing members. Floors shall not squeak nor have noticeable crowns, ridges, or dips. Exterior trim member shall be tight, free of gaps, uniform in appearance, and be properly flashed or sealed. Structural elements are warranted for ten (10) years. Non-structural elements are warranted for one (1) year. All subcontractors must wear hard hats on the job site at all times

Hard hats and appropriate safety equipment are to be worn at all times while on D.R. Horton property. Each crew leader must have scaffolding, fall protection and PPE "Competent Person" training.

NON-PERFORMANCE REMEDY
The Contractor shall repair any defective workmanship, shrinkage gaps greater than 3/8", or areas not plumb or square (1/4" in 32") prior to the home being occupied. Stress caused by normal settlement or movement in the structure is not the responsibility of the Contractor. *Exterior trim* that is loose, shows gaps, or deteriorates because of inappropriate sealing or flashing, shall be repaired or replaced during the one year(1) of occupancy. Final determination for remedial action shall be made by D R. Horton, Inc.

SPECIFICATIONS AND SCOPE OF WORK

1. All walls, openings, and floors to be framed level, square, and plumb.
2. Contractor is to check all foundations prior to framing for correct measurements, square, and level [all basement studs will be cut if necessary to level the *first* floor]. This includes slab and poured walls.
3. All exterior plates on slab or poured walls to be caulked, glued, or sill sealer used.
4. Furr-downs, fire blocking, barge rafters, and punch-out to be done before beginning another unit.
5. Stairs to be set as per D.R. Horton specifications, nailing every stud with 2" shims with even margins nailed at underside of stairs through carriage. Provide OSHA approved fall protection devices at all appropriate areas.
6. All windows installed square and level with even margins, to be shimmed and caulked as required by manufacturer's specifications.
7. All fire stops, water heater platforms and blocking for sheetrock, closet shelves, ext. soffit blocking for flood lights, and cabinets are contractor's responsibility and must be completed before starting another unit.
8. All overhangs for soffits to be of uniform distance.
9. All jobsites are to be broom swept daily to remove all construction debris caused by his operation with usable material stacked in garage and trash placed in the designated areas.
10. All insulated sheathing to be nailed properly with 1 1/4" button cap nails All blown off or weather damaged sheathing will be the responsibility of the contractor to replace.
11. Framing punch out must be completed within 24 hours.
12. All load bearing walls to be 16" o.c. and non-load bearing 24" o.c. (See Builder)
13. All door jacks to be cut out of lineal (not studs) - 14' stock.
14. All joist hangers installed same time as floor system
15. Contractor is responsible for damage or misused material.
16. Stairs damaged by weather are the responsibility of the contractor.
17. H-spacer ply clips will be used on all roofs decking (when trusses are 24" center to center).
18. All sub-flooring is to be glued using an appropriate caulk gun and nailed, per code.
19. All framing to be in accordance with the attached D.R. Horton, Inc. framing checklist.
20. Final payment is to be made upon completion of the signed-off framing inspection
21. Permit boards, driveway barricades and walk boards (adequate to reach street) to be built by framing contractor.
22. Framer to follow engineered truss plan.

23. All gable ends to have horizontal cat walk bracing installed per truss manufacturers specs

SPECIFICATIONS AND SCOPE OF WORK

24 All floor and roof trusses to be braced in accordance to manufacturers specs.
25 All ext. doors, normally front and rear French or sliding to be installed, square, and level with even margin shimmed and sealed with silicone sealant or its equivalent, on top, two sides, and bottom.
26. All framing to pass County Inspection prior to final labor payment to contractor. All county required changes remain the responsibility of the contractor at no additional cost to builder.
27. All framing to be done using "ladder" type framing.
28. All fall protection to be secured to floor independent of wall framing.

Contractor agrees to comply with all applicable building codes, ordinances and OSHA regulations.

ACKNOWLEDGMENT

These specifications are a part of contract identified above. D R. Horton, Inc. reserves the right to amend or modify any of the above general specifications at any time, and will notify the contractor as soon as any change is initiated.

Contractor: C L O. L. T

By: GENERAL MANAGER

Date: 02/17/10

Builder:

D R Horton, Inc.

By: EDMOND G. JEANFREAU, JR

Date: 2/23/10

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

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

Plaintiff,

v.

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

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

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

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

JLS MASONRY, INC. AND MJ COWBOYS, LLC'S JOINDER TO M&L REYNA CONSTRUCTION, LLC'S MEMORANDUM IN OPPOSITION TO D.R. HORTON, INC.'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT

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

Third-Party Defendants.

ProBuild Company, LLC,

Fourth-Party Plaintiff,

V.

Harrleson Painting, LLC; Aaron D. Peris; Therma-Tru, LTD; and Huttig Building Products,

Fourth-Party Defendants.

Builders FirstSource- Southeast Group, LLC,

Fourth-Party Plaintiff,

V.

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Harrleson Paintinf, LLC; Aaron D. Peris; Therma-Tru, Ltd.; and Huttig Building Products, Fourth-Party Defendants.

TO ALL PARTIES ABOVE NAMED AND THEIR ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE the Third-Party Defendants JLS Masonry, Inc. (hereinafter "JLS") and MJ Cowboys, LLC (hereinafter "MJ Cowboys") by and through their undersigned counsel, submit their Joinder to Third-Party Defendant M&L Reyna Construction, LLC's (hereinafter "M&L Reyna") Memorandum in Opposition to D.R. Horton, Inc.'s Motions for Partial Summary Judgment.

JLS and MJ Cowboys incorporate the facts, arguments, and exhibits (including but not limited to the affidavit of Derek Hodgin) in M&L Reyna's Memorandum pursuant to Rule 10(c) of the South Carolina Rules of Civil Procedure. The Court should deny D.R. Horton's motions as to JLS and MJ Cowboys because, *inter alia*, the motions do not specify any causes of action on which D.R. Horton seeks summary judgment, but rather the motions identify "defective stone and brick installation" as the subject/basis of the motions. Additionally, there are plenary issues of material fact as to alleged defects/deficiencies with the brick and stone installation. Finally, D.R. Horton was responsible for construction administration, providing plans and specifications to its subcontractors (including JLS and MJ Cowboys), and supervising and managing the work at Rose Hill. *See Pope v. Heritage Cmtys., Inc.*, 395 S.C. 404, 717 S.E.2d 765 (Ct. App. 2011).

Therefore, JLS and MJ Cowboys join in M&L Reyna's Memorandum in Opposition to D.R. Horton, Inc.'s Motions for Partial Summary Judgment directed at JLS and MJ Cowboys, and respectfully request that D.R. Horton, Inc.'s motions for partial summary judgment be denied.

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ROSS & CRISTALDI, LLC

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Counsel for JLS Masonry, Inc. and MJ Cowboys, LLC

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON 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. _____ 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 Plaintiff, v. Toribio Islas and Alejandro Soto, Fifth-Party Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-04-01942 **PLAINTIFF'S MEMORANDUM IN SUPPORT OF ENTRY OF TRIAL PLAN ORDER**

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Plaintiff submits this Memorandum in Support of her Motion for the Entry of a Trial Plan Order, which was filed on June 23, 2023.

DISCUSSION

Rules 16, 23, 40, 42, 43, 49, and other rules, SCRCP., and the Court's inherent authority, give this Court plenary authority to conduct the trial of this case in a way to reach a just, fair, and expedient resolution. For complex cases, the Court is encouraged to adopt a trial plan for the orderly trial of the case. *See, e.g.*, Manual For Complex Litigation, Fourth, p. 306. There are multitudes of references available, online and elsewhere, with insight as to how to streamline trials in different circumstances. There are many papers on this that have evolved out of multidistrict litigation. The Trial Plan proposed for this case borrows from some of those resources and from Class Counsel's prior experience as to where bottlenecks typically occur at trial and what can be done to avoid these problems, while being fair to the parties involved.

(Characteristics of Current Case)

In devising a trial plan for this case, one must first recognize that the Class had only been certified against Horton, and Plaintiff and the Class only make claims against Horton. No class has been certified in Horton's favor against the Third or Fourth-Party Defendants, a point that might be missed.

A judgment in Plaintiff's favor against Horton will not automatically relate over to a judgement in Horton's favor against the other Defendants. Initially, absent the further details discussed below, it will have no precedential value in the Third-Party case except that it will set the *ceiling* for construction defect damages for which the Third-Party Defendants can be liable. (While potential liability for defense costs could increase this, that is not a derivative claim from Plaintiff's claim and is not being litigated in Plaintiff's case.)

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Assuming Plaintiff achieves a verdict, Horton will still have to prove that the Third-Party Defendants caused the damages, or portions thereof, to achieve a judgment against one or more parties.

Arguably, the extent to which the jury's valuation of the defect damages is binding on the Third-Party Defendants is a function of the extent the Third-Party Defendants participate in the principal trial (*i.e.*, Phase I proposed by Plaintiff). If they participate, they should be bound by the valuation. If they do not, they presumably retain the right to contest Horton's valuation of the damages in the Third-Party litigation (*i.e.*, Phase II proposed by Plaintiff).

Secondly, since there is no certified Third-Party Defendant class, Horton will have to prove either the parties acted in concert, or have a joint indemnity, or it will have to prove each Defendant's responsibility/liability.

Third, as Horton has now settled with some Third-Party Defendants, it cannot simply sue the Third-Party group for its entire judgment, which contains unrelated damages from settled and dismissed subcontractors. It must prove what portion of the Plaintiff's judgment is the responsibility of the remaining Third-Party Defendants. Horton will have to defend against the Third-Party Defendants' evidence allocating damages to Horton's sole negligence or to other trades. For some Third-Party Defendants, Horton may need to defend against evidence of its concurrent negligence.

As part of the foregoing, unless the Third-Party Defendants fully participate in Phase One, Horton will have to establish that its valuation of allocated responsibility/damages to a particular Third-Party Defendant is reasonable.

(Proposed Trial Plan)

The vast majority of the proposed trial plan is simply "I" dotting and "t" crossing of standard matters, and simply establishing deadlines and orderly progression. The only non-

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standard details are contained in paragraphs fourteen and fifteen of Plaintiff's proposed Trial Plan, and they address the Third-Party Defendants' participation in the main trial (Phase I).

Limitations, some such as those suggested by Plaintiff, have been employed in one form or another previously. Manual for Complex Litigation, Fourth, p. 306. Plaintiff understands and/or believes many Third-Party Defendants in this case are, or will be, interested in retaining the right to open in full, enter new evidence, and contest the valuation of damages/allocated damages in Phase II.[1] This would suggest a more limited involvement for Third-Party Defendants in Phase I. However, Plaintiff is amenable to different management approaches; Plaintiff would likely benefit from the jury hearing more subcontractor openings from those third parties that do not which to reserve their openings for Phase II. Plaintiff may also benefit from, *e.g.*, attempts by Third-Party Defendants to examine sympathetic homeowners.

Plaintiff notes that no other party had come forth with a viable alternative, or with reasonable guidelines.[2] Do those Third-Party Defendants that want unlimited cross-examination agree that they do not have the right to call witnesses during Plaintiff's case, or during Horton's case? Do they think they can reasonably litigate and argue their portion of liability or responsibility prior to the jury rendering an initial verdict? It is reasonable to ask the Court to risk a mistrial after four weeks of testimony by the use of a forty-page verdict form with special interrogatories, because one or several Third-Party Defendants wants to litigate its liability out of order? Plaintiff thinks not; but, of course, that is up to the Court. Plaintiff was simply fulfilling her duty to the Court and the process by initiating this dialogue.

[1] Some Third-Party Defendants have moved for a separate trial, indicating their preference for some type of organized, staggard approach.

[2] One party has objected to the use of lead counsel. Lead and liaison counsel are well used tools in our Court system. *See* Manual For Complex Litigation, Fourth, p. 306.

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The question is not whether Third-Party Defendants get to participate and exercise their rights; but rather, when (which Phase); and the extent to which this answer affects what outcomes are binding on the Third-Party Defendants from the main proceeding, besides the damage ceiling – all while balancing the Plaintiff's' due process rights (who did not sue Third-Party Defendants) with Third-Party Defendants' rights.

CONCLUSION

The court should enter a trial plan, be it the one suggested by Plaintiff or any other reasonable approach; and consideration should be had for the balancing of competing due process rights and the issue of what findings in the main trial will be binding upon the Third-Party litigants.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

s/ Justin Lucey

_____

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Attorneys for Plaintiff and the Class

July 12, 2023
Mount Pleasant, South Carolina

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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 MEMORANDUM IN OPPOSITION TO CLASS DECERTIFICATION**
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 Plaintiff, v. Toribio Islas and Alejandro Soto, Fifth-Party Defendants.	

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This Memorandum is submitted in Opposition to Defendant, D.R. Horton, Inc.'s ("Horton") and the Other Defendants' Motions to Decertify this class action.

SUMMARY OF ARGUMENT

The additional site inspections, discovery, depositions, and partial class settlements that have occurred since the class was certified support and bolster this Court's original decision that the class action procedural vehicle is both the proper and the best method for resolving these defective construction claims. Plaintiff and Horton have settled with dozens of Third, Fourth, and Fifth-Party Defendants on a class-wide basis. Absent the Court's Order Granting Class Certification early in the case, the efficient resolution of the claims against the settling Defendants would not have been possible.

The Class's claims concern two hundred and twenty (220) structures constructed by a single developer/general contractor utilizing the same or similar exterior components and the same or similar means or methods, resulting in the same or similar defects. Given the HVAC resolution, the Class claims are now narrower and more focused than the originally certified claims, which this Court already found proper for class treatment. The remaining issues include the following:

1) Whether these homes contain construction defects;
2) Whether these defects are caused in part by Horton's inadequate plans, lack of supervision, and lack of quality control;
3) Whether these defects are latent;
4) Whether these defects have proximately damaged the class; and
5) The cost of repair of the defects.

Importantly, Horton asserts class-wide defenses, *e.g.*, that it relied on its subcontractors and did not have a responsibility to supervise them, which make this case even more suitable for

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continued certification, as all these defenses can be resolved on a class-wide, or representative basis.[1]

Additionally, like Plaintiff, Horton has proffered a nearly uniform, class-wide scope and cost of repair for the residences, evidencing the suitability of class treatment of damages. For example, Horton's expert has opined that all homes need to have their windows inspected, and at least 15% of windows need to be repaired.

Additionally, as 1) Horton has now settled with half or more of its Third- and Fourth- Party Defendants, including horizontal, roofing, flooring, and miscellaneous Defendants, and 2) it has become clear that the multiple masons on this job were successor entities supervised by the same principal, employing the same workforce, the contemplated trial of this matter has become far simpler than previously considered.

Decertifying this Class in the face of such overwhelming evidence of commonality, typicality, and class representative adequacy, and after all the parties' investment and progress in this litigation, would unnecessarily multiply litigation and run contrary to South Carolina's policy of promoting the efficient resolution of claims that hinge on the resolution of common issues of law and fact. Accordingly, the Court should deny Horton's and the Other Defendants' Motions to Decertify this Class.

As an aside, Horton constantly refers to this Court's Order Granting Class Certification as "conditional" throughout its Motion for Decertification and Supporting Memorandum. *See* (Horton's Motion for Decert. and. Supp. Memo.). Nowhere in this Court's 2021 Certification

[1] For example, Horton claims that a national builder can rely on its local "partners" for local building code requirements, and that it "relied" on its subcontractors to build all these homes correctly. On this basis, Horton's expert blames these subcontractors for the common, building violations that most experts have documented throughout the neighborhood.

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Order is the word conditional used; nor is there any language that would suggest the original class certification was conditional. Further, Horton and others have moved to "clarify" the original certification order as to what defects were included. These Motions are untimely and without foundation; the Certification Order is clear that the Class was certified on the entirety of its construction defect claims against Horton, and no others.

THE CERTIFIED CLASS

This certified class action arises from Horton's construction of 220 homes in the Rose Hill subdivision. Plaintiff filed the initial Summons and Complaint on September 25, 2019. On January 27, 2021, the Honorable Cordell Maddox certified the following class:

> Any persons or entities that own a home developed/built by D.R. Horton within the Rose Hill neighborhood in Easley, South Carolina.
>
> The class excludes any home owned by D.R. Horton and/or their affiliates; any home owned by the Judge, any Rose Hill home developed by persons other than D.R. Horton; any former Rose Hill homeowner, any current Rose Hill homeowner who previously released D.R. Horton; and, all persons who properly execute and file a timely request for exclusion from the Class.

1/27/2021 Order Granting Plaintiff's Motion for Class Certification ("Order").

BACKGROUND

Plaintiff Zitek and the Class (hereinafter collectively "Plaintiff") are the owners of 220 single-family homes located in a neighborhood known as Rose Hill in Easley, SC. Horton developed Rose Hill between 2012-2017. The last Rose Hill home was completed/sold in June 2017, and Horton turned over the Homeowners' Association ("HOA") and Architectural Review Committee ("ARC") to the homeowners later in 2017.

In 2019, Plaintiff Zitek grew concerned about potential brick-related construction defects after cracks emerged near her garage following Horton's *fourth* or so attempt to repair the brick façade near the garage. (N. Zitek Depo. Trans. 185:8-14, 330:10-23; 370:15-18); *see also* Pl. Supp.

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Answer to Horton's Interrogatory No. 9, Ex. A). Plaintiff Zitek concurrently learned that her neighbors were experiencing similar brick-related cracking and Horton repair problems. (N. Zitek Depo. Trans. 127:21-128:14). Therefore, Plaintiff Zitek filed this action against Horton on September 25, 2019.

After extensive right to cure inspections and motions practice, this class was certified on January 27, 2021. Notice of class certification was given to absent class members and approximately one dozen opted out, resulting in a class of 220 homes. It was later designated complex (at Horton's request) on March 16, 2022. Discovery in this case concluded on June 9, 2023, and the case is currently set for a four-week trial beginning on September 5, 2023.

During the four years that this case has been pending, Plaintiff's and Defendants' experts have observed the exteriors on all the Class homes and inspected over 2/3 of the Class's homes in greater detail.[2] These inspections verified this Court's initial findings that these homes were similarly designed and constructed with similar building components under the same supervision and guidelines (or lack thereof) by Horton. As a result, these homes all have similar defects including:

- Building envelopes that are failing because of, *e.g.*,
    a. non-code compliant brick and stone veneer masonry walls that are separating, cracking;
    b. defective fenestration products (leaking, broken windows and patio doors); and,
    c. torn, non-code compliant weather barriers;
- Flooding yards because of, *e.g.*, inadequate grading and drainage;
- Excessively cracking foundations and garage slabs (that are potentially allowing radon[3] to enter these homes); and,

[2] Plaintiff's experts have inspected 140 homes and Horton's experts have inspected 130 homes.
[3] Radon is the 1st leading environmental cause of cancer. Anderson is designated as a Radon prone zone.

- Insufficient air flow because of, *e.g.*, non-code compliant duct-work and interior door undercuts .[4]

These common defects have resulted in common damages such as cracking/separating veneer,[5] air and water intrusion,[6] wood framing and trim deterioration,[7] compromised claddings,[8] and stained finishes.[9]

PERTINENT FACTS

A. Horton's Engineering Expert Moore Agrees That the Common Defects Originally Recognized by This Court Are, In Fact, Common Defects

Horton's own expert, Steve Moore, acknowledges that these homes suffer from the multiple code violations documented to this Court in its original consideration of Class Certification, including:

Stone Veneer (MVS) Defect Exemplars[10]

- ***Improperly Installed Stone Veneer (MSV) over brick:*** Moore admitted that the MSV applied to the brick façade was a "construction defect." (Moore Depo. Trans. 26);

- ***Insufficient MSV Clearance***: Moore admitted that the stone veneer walls lack sufficient clearance with the hardscape and ground below, and asphalt shingles on second stories, and that these are all building code violations. (Moore Depo. Trans. 573-77; 863-65);[11]

[4] The MEP Defendants, Horton, and Plaintiff agreed to settle all HVAC, plumbing, and electrical-related claims. However, these parties have not yet been dismissed as the class wide settlement is arguably subject to Court approval.
[5] (Whitlock Depo. Trans. 130; 211; 480; 901-02).
[6] (Whitlock Depo. Trans. 383; 847).
[7] (Whitlock Depo. Trans. 65; 77; 847).
[8] (Whitlock Depo. Trans. 789).
[9] (Whitlock Depo. Trans. 73; 195; 216; 294; 646).
[10] Notably, another defense expert, Derek Hodgin, has substantiated Dr. Whitlock's opinion that the MSV was inadequate adhered due to it being inadequately "buttered" (mortared) on the backside (an additional building code violation). (Hodgin Depo. Trans. 50, 85-86, 125-6, 155). Mr. Hodgin also opined that all the MSV needs to come off and be replaced. (Hodgin Depo. Trans. 153).
[11] *See also* (Moore Depo Trans. 189:23-190:8).

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- ***Cantilevered MSV Defect*:** See Moore's responsibility discussion below regarding the intersection of the MSV on the front of the houses with the brick on the side of the houses. (Page 9).

Brick Veneer Defect Exemplars

- ***Omission of Code Required Separation/Joint Between Brick Supported by Foundation and Brick Supported by Framing:*** Moore admitted that the Code required separation between the portions of the brick supported by the foundation (sitting on a foundation ledge under the ground) and the brick supported by framing (*e.g.*, brick sitting on a piece of steel attached to wood framing such as the brick over the garage door openings) does not exist at Rose Hill. (Moore Depo. Trans. 67-71; 189:2-22; 289-93);

- ***Omission of the Brick Separation at Second Floor Windows and Brick Facades:*** Moore admitted that the garage door brick building code violation was similarly missing at other locations, *e.g.*, where second floor, roof supported brick met side wall, foundation supported brick at corners, causing cracking in the brick façade. (Moore Depo. Trans. 186-89);

- ***Missing, Misplaced, and Concrete Clogged Brick Weep Hole Building Code Violations:*** Moore admitted that the code-required weep holes were missing or defective throughout Rose Hill. (Moore Depo. Trans. 30:16-31:4; 111-12);

- ***Improper Brick Fastening***: Moore admitted that there are locations where the brick ties are not fully embedded and that this is a code violation. (Moore Depo. Trans. 157:6-16);

Window Defect Exemplars

- ***Fractured Vinyl Windows:*** Moore admitted that 15% of the windows frames either have a "crack" in the corner or "gasket expansion might be missing or dislodged" and need repairs. (Moore Depo. Trans. 73-74);

- ***Missing Window Labels***: Moore admitted that the code requires a third-party performance label to be adhered to windows at the time of delivery and he has not documented a single AAMA or other third-party performance label on any of the thousands of windows existing at Rose Hill. (Moore Depo. Trans. 330:24-335:25);

- ***Failing window interior sealant Joints***: Moore conceded that his only formal reports in this matter documented sealant failure at interior window perimeters that were the responsibility of DRH's paint subcontractors (Moore Depo. Trans. 92; 116-18); and that this condition was pervasive. (Moore Depo. Trans. 791-94; 800-04).

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Additional Construction Defect Exemplars

- ***Incomplete Weather Resistant Barriers ("WRB")***: Moore conceded that the code requires WRB to be free from tears and breaks and he documented typical locations where there were gaps in the WRB that exposes sheathing. (Moore Depo. Trans. 165:11-169:1);

- ***Improperly Installed Patio Doors:*** Moore documented that the installation of the patio doors was in violation of the manufacturer's installation instructions and therefore a building code violation. For instance, the building paper was not turned into the opening at several of the test cuts, the building paper was reverse weather lapped with the head flashing, and the manufacturer supplied jamb gasket were not installed anywhere. (Moore Depo. Trans. 206-18; 847-48). And the bottoms of the brick mold and door slabs were not painted. (Moore Depo. Trans. 756-64);

- ***Reverse Lapped Building Paper at Base of Vinyl Siding Walls:*** Moore concedes the building wrap not being properly lapped into the L flashing at the base of wall and that this condition is a building code violation. (Moore Depo. Trans. 401-405);

- ***Plumbing P&T Discharge in Violation Building Code:*** Moore admitted that the installed discharge for the P&T valves at Rose Hill water heaters are in violation of the 2012 IRC building code in effect in Anderson County at the time of construction. (Moore Depo. Trans. 25).[12]

Moreover, as conceded by Moore, Horton – Rose Hill's self-described general contractor – is the "conductor" in the construction of the neighborhood and the houses; and its superintendents and project managers share in "quality control" and "checking behind the subs." (Moore Depo. Trans. 285-287); *see also* (Geraghty Depo. Trans. 174:15-175:9).

As the owner/general contractor, it was Horton's "responsibility to make sure that the plans and specifications for the buildout of Rose Hill had adequate information and details" for proper construction. (Moore Depo. Trans. 287-88). As testified by Moore: "Horton, as the general contractor, holds the license. They're ultimately responsible for the job…" (Moore Depo. Trans.

[12] While Dr. Whitlock has documented additional defects, the above defects are conceded by Moore.

491). As the permit holder, Horton "has the inherent responsibility" to make sure that the construction of the home meets all requirements of the building code. (Moore Depo. Trans. 494). And, that includes "some duty" to inspect the work of subcontractors, (Moore Depo. Trans. 498-99), and to provide quality control (Moore Depo. Trans. 778).

The construction detail drawings supplied by Horton to the subcontractors did not have any guidance that would have assisted its subcontractors in avoiding the construction defects documented by Dr. Whitlock. (Moore Depo. Trans. 770-77). In fact, defense expert, Derek Hodgin, agreed that Horton's designs provided to the subs contained many of the MSV and brick veneer errors, and "that a number of the improper conditions we see at Rose Hill were actually installed in accordance with. . .the plans…" (Hodgin Depo. Trans. 238; 93-96).

Moore specifically attributed responsibility to Horton for two of the most significant construction defects: The interface of the MSV and brick at the front corners and the application of MSV to brick over the garage openings (Moore Depo. Trans. 743).

Most importantly, Moore agreed that Horton "delegated much of that responsibility [to comply with the building code] to its subcontractors. . .and while that delegation gives them the right to look to the subcontractor for some redress, it doesn't relieve Horton of its responsibility, its original responsibility, to comply with the building code…" (Moore Depo. Trans. 859).

Additionally, as prompted by Horton's Counsel, Moore agrees that "D.R. Horton considers their subcontractors as their *partners*, their vendor partners, in the construction of their houses. (Moore Depo. Trans. 942-43) (emphasis added). Its hornbook law that "partners" share in responsibility for all the partners' efforts and deficiencies. Horton is jointly responsible for each and every "partnership" defect at Rose Hill.

B. <u>Evidence of Commonality Has Only Increased Since Certification</u>

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There is even more evidence of commonality in addition to these multiple, common code violations and damages conceded by Horton's main expert. The evidence also shows, for example, that:

1. Horton Developed, Designed, Constructed, and Supervised All 220 Homes

The evidence before the Court also shows that Horton is ultimately responsible for the design, and construction supervision and/or repair of all 220 homes that are a part of this Class:

- Horton purchased Rose Hill in 2011 and developed these lots for construction. *See* (Pl. Ex. 23.2); *see also* (S. Kruglewicz Aff. 5/27/20);
- "Horton America's Builder" is emblazoned as the designer on every page of the model plans purportedly used for these homes. *See, e.g.*, (Pl. Ex. 5.25);
- Horton is listed as the "general contractor" on these homes' building permits. *See, e.g.*, (Pl. Ex. 101.1);
- Horton negotiated national deals for the same, fenestration products used in these homes. (Pl. Ex. 32.16); *see also* (Jeanfreau Depo. Trans. 75:2-25);
- Horton hired the subcontractors whose work Horton and its expert now blame for these homes' defective condition. *See, e.g.*, (Pl. Exs. 1.18, 1.25, 1.26; *see also* (Pl. Ex. 24.4 and 24.6) (ABS' Preliminary Reports indicating that Horton's subcontractors are largely "responsible" for the common defects at Rose Hill).

Horton also admits that its role was to "supervise" these subcontractors and ensure a quality home. (Horton SJ Motion, p. 4, para. 10); *see also* (Pl. Exs. 25.5-25.7) (Job descriptions for Horton's construction employees indicating that they are responsible for ensuring code compliance and quality construction).

2. Horton Used the Same Building Products at all 220 Homes

The record is also replete with evidence that Horton used the same products in all homes such as the following testimony from its employees, subcontractors, and experts:

Q: I assume in addition to selecting and supplying the brick ties, that D.R. Horton also selected and supplied the brick tie fasteners, be they nails or whatever is that correct?

A: Yes.

(Reyna Depo. Trans. 78:34-79:3).

Q: So its D.R. Horton's call as to materials?

A: Correct.

(Giordano Depo. Trans. 71:25-72:2).

Q. What is your knowledge of General Shale Brick's participation in the construction of the Rose Hill subdivision?

A. **The supply of brick, mortar – basically anything that goes into putting brick on a home.**

(Cannon Depo. Trans. 217:24-218:3) (emphasis added).

Q. And do you happen to know the – or have insight to share as to the manufacturer of the stone?

A. **I believe it was Anatoliy Stone.**

(Cannon Depo. Trans. 178:22-25) (emphasis added).

Q. And you agree that the same manufacturer, Silver Line, manufactured all or substantially all of the windows that were installed at Rose Hill?

A. **That is my understanding.**

Q. And the same manufacturer, Therma-Tru, manufactured all or substantially all of the patio doors installed at Rose Hill?

A. **That is my understanding.**

***

Q. You'd agree with me that it appears all MSV, all the stone veneer at Rose Hill, was manufactured by the same company, Anatoliy?

A. **That's my understanding. There was a – I think they called it a master agreement, and all the stone came from the one manufacturer supplier company, Anatoliy**.

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(Moore Depo. Trans. 354:20-355:24) (emphasis added).

Q. Mr. Moore. Thank you for your time today. Number one, Ms. Zitek has the same Silverline windows as the other homes in Rose Hill, correct?

A. **Correct, ma'am.**

Q. Ms. Zitek has the same Anatoliy manufactured stone as the other homes in Rose Hill, correct?

A. **Yes, ma'am.**

Q. And Ms. Zitek's home has the same General Shale manufactured brick as the other homes in Rose Hill, correct?

A. **Yes, ma'am.**

(Moore Depo. Trans. 965:8-20) (emphasis added).

There are 150 houses with brick façade in the class. (Moore Depo. Trans. 72). Six house plans also admittedly make up 60% of the houses in Rose Hill. (Moore Depo. Trans. 549-51). Plaintiff Zitek has the same defective windows, the same leaky patio door, the same improperly installed stone facade, and the same improperly installed brick façade, as all the other homes in the Class. (R. Whitlock Aff., Exhibit B). And Horton, through Moore, produced a single repair estimate addressing all class deficiencies. (Moore Depo. Trans. 965-66).

3. Horton Used Similar Subcontractors at all 220 Homes and There is No Material Difference in These Subcontractors' Means and Methods

Horton has made it a point to blame the defects at Rose Hill on the subcontractors it hired to do the work. However, this point is further evidence of commonality because Horton used substantially the same subcontractors for the project. Where subcontractors differ, the bare bones scopes of work Horton provided to them were still substantially the same.

a. Similar Subcontractors

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Horton employed the same subcontractors for many of the work at all homes throughout Rose Hill:

> Q. And were all the houses at Rose Hill, generally speaking, **built by the same group of subs, using the same model home plans?**
>
> A. Generally speaking, yes.

(Waddell Depo. Trans. 151:1-4) (emphasis added).

> Q. Do you recall whether you continued using the same subcontractors through your next four or so years there?
>
> A. I know I had – **Mauricio did all my foundations, did all my brickwork.** He was consistent. And unfortunately, **I had the same framer the whole time**. That was Bravo. And **had the same flooring company.** For the most part, there's a core of them, yeah.

(Waddell Depo. Trans. 46:12-20) (emphasis added).

> Q. Tell me about Maurico.
>
> A. Mauricio?
>
> Q. Mauricio. I'm going to work on that pronunciation. I understand his companies changed from MJ Cowboys to M&L Reyna.
>
> A. I wouldn't know that.
>
> Q. Did you know him before Rose Hill?
>
> A. No.
>
> Q. And you told me he did all your foundation and brickwork. Did he do any of your stone veneer work?
>
> A. **All of it.**

(Waddell Depo. Trans. 57:22-58:8) (emphasis added).

b. Using Similar (Minimal) Scopes of Work

Horton provided this same, minimal scope of work to many of its subcontractors:

> 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 performed under this Agreement shall include all work performed and all materials supplied by Contractor, directly or indirectly, to Owner, including but not limited to labor, services, and/or materials, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized

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> 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 purchased order issued by Owner, or in other documentation most recently occupied and proved 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 the Contractor regardless of the Pricing Schedule, does not guarantee any quality of work by the 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 the Contractor.

See, e.g., (Pl. Exs. 1.31, 1.32, 1.33, 1.34, 1.35, 1.36) (various subcontractor agreements).

Horton employees and subcontractors testified to the outdated, generalized scopes of work used at Rose Hill:

> Q. You pointed to Exhibit 1.46 and you indicated to me that as a matter of course D.R. Horton updates their scopes when the code changes; is that correct?
>
> A. No, sir. I did not say that. I was actually contradicting that. **We could not update our scopes every time a code changed, I'm saying, so we don't.**

(Kruglewicz Depo. Trans.73:18-25) (emphasis added).

> Q. Got you. Now, has any effort been made that you're aware of to either improve or update the Exhibit A's for any of the trades since you-all reopened the Greenville market?
>
> A. **I am not aware of that, no.**

(Jeanfreau Depo. Trans. 57:23-58:2) (emphasis added).

> Q. I'm showing you this contract and asking whether you see it attached in this contract, in Plaintiff's Exhibit 1.44.
>
> A. I don't see it attached to that. I don't see an Exhibit A, right, attached to that. No I don't.
>
> Q. After reading all paragraphs of Plaintiff's Exhibit 1.44, would you agree that there are no specifics as to your scope of work? It's general things?
>
> A. **Right. I agree.**

(Urps. Depo. Trans. 95: 5-15) (emphasis added). *See also* (Pl. Ex. 1.44).

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4. The Adequacy of All Subcontractor's Work Depended Upon Horton Providing Sufficient Instructions, Training, Plans, Oversight, and Quality Control

The evidence further shows that Horton was relied upon to supervise the construction of these homes and ultimately approve the final product. Horton itself admitted that it "was to perform its obligations as **general contractor** at Rose Hill **in a workmanlike manner in compliance with all applicable codes, regulations, industry standards, plans and specifications, and manufacturer instructions.**" (Horton's Responses to M&L Reyna's Requests to Admit, Ex. C) (emphasis added).

Horton's job descriptions outline the responsibilities of its employees which include supervision, code compliance, and other oversight which employees failed to do:

- The job description for "Construction Manager" includes the responsibility to: "Oversee field operations, production times, **and insure [sic] quality control so that the homes built meet the DR Horton standards** and are ready for homeowner orientations/occupancy." (Pl. Ex. 23.6) (emphasis added);

- The job description for "Construction Area Manager" includes the responsibilities to: "Supervise all field personnel that are assigned to subdivisions in the area. Update reports and **assure quality control in the houses built**," and "Oversee field operations, production times, and insure [sic] quality control so that the homes built meet the DR Horton standards and are ready for homeowner orientations/occupancy." (Pl. Ex. 23.5) (emphasis added); and,

- The job description for "Superintendent" includes the responsibilities to: **manage all functions of the job site as it relates to home construction** while providing excellent customer service. . . .**supervising job site subcontractors**, homeowner walk-throughs, and inspections," "**Approves work being performed by subcontractors and handle any related issues**," "**Maintains compliance with all applicable building codes**," and "Verify all checklists are completed and inspections are scheduled and passed." (Pl. Ex. 23.7) (emphasis added).

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Horton was the general contractor for the Rose Hill neighborhood and its experts, its employees, the subs, and the subs' experts agreed it had a responsibility to build to code and oversee everything:

Q. Okay. Would you agree that a general contractor is responsible for giving its subcontractors the information they need to property perform?

A. **Information – yes. Of course.**

Q. And what was D.R. Horton's role at this project?

A. **They were the general contractor.**

(Walker Depo. Trans. 87: 3-10) (emphasis added).

Q. As a tract homebuilder, is D.R. Horton ultimately responsible for ensuring proper construction?

A. **Yes.**

Mr. Imhoff: Object the form.

(Galloway Depo. Trans. 49:17-21) (emphasis added).

Q. Do you believe that people in the construction industry have a duty to employ workmanship commensurate with industry standards?

Mr. Imhoff: Object to the form.

A. The Witness: **I believe they have a responsibility to meet the manufacturer's requirements and the code requirements.**

(Moore Depo. Trans. 111:11-17) (emphasis added).

A. Going back to the general theme, there needs to be – for an effort as large as this with so many moving pieces and so many contractors and vendors and whatnot, **it is my opinion that any effort like this needs to have a conductor, needs to have an entity that is responsible for ensuring that that each building is put together compliant with, you know, their sequence and their levels of responsibility as the general contractor.** And so to not have – and quality control checklists can be named different things. You know, it's daily reports that I can often have seen. It is punch lists. It is a variety of inspections. And to not have any understanding or recognition that there are any kind of checklists related to quality or review

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of the execution of the work is concerning on how that conductor is able to deliver a product in a quality way.

(Geraghty Depo. Trans. 174:15-175:9) (emphasis added).

Q. Just generally, what was your understanding of D.R. Horton's role at Rose Hill?

A. **They were a builder.** They were the builder – a builder there, you know?

Q. Okay. And as a builder, what was D.R. Horton responsible for in your opinion?

Mr. Imhoff: Object to the form.

A. To build the house – **to build their houses and to manage their houses, to manage the people that go in the house. To build a quality house is what they're supposed to do.**

Q. Do you think a builder should give its subcontractors their resources and information that they need so that they can properly perform their respective task?

Mr. Imhoff: Object to the form.

A. **Yes, they should.** Are you saying did they or should they?

Q. Should they.

A. Yes, they should.

Q. Okay. Should a builder also oversee and check on its subcontractors' work to ensure that there is proper construction?

A. **Yes.**

Q. Do you agree that construction should adhere to the applicable building codes?

A. **Yes.**

(Urps Depo. Trans. 84:12-85:13) (emphasis added).

Q. Do you agree that a general contractor is ultimately responsible for ensuring construction that is proper?

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A. Yes. So in the – during the construction process, **the general contractor oversees work of the subcontractor.** So not only does the subcontractor have to perform the work in accordance with the building code and the manufacturer instructions, **the general contractor also has to ensure that the work is being done in compliance with the building code standards, plans, and specs.**

(Wylie Depo. Trans. 116:23-117:9) (emphasis added).

Horton holds itself out as "America's No. 1 Builder" in its advertising materials and emails to homeowners, giving the impression that buyers should expect a quality product, built to code. *See* (Pl. Ex. 30.15); (104 Sturbridge 000726; KDC_00156130; and 104 Sturbridge_000829-000830, Ex. D).

5. Horton Did Not Do Its Job

The evidence also shows that Horton epically failed at everything as demonstrated by the dozens of building code violations and other construction and design defects observed by Plaintiff, Plaintiff's experts, Horton, Horton's expert and other Defendants' experts.[13]

Plaintiff's expert testified to a Horton's systemic failures resulting in widespread defects at the homes in Rose Hill:

Q. What proportion is sufficient to support your opinion that [windows are] failing at too high of a rate?

A. So you want me to give you a rate of acceptable failure?

Q. Yes.

A. I don't know if I can give you a single number that I would say is an acceptable failure rate. But from a homeowner's perspective, I don't think a homeowner wants any windows to fail, but if they were to accept some

[13] For Plaintiff: Warren Maddox, P.E.; Andy Sherard, P.E., RLS; Larry Sherman; and Rhett Whitlock, Ph.D., P.E. For Defendants: Dr. Charles Alford, Ph.D.; Nicholas Baker; Scott Coffman; Andrew Coggins; Brian During; J. Lawrence Elkin; Frank Henry; Matt Hines; Derek Hodgin; David Horne; Chad Jones; L.G. Lewis; Kevin M. Lugo; Chad Mclemore; Michael Moore; Steven Moore; Richard Rogers; W. Randall Still; Raulton L. Travis; and John Wylie.

failure rate, maybe one out of 20, which would be 5 percent. **And I am confident that the failure rate is more than 5 percent.**

Q. Of the entire population?

A. Yes.

(Whitlock Depo. Trans. 63:8-23) (emphasis added).

Q. How many of those thousand windows that you've looked at are leaking?

A. A lot of them. I can't tell you exactly how many are leaking, but a lot leak. And a lot show signs of leakage.

Q. What's a lot?

A. More than 50 percent.

Q. More than 50 percent of the windows leak?

A. I believe so.

(Whitlock Depo. Trans. 73:5-14).

Q. What brick and stone veneer do you believe is inadequately or improperly supported?

A. **All of it.**

Q. Supported of - the brick is improperly supported?

A. Absolutely.

Q. By what?

A. By the lintel that's bolted to the header over the doors and also buried on the masonry adjacent to the garage door openings.

Q. That's where brick surrounds garage door openings, right?

A. Yes.

Q. How many of those exist?

A. **Everywhere there's brick over the garage door.**

(Whitlock Depo. Trans. 76:6-20) (emphasis added).

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Q. How then did you estimate that there would be 100 – how then did you estimate the number of linear feet that needed to be injected at 185?

A. Based on the cracks that you can see on the exterior of the homes and the foundation walls that extend up into the floor slabs.

Q. How do you know there's four of them crisscrossing the entire home?

A. That's basically what you see if you go to the homes. You'll see two cracks on each end, and then cracks from the front to back. They may be three places, may be four places in some, two places in others and maybe some with one place. But on average, I would say there's two in each direction.

Q. And you expect those cracks to be present in every home?

A. **I do. I haven't seen a home without a slab crack that shows up in the foundation walls or in the garages.**

(Whitlock Depo. Trans. 137:7-138:2) (emphasis added).

Q. Can you say – number 2, stone veneer units were not embedded fully. Can you say which stones are not embedded fully at Rose Hill?

A. I can walk you out there and show you.

Q. Yeah. And that's sort of the point is are there properly embedded stones out there?

A. **I haven't seen one yet.**

Q. Can you say there are not any properly embedded stones out there?

A. There might be a few, but the ones I've seen, the ones I've seen fall off, the ones that I've removed without applying much force and the ones that were stuck fairly well were not embedded properly.

(Whitlock Depo. Trans. 166:7-20) (emphasis added).

Q. Did you find any areas where you could see that flashing through that mortar joint?

A. **Nowhere. Maybe one exception. An entire neighborhood I may have seen it one – in one place.**

Q. Do you have to see it or be able to see it?

A. The code says for it to extend completely through the wall. Industry standard dictates that you do that.

(Whitlock Depo. Trans. 198:25-199:9) (emphasis added).

Horton's experts and other defense experts similarly testified to the prevalent code violations observed at throughout Rose Hill:

Q. Did you observe what Whitlock documented in the beginning of this report, the absence of required weeps in the stone façade above the garage door?

A. You can't really see unless you get up and take out stone to see whether or not there are weeps in because of the joint pattern. It's hard – I didn't see any, but I think you need to do a destructive test to navigate it.

Q. So you didn't see the code-required joints – excuse me, weeps, but you can't say for certain they're not there because it's difficult to see?

Mr. Imhoff: Object to the form.

A. **I did not see a weep screed, but I didn't see any induvial weeps either.**

Q. You do agree that they're code required, correct?

A. **Yes.**

(Moore *Smith* Depo. Trans. 184: 2-23) (emphasis added).

Q. Going to 429, was this brick tie embedded?

A. It doesn't appear to.

Q. And an unembedded brick tie is, in the eyes of the building code, not a brick tie, correct? Doesn't count?

A. It's a brick tie that's not embedded.

Q. And doesn't count, correct? It doesn't count towards the fastening requirements that are in the building code, correct?

A. **Correct.**

(Moore Depo. Trans. 157:6-16) (emphasis added).

Q. Sir, I guess we do have a few more 4 Dartford masonry photos to look at. Going to 345, about where we were with the fractured rowlock sill – let's

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go to 353. 353 is showing the stone veneer sitting on the apron above the roof is a clear building code violation, correct?

A. It's definitely sitting on the apron of the roof.

Q. And that's a clear building code violation, correct?

A. **Yes.**

(Moore Depo. Trans. 189:23-190:8) (emphasis added).

Q. There is no isolation joint between the wood-supported brick on the front corner of this house shown at image 344, 4 Dartford, and the foundation-supported brick right at the immediate corner, right?

A. It doesn't appear to be, no.

Q. And that's the code violation, correct?

A. Sir?

Q. That's a code violation, correct?

A. **If, in fact, there's a lintel in there and if, in fact, that is the cause of it, yes.**

Q. There has to be a lintel – it's either sitting on the lintel or it's sitting on the roof, right?

A. **Right.**

Q. Either way it's sitting on wood framing, right?

A. It's supported by wood framing.

Q. Either way it's a code violation, correct?

A. **Yes.**

(Moore Depo. Trans. p. 189:2-22) (emphasis added).

Q. Okay. After reviewing the 362 photos of the two homes that you have inspected, you would agree that in both homes we have rigid duct insulation that is insufficient, correct?

Mr. Trask: Object to the form.

Ms. Wooten: Object to the form.
Mr. Teague: Object to the form.

A. **Based on my inspection, the measured thickness of the rigid duct insulation is in violation of the code.**

(Jones Depo. Trans. 114:6-15) (emphasis added).

Q. But do you generally agree with Mr. Maddox's opinion that there's insufficient airflow because of the doors, right?

Mr. Teague: Object to the form.
Mr. Trask: Object to the form.
Ms. Wooten: Object to the form.

A. I believe with Mr. Maddox, there are pieces where.

Ms. Wooten: Chad, you're breaking up. You need to start over.

Okay let me get a little bit closer. **I agree with you that there are instances where the undercut of the doors does not meet the intent of the return air path requirements in Manual D.**

(Jones Depo. Trans. 150:5-20) (emphasis added).

Q. Do you agree that expansion tanks should be mounted in the vertical position and supported by the top of a pipe, per the manufacturer's installation requirements?

A. I do.

Q. And any configuration otherwise is a code violation?

A. I have reviewed it and researched both the code and the installation instructions for what I understand to be what Mr. Maddox documented, and **he is 100 percent correct. If these tanks are installed in the horizontal, then they should be supported independently of the piping that they are on.**

(Jones Depo. Trans. 153: 12-25) (emphasis added).

Q. The building code complaint labels that are not on these windows, what do you think is more likely, that 5,000 fell off or they were never on these windows to begin with?

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Mr. Shealy: Object to the form.
Mr. Rogers: Object to the form.
Mr. Imhoff: Object to the form.

A. I'm sorry. They were not there, that the label that was on there is the label that was on there.

Q. And you don't have dispute that the building code required third-party certification and identification and performance grading is a building code violation under IRC 2012, correct?
Mr. Hughes: Object to the form.
Mr. Rogers: Object to the form.
Mr. Shealy: Object to the form.

A. **It doesn't meet the requirements of the code.**

Q. Though the failure to meet the building code requirement is, in fact, a building code violation, correct?

A. **It would be.**

(Henry Depo. Trans. 196:16-197:14) (emphasis added).

Q. Got ya. If we go a couple more pictures here, we get to a close-up of the windows. Is that what you – and this is for our court reporter. It is 1:30p.m. and 41 seconds in your photos on March 20, 2023, Plaintiff's Exhibit 124.4. And the top right-hand corner is the diagonal slit over the window that's not been taped upon completion, correct?

A. Yes.

Q. And I may have missed it earlier, and I apologize if I did, but what is the source for your belief that that's an improper construction practice?

A. It would be the typical standard guidelines for installing a window with house wrap.

Q. Okay. And are those guidelines typically illustrated in the house wrap instructions too?

A. They could well be.

Q. And they're typically illustrated in the window installation instructions too?

A. Very likely.

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Q. And, of course, the building code incorporates manufacturer's installation instructions into its requirements, correct?

A. It does.

Q. Making what we're seeing here with the unsealed diagonal slit above the window a building code violation, correct?

A. **Correct.**

Q. And we see the same thing on the other side of the window, correct?

A. That's correct.

(Henry Depo. Trans. 214:5-215:13) (emphasis added); *see also* (Pl. Ex. 124.4).

Q. Are there building code violations present at my clients' residences in Rose Hill?

A. **Yes. I believe so.**

Q. Tell me what those are, please.

A. Which – do you have a preference to start with the brick or the stone?

Q. Let's start with brick.

A. Okay.

***

Q. Before we go through your book, I want to know code violation, brick code violations, that you're aware of without referring to some other document at my clients' houses.

A. Okay.

Q. We can supplement it by reviewing your binder, but I want to know what sticks out in your head.

A. **Weep hole spacing.**

Q. Okay.

A. **Flashing not going to daylight. There may be issues with the brick heigh issue above an opening, and there may be issues with the lintel**

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and/or shelf angle installation. And when we get to those, I can tell you why it's a maybe.

***

Q. Okay. So there's weep hole spacing, and would that – would that code violation – would that genre – would that element of your list include excessive spacing and missing weep holes? Would you throw that in –

A. Sure.

Q. - at the same time?

A. Sure.

Q. Because if it's not there, it's excessive space, right?

A. Yeah.

Q. **That's a code violation. Not finished to daylight is a second code violation that you gave me. Three, you said possibly a height violation. Four, possibly a lintel shelf angle violation. And five, the 1-inch space**, but you're not sure there's any consequences to that. Any other brick building code violations come to mind?

A. No.

(Hodgin Depo. Trans. 45:16-48:14) (emphasis added).

Q. Let's perform the same exercise with regard to the stone veneer installation –

A. Okay.

Q. - without us diving into the details of it.

A. Right.

Q. Just help me make a list. What stone veneer building code violations are you aware of?

A. Well, the one we can start with would be the installation of the stone over the brick. That – I don't know if I can connect the dots to make it a code – well, so the code's going to say follow the stone manufacturer's instructions. I'm sorry that I'm going to be long-winded, but I just want to explain the process. The stone manufacturer has a code evaluation report that says, you can put our stone over these certain substrates shown in table

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one. Table 1 doesn't include brick veneer. But the same code evaluation report references the MVMA standard, and you go to that standard, and it has a similar table that says you cannot put stone over clay brick. And so I guess by those – connecting those dots, that would be a technical – **that would be a code violation to put the stone on the brick**. So that would be one. The – and **not embedding the stone fully would be a code violation.** I don't know if – well, I think I do. He's got – again, for the record, I'm looking at my binder that has the WDP list of nine issues there were being raised, so the WDP issues, stone veneer not fully embedded, would be a code violation. **Not adequately adhered, I think he's talking about the stone over the garage on the brick which we just talked about. So that is – I would say a code violation.** Number 4, the corroded fasteners, not a code violation. **The flashing missing – if it's missing, that would be a code violation.**

Q. Well, you said if –

A. I don't remember seeing the missing – I think he's talking about a weep screed. That's not really flashing. That's just a termination component.

Q. But whether you flash – whether you're using flashing or weep screed, it's not there anywhere, correct?
Mr. Mims: Objection.

A. **Right. So if you're saying – and if the code says, follow manufacturer's instructions and it's shown on the instructions, that would a violation.**

Q. So it is a violation?

A. **Yes.**

Q. Whether you call it a flashing or weep screed, its absence is a violation?

Mr. Mims: Objection.

A. **Yes.**

Q. What else?

A. **The clearance issues between earth and the roof and the concrete walkways would be a violation**. . .

Q. So you listed for me four building code violations that you have observed with regards to the stone veneer application at my clients' residences at Rose Hill. One is the stone being applied over brick. Two is the stone that's not being fully embedded. Three, the missing flashings or weep screeds.

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And four is the clearance between the stone veneer and the grade or hardscape?

A. Yes, sir.

(Hodgin Depo. Trans. 49:1-51:25) (emphasis added).

Q. You believe that 130.17 and 130.18 reflect shelf angles that are bolted to the frame and do not extend into the brick façade, correct?

A. Yes, sir.

Q. And you do agree that 130.17 and 130.18 is a code violation inasmuch as the frame-supported brick is not isolated or separated by a sealant joint from the foundation-supported brick, correct?

A. I would call it a movement joint but **yeah, that's correct**.

(Hodgin Depo. Trans. 67:18-68:3) (emphasis added); *see also* (Pl. Exs. 130.17 and 130.18).

6. Horton Blames Its Subcontractors

Horton's expert points the finger at the subs – which are in turn pointing the finger at Horton:

- Steve Moore placed shared responsibility for nearly every discovered defect at homes in Rose Hill on the respective subcontractor. *See* (Pl. Exs. 24.4 and 24.26, ABS' Preliminary Reports);

- Waddell testified that one of the subcontractors was "a labor pimp" and "an absolute failure at every single thing [he's] seen him do." (Waddell Depo. Trans. 215:22-216:7);

- Waddell testified that he could never get one of the subcontractors to finish his job. (Waddell Depo. Trans. 47:5-23);

- Waddell testified that Rite Rug is "notoriously the worst flooring contractor in the upstate." (Waddell Depo. Trans. 48:1-10);

7. Subcontractors Blame Horton

- Harrelson testified that Horton did not visit the job sites on a typical basis and sometimes would receive no response from Horton after informing Horton that a project was finished and being closed out. (Harrelson Depo. Trans. 66:18-67:1); and,

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- Reyna testified that Horton never asked his company to install control joints in the brick, and there were no control joints in the instructions provided to him, but if he had been given such instructions, he would have implemented the control joints. (Reyna Depo. Trans.78:7-79:23).

8. Horton Lacks Critical Information

Notably, Horton is unable to refute many of these opinions because Horton "does not know" or "does not recall" a host of things, including:

- Horton employee Carl Ruroede had never seen any of the home details marked as Pl. Exs. 15.3-15.11. (Ruroede Depo. Trans. 75:23-76:19);

- Horton employee Marcus Cannon did not know how the builder is supposed to check to make sure the subcontractors do things right if he doesn't even have a copy of the do-it-right instructions. (Cannon Depo. Trans. 64:10-14);

- Horton employee John Martin did not remember whether there was a quality standard list or booklet ever used by D.R. Horton. (Martin Depo. Trans. 63:1-16);

- Horton employee Jeremy Young did not know whether superintendents even consulted with the code during the buildout of Rose Hill. (Young Depo. Trans. 49:5-7);

- Young also did not know whether superintendents were provided with engineering reports on site at Rose Hill. (Young Depo. Trans. 54:3-6);

- Cannon did not know whether D.R. Horton ever checked performance requirements on any windows used at Rose Hill. (Cannon Depo. Trans. 53:14-18);

- Horton employee John Martin did not know whether recommendations to test and fix existing issues were ever completed. (Martin Depo. Trans. 77:20-78:9); and

- Horton employee Shaun Kruglewicz did not know how Horton communicates critical information to its subcontractors such as manufacturing specifications and installation instructions. (Kruglewicz Depo. Trans. 174:4-17).

C. The Homeowners Have Testified that they Suffer Similar Problems Which Require Repair and that Plaintiff Zitek Will Adequately Represent Them in Attempting to Recover the Repair Funds Needed

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Homeowners have testified to experiencing similar issues, and there has not been one homeowner that has had an issue or concern with Natalie Zitek representing the class. For example:

> Q. First, my do you think Natalie will fairly and adequately represent this class?
>
> A. **I believe Natalie will fairly and adequately handle this class because she is probably the most honest human being I've ever met in my life and one of the most detail-orientated human beings I know.**

(P. Zitek Depo. Trans. 340:22-341:2) (emphasis added).

> Q. Do you know what the cladding is on the exterior of Ms. Zitek's home?
>
> A. I do not.
>
> Q. Okay. I will represent to you that she had almost all brick, also no stone. Do you believe her house is the same as your house?
>
> Ms. Funai: Objection.
>
> A. **I believe all homes are built by D.R. Horton** and, you know, there may be a few pieces here or there that can be interchanged part-wise, whether it's stone, brick, or whatever. Outside of that, **I believe all of the homes are more or less the same.**

(Cole Depo. Trans. 148: 6-18) (emphasis added).

D. Plaintiff's Expert, Horton's Experts, and Other Defendants' Experts Have Opined that Common Repairs are Needed and Estimated Class-Wide Damages

Dr. Whitlock opined on numerous repairs that are needed on a class-wide basis:

> Q. Is that a basis for your opinion that the brick needs to be pulled off and fixed?
>
> A. That's one of the issues with the brick that needs to be corrected.
>
> Q. All the windows?
>
> A. Is it done that way at all windows? Is that your question?
>
> Q. Sorry. It was a bad question. Do all of the windows have the same condition? Do all of the windows in the brick have the same condition that requires the removal of brick and reinstallation correctly with the correct expansion joint?
>
> A. **Yes.**

(Whitlock Depo. Trans. 136:7-20) (emphasis added).

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Q. We haven't gotten there yet, but do you propose repairing flooring issues in all of the houses?

A. **Yes.**

Q. And how did you do that? So there's 200 plus homes. Did you break it down into different categories? Did you look at them individually like you've done here for 8 Duxbury and 4040 Rowley? How did you do it?

A. Took those homes, particularly what the cost would be for those homes, and then extrapolated that cost over the neighborhood.

(Whitlock Depo. Trans. 118:20-119:6) (emphasis added).

Q. For – maybe the three different categories?

Ms. Lynn: Objection.

A. No. The approach that we are looking at is an approach to the entire neighborhood.

Q. What does that mean?

A. **It's difficult to correct one lot without it impacting the adjoining property.**

(Sherard Depo. Trans. 55:2-9) (emphasis added).

Defendant's expert, Derek Hodgins testified, that based on all the MSV code violations (discussed above) that he would recommend removing and replacing ALL the stone:

A. Other portions of the stone I can maybe fix with a localized repair, but there is so little left after you take off what's adhered to the brick, **that I would lean toward just the complete removal of all the stone and replace it with properly installed stone. So I think all the stone for one reason or another needs to be removed and replaced.**

(Hodgin Depo. Trans. 134:8-15) (emphasis added).

Defense expert, Frank Henry, also agreed with Dr. Whitlock on multiple issues:

- "I agree with Dr Whitlock that the windows should be replaced due to issues with their design and manufacture. The jamb-to-sill connections are weak, allowing cracks to develop in the window frames. I agree with Dr Whitlock when he stated there is no evidence that window installation caused the cracks." (Pl. Ex. 24.25);

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- The diagonal cuts in the House Wrap at the heads of the windows and doors were often not taped." (Pl. Ex. 24.25);

- "I agree with Dr Whitlock that the rear doors are improper for locations exposed to the weather. The doors and frames are not decay resistant. The cut ends of the wood allow moisture to be absorbed, initiating decay." (Pl. Ex. 24.25).

E. Horton Has Settled with Many Defendants on a Class-Wide Basis

As further discussed above and below, Plaintiff and Horton have settled with dozens of parties on a class-wide basis, illustrating the utility of this present class certification.

STANDARD OF REVIEW

On a motion to modify or decertify a class, "the court must make the same inquiry required for class certification—whether the claims should be maintained as a class under Rule 23." *Brooks v. GAF Materials Corp.*, 284 F.R.D. 352, 360 (D.S.C. 2012), *amended in part*, No. 8:11-CV-00983-JMC, 2012 WL 5195982 (D.S.C. Oct. 19, 2012), *clarified on denial of reconsideration*, No. 8:11-CV-00983-JMC, 2013 WL 461468 (D.S.C. Feb. 6, 2013). '"[A] court may not look to the merits when determining whether to certify a class.'" *King v. Am. Gen. Fin., Inc.*, 386 S.C. 82, 88, 687 S.E.2d 321, 324 (2009) (quoting *Tilley v. Pacesetter Corp.*, 333 S.C. 33, 43, 508 S.E.2d 16, 21 (1998)). The same is true when deciding a motion to decertify a class. *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 459-60, 661 S.E.2d 81, 91 (2008) (reversing an order decertifying a consumer class action).[14]

Class Certification is appropriate where the court finds the following:

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the

[14]*See also Hart v. Louisiana-Pac. Corp.*, No. 2:08-CV-47-BO, 2013 WL 12143171, at *1 (E.D.N.C. Mar. 29, 2013) ("A motion to decertify class is reviewed under the same standard the Court applies when considering a motion to certify class."); *Brooks v. GAF Materials Corp.*, 301 F.R.D. 229, 231 (D.S.C. 2014) ("Moreover, '[a] court should be wary of revoking a certification order completely at a late stage in the litigation process.'") (quoting *Easterling v. Conn. Dep't of Corr.*, 278 F.R.D. 41, 42 (D.Conn. 2011)).

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> representative parties are typical of the claims or defenses of the class, (4) the representative parties will fairly and adequately protect the interests of the class, and (5) in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

Rule 23, SCRCP.

The trial court has broad discretion in determining whether to certify, modify, or decertify a class. *See Brooks,* 284 F.R.D. at 360 (D.S.C. 2012); *see also Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 421, 717 S.E.2d 765, 774 (Ct. App. 2011) ("It is within a trial court's discretion whether a class should be certified.") (citing *Tilley v. Pacesetter Corp.*, 333 S.C. 33, 42, 508 S.E.2d 16, 21 (1998)).

"South Carolina's class certification rule has no predominance or superiority requirement." *Melton ex rel. Dutton v. Carolina Power & Light Co.*, 283 F.R.D. 280, 297-98 (D.S.C. 2012). The South Carolina Supreme Court has recognized and endorsed an expansive view and treatment of class actions: "By omitting the additional requirements [of 23(b) from the federal rules of civil procedure], Rule 23, SCRCP, endorses a more expansive view of class action availability than its federal counterpart." *Littlefield v. S.C. Forestry Comm'n*, 337 S.C. 348, 523 S.E.2d 781(2000) (emphasis added). Since the adoption of Rule 23, SCRCP, this Court has heard many cases that have used the class action procedure to allow adequate representatives to address issues which affect large groups of citizens in our state. *Littlefield*, 337 S.C. at 355, 523 S.E.2d at 784 (citations omitted). This expansion approved was reaffirmed in *Grazia v. S.C. State Plastering*, LLC, 390 S.C. 562, 703 S.E.2d 197 (2010).

As to the principal ground relied upon by Horton and other Defendants, commonality, or lack thereof, *Pope* stated:

> To establish commonality, a party must show "questions of law or fact common to the class." Rule 23(a)(2), SCRCP. **Commonality does not require every issue in**

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> **the case to be common to all class members**. *Gardner*, 353 S.C. at 21, 577 S.E.2d at 200–01. **Rather, commonality is met when the class shares a determinative issue**. *Id.* We find the Class shares the determinative issue of loss of use. We also find the fact that the Class members utilized their units in different manners does not defeat the commonality prerequisite. *See McGann v. Mungo*, 287 S.C. 561, 568, 340 S.E.2d 154, 157–58 (Ct.App.1986) (discussing the commonality requirement of Rule 23 and stating it is not necessary that all questions of law and fact be common, only that common issues exist among the class).

Pope, 395 S.C. at 422, 717 S.E.2d at 774 (Ct. App. 2011) (emphasis added).

Furthermore, a court should not decertify a class unless there is a "surprise" or change in circumstances:

> While a court is permitted to decertify a class if it appears that the requirements of Rule 23 are not in fact met, the court may not disturb its prior certification of the class absent some **significant intervening event** or showing of compelling reasons to reexamine the question, such as an **intervening change of controlling law**, the **availability of new evidence**, or the **need to correct clear error or prevent manifest injustice**.

Wright & Miller, 7AA Fed. Prac. & Proc. Civ. § 1785.4 (3d ed.) (emphasis added), *citing Gulino v. Board of Educ. of City School Dist. of City of New York*, 907 F. Supp. 2d 492 (S.D. N.Y. 2012).

"[A] court should not 'disturb its prior certification findings absent some significant intervening event, or a showing of compelling reasons to reexamine the question.'" *Brooks v. GAF Materials Corp*., 301 F.R.D. 229, 230 (D.S.C. 2014) *quoting Jermyn v. Best Buy Stores, L.P.*, 276 F.R.D. 167, 169 (S.D.N.Y. 2011). A court is not required to decertify a class even if a party can "show that the circumstances surrounding the initial class determination have changed." *Hart v. Louisiana-Pac. Corp.*, No. 2:08-CV-47-BO, 2013 WL 12143171, at *2 (E.D.N.C. Mar. 29, 2013) (citing Wright & Miller, 7AA Fed. Prac. & Proc. Civ. § 1785.4 (3d ed.)).

Lastly, "the Court must also consider whether decertification would unfairly prejudice the class members in light of the advanced stage of [the] litigation." *Hart*, 2013 WL 12143171, at *2, *citing Langley v. Coughlin*, 715 F. Supp. 522, 552 (S.D.N.Y. 1989) ("At a minimum, in such

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circumstances the Court must take into consideration that an eve-of-trial decertification could adversely and unfairly prejudice class members, who may be unable to protect their own interests."); *see also* *Woe v. Cuomo*, 729 F.2d 96, 107 (2d Cir.), *cert. denied*, 469 U.S. 936, 105 S.Ct. 339, 83 L.Ed.2d 274 (1984) (emphasizing drastic effect of decertification and potential injury to class members who relied on initial certification); *Samuel v. University of Pittsburgh*, 538 F.2d 991, 995–96 (3d Cir.1976) (cautioning against decertification of class at late stage based solely on need for individualized proof of damages).

Here, each of the requirements for class certification continue to be met as set forth more fully below. There has been no significant intervening event sufficient to warrant decertification, and decertification on the eve of trial would unfairly prejudice the class members. Horton's Motion for Decertification should be overruled.

ARGUMENT

A. Nothing has Changed Warranting the Decertification of This Class

There has been no material change in the grounds supporting the 2021 class certification; and there certainly has not been a significant intervening event warranting decertification this late in the litigation. Plaintiff satisfied her burden under Rule 23 over two and a half years ago and now additional evidence further supports class certification, not D.R. Horton.

1. The Class is Still So Numerous that Joinder is Impractical

This Court's prior finding that the numerosity requirement is satisfied remains undisputed. Only 13 homes opted out of the class since certification, leaving a class that includes the owners and co-owners of 220 homes. 1 A. Conte & H. Newberg, Newberg on Class Actions § 3:5, at 247 (4th ed. 2002) (The difficulty inherent in joining as few as 40 class members should raise a

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presumption that joinder is impracticable, and the plaintiff whose class is that large or larger should meet the numerosity test of Rule 23(a)(1)).

This Court does not need to have 220 or so identical trials when the pattern of deficiencies is both substantial and well documented, as this Court found in its Order:

> This Court finds that the proposed class, which Horton admits consists of 234 or more members who own 234 houses, is so numerous that the joinder of all members is impractical…The Court also finds **that a class action is the appropriate procedure to effectively litigate the claims of these homeowners**. **Many of these homeowners may not have the ability to bring their own claim** because of lack of time, expertise, or financial resources required. Even if each of these homeowners had the resources to proceed individually, **this Court would be overrun with claims.**

1/27/21 Order, pp. 4-5 (emphasis added).

2. Commonality Remains Satisfied as it Was Over Two Years Ago.

There is also nothing new that Horton (or the other Defendants) proffer that justifies revisiting this Court's finding that "there are **common legal and factual questions that bind the proposed class together** such as whether Horton's construction practices damaged class members." 1/27/21 Class Cert. Order, p. 5 (emphasis added). In its Order, this Court noted that Plaintiff's expert documented "six common defects" related to these homes' building envelopes, two of which – leaky patio doors and unsealed windows – Horton "concede[d] in its Opposing Memo". 1/27/21 Order, p. 7; *see also* 1/27/21 Order, n. 11 (citing *McGann v. Mungo*, 287 S.C. 561, 568, 340 S.E.2d 154, 157-58 (Ct. App. 1986) ("not every issue must be common to all class members; and **even one single common issue** will satisfy Rule 23.") (emphasis added)). As documented elsewhere herein, Horton (and now other defense experts) still concede these and now, additional defects as well as common repairs. Class decertification is therefore wholly inappropriate on the commonality ground.

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a. <u>Horton's and Other Defendants' Experts Concede These Same Common Defects</u>

Horton's own expert, Steve Moore, as well as other defense experts acknowledge that these homes suffer from multiple, common defects and code violations including. As seen above, Moore conceded to multiple violations. In addition to these conceded defects, other experts have admitted to code violations as well:

- ***Leaky Windows:*** Defense expert Frank Henry admitted that all windows need to be replaced because they have weak jamb to sill intersections (Henry Depo. Trans. 43:1-18); defense expert Randy Still opined that all windows suffer from a manufacturing defect (Still Depo. Trans. 173:25-174:12);

- ***Leaky Patio Doors:*** Henry admitted that he does not prefer finger jointed framing and trim used on exterior doors because it is susceptible to water damage such as what he observed from doors in Rose Hill. (Henry Depo. Trans. 255:5-17). Curtis Harrelson, the sole patio door installer, also testified that the patio doors were installed without sill pans which resulted in widespread leakage at Rose Hill (Harrelson *Smith* Depo. Trans. 39:17-40:5);

- ***Ripped Weather Resistant Barriers ("WRB")***: Henry admits that the unsealed, diagonal slits in WRB above windows is a code violation. (Henry Depo. Trans. 214:5-216:4);

- ***Inadequately Attached Flooring:*** Henry agrees that there is inadequate adhesion of hardwood floors which caused separation. (Henry Depo. Trans. 38:25 - 39:6);

- ***Inadequately Adhered Stone:*** Defense expert Derek Hodgin admitted that not embedding the stone fully is a code violation present at Rose Hill. (Hodgin Depo. Trans. 49:1-50:16);

b. <u>The Evidence Shows That Many of Defect Exist at 100% of these Homes</u>

Since certification, both Plaintiff and Defendants have inspected more homes and performed more testing which confirmed that there is a **<u>100%</u>** defect rate for the following conditions:

- ***Missing Window Labels***: John Martin admitted he had not seen a single AAMA label on any windows at Rose Hill. (Martin Depo. Trans. 211:18-212:7);

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- ***Patio Doors That are Missing Code-Required Labels***: Defense expert Randall Still conceded that he has not seen any labels on the patio doors at Rose Hill as required by the code. (Still Depo. Trans. 130:17-131:25);

- ***Patio Doors That are Not Rated for Exterior Exposure***: Henry agreed that the patio doors are improper for locations exposed to weather because they are prone to rot, and the materials used were not decay resistant. (Henry Depo. Trans. 97:19-98:5);

- ***Stone That Lacks Weep-Screeds Because Horton Failed to Design for Them***: Horton had pre-existing knowledge that the stone installed at these homes without weep screeds violated manufacturer recommendations. *See* (Pl. Ex. 11.27). Horton instructed the stone installer, M&L Reyna, to inspect and correct the condition as necessary but M&L Reyna was unable to because of Horton's failure to detail enough room for weep screeds in its plans. *See* (Pl. Ex. 27.78);

- ***Insufficient Stone Clearance***: Hodgin admitted that the inadequate clearance between stone veneer and grade, hardscape, or roof is a code violation present at Rose Hill. (Hodgin Depo. Trans. 49:1-52:2).

c. <u>Common Repairs are Conceded</u>

Dr. Whitlock has also concluded that all homes will require essentially the same repair, and many of the Defendant's experts agree. To wit:

Defense expert, Frank Henry, also agreed with Dr. Whitlock on multiple issues:

- Henry agreed that all windows need to be replaced due to design and manufacturing issues. (Pl. Ex. 24.25);

- Henry also agreed that all patio doors are improper for locations exposed to weather. (Pl. Ex. 24.25).

Hodgin agreed that all stone needs to be removed in Rose Hill. (Hodgin Depo. Trans. 134:8-15). Moore also conceded that all windows need repairs, although he does not know exactly what type of repairs are needed. (Moore Depo. Trans. 73-75).

d. <u>Common Liability is Clear</u>

Horton's common liability, as the developer, designer, general contractor, and supervisor of all 220 homes is also clear. In fact, Horton admitted in discovery that it was "to perform

obligations as the general contractor at Rose Hill in a workmanlike manner in compliance with all applicable codes, regulations, industry standards, plans and specifications, and manufacturer instructions." (Horton's Responses to M&L Reyna's Requests to Admit, Ex. C); *see also* (Pl. Ex. 101.1, Building Permits) (listing Horton as the "general contractor").

Horton also admits that its role was to "supervise" construction, (Horton MSJ Motion, p. 4, para. 10), and its employee job descriptions indicate that "supervision" entailed:

> Responsible for the generation and implementation of all construction field policies and procedures
> . . .
>
> Plans and directs tasks necessary for all phases of construction
>
> Manage and supervise construction activities in the field either directly or through utilizing your Construction Area Managers, Project Managers and Superintendents
> . . .
>
> Visit job sites periodically to spot check quality and policy enforcement
>
> Develop and review performance of all subcontractors

See (Pl. Ex. 23.6, Horton Construction Manager Job Description).

> The Superintendent's primary responsibility is to manage all functions of the job site as it relates to home construction while providing excellent customer service. The Superintendent manages the construction of multiple homes from permit to closing by scheduling and supervising job site subcontractors, homeowner walk-throughs, and inspections while maintaining company construction and safety standards.

See (Pl. Ex. 23.7, Horton Superintendent Job Description).

> Supervise all field personnel that are assigned to subdivisions in the area. Update reports and assure quality control in the houses built. Implement all DR Horton policies and procedures throughout the entire construction process.
> . . .
>
> Handle escalated problems with subcontractors

See (Pl. Ex. 23.5, Horton Construction Area Manager Job Description).

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Obviously, Horton failed to adequately supervise its subcontractors' work, this failure was universal across the neighborhood, and it led to the common defects and damages documented by most experts, regardless of what side of their party aisle. *See, e.g.*, (Cannon Depo. Trans. 27); (Martin Depo. Trans. 39); (Geraghty Depo. Trans. 50-53; 168-70; 176-77); (Waddell Depo. Trans. 257-258); (Waddell Depo. Trans. 56-57); (Henderson Depo. Trans. 25).

There is also ample evidence of other Horton failures and its resulting, common liability, including:

- Failing to have its licensed qualifier manage and oversee Rose Hill;

  (Henderson Depo. Trans. p. 36) (the "only time" the licensed qualified was on site at Rose Hill was in 2011 before the acquisition).

- Failing to design and construct weather resistant building envelopes for Rose Hill;

  (Whitlock Depo. Trans. 56) (patio doors leaking and deteriorate); (Whitlock Depo. Trans. 60) (leaking windows throughout); (Moore *Smith* Depo. Trans. 143:2-8) (concession of water issues at windows).

- Failing to provide adequately detailed plans and specifications to its subcontractors;

  (Young Depo. Trans. p. 60:3-8) (Horton superintendent admitting he was never provided a grading or drainage plan); (Waddell Depo. Trans. 37:7-16) (Horton superintendent admitting he never saw detailed specifications); (Ruroede Depo. Trans. 75:23-76:19) (Horton customer service tech admitting he has never seen the "Atlanta" plans or details Horton belatedly produced in this case marked as Pl. Exs. 15.3-15.11); (Horton's Responses to Plaintiff's Requests to Admit, Ex. E) (admitting Horton never had a fine grading plan).

- Failing to give detailed scopes or work or training to its subcontractors;

  (Pl. Ex. 1.18) (exemplar Horton subcontractor agreement Ex. A for grader with a scope of work that says merely "sitework, storm drainage, sewer, curb, paving); (Kruglewicz Depo. Trans. 73:18-25) (Horton employee admitting Horton does not update its scopes of work to reference applicable codes and standards); (Waddell Depo. Trans. 36:6-22) (Horton superintendent admitting Horton provided him no training and only gave him operating software to do

his job); (Geraghty Depo. Trans. 168:20-170:10) (defense expert opines that oversight by the general contractor is essential).

- Falling to provide quality control that Horton admittedly owed a duty to provide;

  Compare (Geraghty Depo. Trans. 168:20-170:10) (defense expert opines that a conductor is needed to ensure quality control); (Pl. Exs. 23.5 and 23.6) (construction manager and construction area manager job descriptions require they "insure [sic] quality control"); *with* (Kruglewicz Depo. Trans. 84:1-12) (Horton executive unaware if Horton has a standard policy for "standards of quality"); (Ruroede Depo. Trans. 82:10-16) (Horton customer service rep admitting he has never seen the quality assurance checklist); (Martin Depo. Trans. 63:1-16) (Horton construction manager, John Martin, similarly testified that he does not recall seeing the "quality standards" that Horton touted in its representations to Rose Hill homeowners); (Harrelson Depo. Trans. 66:18-67:1) (subcontractor admitted that Horton did not check the work of the subs on a "typical basis"); (Henderson Depo. Trans. 60) (Horton qualifier for Rose Hill neighborhood testified that he had no responsibility for quality control).

- Failing to follow third-party consultant, subcontractor, and superintendent recommendations;

  See, *e.g.*, (Pl. Ex. 77) (recommending extensive remediation of the soils for several Rose Hill lots); (Waddell Depo. Trans. p. 76:16-77:1) (Horton superintendent admitting he never saw this remediation happen); (Harrelson *Smith* Depo. Trans. 129-30) (Harrelson recommended specifically to Horton to remove patio doors and install sill pans due to excessive issues. Despite having made this request multiple times, there is no evidence that all doors in Rose Hill received this repair); (Pl. Ex. 27.78) (letter to homeowner that masonry sub cannot do anything about missing weep-screeds because Horton failed to design for them); (Waddell Depo. Trans. 165:25-166:11) (Horton superintendents asked multiple times if they could fire Bravo and get a "competent framer" but suspects that financial considerations superseded).

- Failing to vet the performance characteristics of the building products ultimately used as Rose Hill such as the leaky windows and patio doors;

  (Jeanfreau Depo. Trans. 81:12-15; 79:10-14; 132:5-133:8); (Cannon Depo. Trans. p. 188:17-21)

- Failing to warn Plaintiff and the Class of defective and dangerous conditions including stones falling from homes and radon exposure due to concrete cracking;

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(Pl. Ex. 24.1, Whitlock Life Safety Letter re: stone); (Whitlock Life Safety Letter re: Radon, Ex. F); and,

- Failing to correct the dozens of building code violations that are commonly damaging Plaintiff's and the Class's homes.

See Pertinent Facts Sections A, B, D, *supra*.

e. Common, Class-Wide Settlements Have Also Occurred

The utility of the class vehicle in this case has been further proven by settlements that have occurred on a class-wide basis. To wit:

- Plaintiff has achieved a class-wide resolution of the HVAC defects;
- Horton has achieved a class wide resolution of its claims for the horizontal defects;
- Horton has achieved a class wide resolution of its claims for roofing defects;
- Horton has achieved a class wide resolution of other miscellaneous claims; and,
- Horton has reportedly achieved a class wide resolution of flooring defects.

All in all, over $4.5m of class-wide settlements have occurred and millions of dollars of other class-wide settlements were considered by Plaintiff and Third, Fourth, and Fifth-Party Defendants. Clearly, this class certification has shown its utility, and the progress has validated this Court's original grant of certification.

f. Horton's Arguments to the Contrary are Without Merit

Horton's latest commonality arguments are more of the same – speculative arguments that this Judge Maddox already rejected in his Order Granting Class Certification:

> [Horton's] concessions negate Horton's expert opinion that individualized repairs "may" be required and that "there was not one issue that was common and present at all of the homes." **This Court will not deny class certification based on speculation rather than facts.** Zitek and Dr. Whitlock provided extensive evidence supporting all five Rule 23 requirements. Horton has had months to challenge this evidence or otherwise refute Dr. Whitlock's opinions but failed to do so. Notably, Plaintiffs have shown that person(s) knowledgeable about the

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> construction of these homes are still employed by Horton and could have submitted less speculative affidavits -- but did not.

1/27/21 Order, p. 7 (emphasis added).

Horton has only submitted two affidavits from its experts (Steve Moore and Charles Alford) both of which are speculative, unsupported, and conclusory, and go to the weight of the evidence **at trial** as opposed to decertification **pre-trial**. Horton has not provided a new affidavit from any of its executives, employees, subcontractors, vendors, or manufacturers. Instead, Horton makes arguments that were or could have been made at the original certification hearing and frankly its Motion is more appropriately characterized as a Motion for Reconsideration that is untimely at this juncture.

3. Plaintiff Zitek's Claims are Still Typical of the Class's Claims and Horton Cannot Prove Otherwise Because Horton Failed to Test Zitek's Home After Certification, Choosing Instead to Test Other Homes.

There is also nothing new that warrants this Court reversing its finding that:

> **Zitek's class are typical** of the claims of the proposed class. . .**Zitek's claims arise out of a common pattern of alleged wrongdoing by Horton, and the same legal and factual theories, e.g., building code violations**, are asserted on behalf of all class members.

1/27/21 Order, pp. 5-6 (emphasis added). As shown above, there is even more evidence of "common wrongdoing" and "common building code violations" now than there was two years ago when this Court first certified this Class. Plaintiff Zitek and the Class's claims **all** arise out of Horton's common failures and Horton has not and cannot show otherwise because **Horton did not test Zitek's home for latent defects** before or after this Class was certified. Horton cites *Deiter* in support of their argument:

> The question for continued class certification is whether it can be fairly stated that: "as goes the claim of the named plaintiff, so go the claims of the class." *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir.2006). Because of the numerous factual differences among the Plaintiff and absent class members—as identified

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> through home inspections, depositions, and other discovery—it cannot be fairly stated that as goes the claims of Plaintiff Zitek, so go the claims of the class.

Horton's Motion for Decertification, p. 6 (emphasis added).

Here, any argument Horton brings regarding Plaintiff Zitek's issues as compared to the Class's are entirely unsupported and speculative because over the course of this four-and-a-half-year lawsuit, ***Horton never tested the sole class representative's home***.[15] Thus, Horton cannot "fairly state" that Ms. Zitek's latent defects are not the same or similar as those of the absent class members, and Horton cannot dispute the fact that "as goes the claims of Plaintiff Zitek, so go the claims of the class."

Furthermore, Horton attempts to distract the Court with micro issues in an effort to avoid the macro issue as to "as goes the claim of the named plaintiff, so go the claims of the class." The overwhelming evidence is that Horton failed in its role as a developer, general contractor, and supervisor, and that the neighborhood is riddled with defects. In contrast, Horton argues that the damages are a result of a lack of homeowner maintenance, or that the defects are benign, or that the claims are time barred. Plaintiff and the Class are putting up circa $40,000,000 in damages, Defendants are putting up $1,367,170. (Pl. Ex. 127.25). The jury will likely either side with the Plaintiff and her certified Class, or the Defendant. As goes the Zitek claim, so will the class claim go.

Horton final typicality spin – that Plaintiff Zitek's issues are not the ***same*** as the rest of the Class's issues – is equally unavailing. There is no requirement that the Plaintiff and the Class must have the same, exact issues. Rather, the class representative must suffer a "cognizable injury" that

[15] By the time Horton decided it should inspect the class representative's home in March of this year, this Court agreed Horton had missed its chance to do so over the previous four years and denied Horton's request.

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is "**similar** to the injuries suffered by the other class members." *McClain v. S.C. Nat'l Bank*, 105 F.3d 898, 903 (4th Cir.1997); *see also Cent. Wesleyan Coll.*, 143 F.R.D. 628, 637 (D.S.C. 1992), *aff'd*, 6 F.3d 177 (4th Cir. 1993) (for the purposes of Rule 23(a), the representative party's claims are "typical" if they arise from the same course of conduct that gives rise to the claims of the class members and if the claims of the claimants are based on the same legal theories); 1 Conte & Newberg, supra, § 3.13, at 317. The typicality requirement does not require the class representative to have claims that are identical to the class members:

> The typicality requirement does not require that the representatives have identical claims which other members of the class might present. The question of typicality focuses on the similarity of the legal and remedial theories of claims of the named and unnamed plaintiffs. The plaintiffs' claims for damages stem from effects of the defendants' activities on the plaintiffs' property and their health, now, in the past and in the future. **Whether each potential member of the class has suffered the same degree of harm, or each and every type of harm, does not preclude a finding of typicality.**

Bates v. Tenco Servs., Inc., 132 F.R.D. 160, 163 (D.S.C. 1990) (emphasis added); *see also Deiter*, 436 F.3d at 466 (Typicality does not require that the class representative's claims be "perfectly identical or perfectly aligned.").

As recently document by Dr. Whitlock in his July 12, 2023 Affidavit:

> 17. Additionally, I am informed that D.R Horton is revisiting its argument that Plaintiff Zitek's house does not suffer from similar defects as the class members. I have personally documented many of the class-wide defects at the Zitek residence, including cracking brick façade as a result of failing to separate foundation and frame-supported brick, improperly applied MSV, failing windows, and cracking slabs. Exemplar, common, typical defect photos of the Zitek residence are attached.

(R. Whitlock Aff., Ex. B).

Here, Plaintiff Zitek claims (and has shown), that her defects and damages are typical of the rest of the class. In fact, Zitek has done a commendable job of advancing the class claims with her own. And, therefore, Zitek satisfies the typicality requirement.

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1. Plaintiff Zitek is Even More of an Adequate Class Representative.

This Court determined that Ms. Zitek was an adequate class member in its Order and nothing has occurred to change this finding:

> No material conflict exists between Zitek **(an owner of a Horton-built home)** and the class members she seeks to represent **(also owners of Horton-built homes)**. Horton's argument that her upscale residence should disqualify her is inadequately supported and misplaced.

1/27/2021 Order (emphasis added).

Horton continues to argue that Plaintiff Zitek cannot adequately represent this class because her issues are not "common and typical of the absent class members". *See* Horton's Motion for Decertification, p. 8. This argument is duplicitous of Horton's arguments, addressed above, and fails for the same reasons. Moreover, the evidence and testimony to date shows that Plaintiff Zitek has served as an adequate class representative, and she is committed to Rose Hill and her neighbors as she testified to in her deposition:

> Q. Thank you. It says that you understand the responsibility associated with serving as a class representative and will also fairly and adequately represent the interest of other Rose Hill homeowners whose homes were built by DR Horton and its subcontractors. What are your responsibilities as a class representative?
>
> A. **To represent all of the homeowners in Rose Hill.**
>
> Q. What else?
>
> A. **To help them have repairs done to their home, to be fair and equitable to each and every one of those homeowners. Just to help them and assist them to get the home that they purchased and dreamed of and thought they were going to get.**

(N. Zitek Depo. Trans. 427:2-17) (emphasis added); *see also* (P. Zitek Depo. Trans. 340:22-341:2).

Note also, Zitek has shown herself to be an admirable class representative. She has spearheaded the advancement of the class claims in such a manner that the case has resulted in

millions of dollars in settlements, millions of dollars in additional negotiations, and a case that is entering its final preparations for trial.

Additionally, as Horton has applied and reapplied her brick incorrectly, Zitek has become the poster person for demonstrating a pattern of Horton's ineptitude in the Class's behalf. She has endured three days of depositions, and she is perfectly prepared to advocate the Class position at trial with her identical and similar defects.

C. Decertification Weeks Before Trial is Highly Prejudicial to the Class.

A court must consider "whether decertification would unfairly prejudice the class members in light of the advanced stage of [the] litigation." *Hart*, 2013 WL 12143171, at *2 (citing *Langley v. Coughlin*, 715 F. Supp. 522, 552 (S.D.N.Y. 1989)). Decertifying a class raises the concern of "possible prejudice to members of a class who failed or were unable to take independent steps to protect their rights **precisely because they were members of the class**." *Woe by Woe v. Cuomo*, 729 F.2d 96, 107 (2d Cir. 1984) *cert. denied,* 469 U.S. 936, 105 S.Ct. 339, 83 L.Ed.2d 274 (1984) (emphasis added).

Plaintiff Zitek and the other 219 class members in this case would be unfairly prejudiced if this Court were to decertify the class at this stage of the litigation. This Court has already taken the steps to go through the Supreme Court to get approval to set aside an entire month-long jury term to allow a case of this complexity and size to be tried. Decertifying the class at this juncture would create a whirlwind of trials that this Court will clog this Court's docket for months to come. Only one percent (1 %) of individual trials of the class claims could be heard within the time set aside for this case.

As shown by the arguments herein, Horton has not proven a single fact that warrants decertification. Instead, Horton is recycling its original arguments in opposition to certification,

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which this Court saw right through two and a half years ago. Accordingly, this Court should not even have to undertake this balancing test to determine if decertification is reasonable at this point. Even if Horton were able to prove a single issue warranting the consideration of decertification, that would not be nearly enough to outweigh the severe prejudice these class members would experience.

This Court's Order noted class members' inability to protect themselves as justification for certification in the first place:

> The Court also finds that a class action is the appropriate procedure to efficiently litigate the claims of these homeowners. Many of these homeowners may not have the ability to bring their own claim because of a lack of time, expertise, or financial resources required. Even if each of these homeowners had the resources to proceed individually, this Court would be overrun with claims.

1/27/2021 Order. This concern is heightened now. Three years of discovery and waiting have brought to light the severity of the defects that exist at the homes in Rose Hill, and each homeowner was wronged by Horton's shoddy construction.

The original Certification Order also highlighted Horton's failure to act in a timely manner the first-time certification was before this Court. "Horton has had months to challenge this evidence or otherwise refute Dr. Whitlock's opinions but failed to do so." 1/27/2021 Order. Horton has continued to waste a substantial amount of time since then. Horton waited until December 2022 to start inspecting class homes, and Horton's expert has still not produced a report or any evidence contradicting Dr. Whitlock's findings. Horton could have moved to decertify much sooner instead of within weeks of trial. This class should not be punished for its continued failure to be proactive throughout this lawsuit.

D. Horton's Other Grounds for Decertification Fail

Horton's other grounds also do not justify decertification.

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1. Horton's Laundry List of Reasons "Supporting" Decertification Actually Supports Plaintiff's Memorandum Opposing Horton's Summary Judgment Motion

Horton's Motion attempts to throw a lot of unsupported assertions at the decertification wall in hopes that one will stick. This Court has already rejected many of these arguments, and Horton's "new" arguments only establish that there are questions of fact precluding summary judgment in its favor. To wit:

Horton maintains that Plaintiff's "allegations of construction defects in the homes exteriors vary widely based on the construction material". (Horton's Motion for Decertification, p. 4). This is incorrect – not only are Plaintiff's **allegations** of common defects consistent as this Court has already found, 1/27/21 Order, p. 7, Plaintiff has since **proven** that a host of common building code violations exist in these homes' exteriors including all of the windows, patio doors, brick and stone code violations that Horton's expert conceded which are summarized further above.

Horton next argues that "all 4000 windows at issues in this case vary in type, size, location, rating, and orientation." (Horton's Motion for Decertification, p. 5). Horton's own expert opined in his original reports that every window he investigated suffered interior sealant adhesive failure **regardless** of "type, size, location, rating and orientation". *See, e.g.,* (Pl Exs. 24.4 and 24.6). Additionally, D.R. Horton expert Moore opined that 15% of these windows need to be repaired. (Moore Depo. Trans. 73-74). Moreover, Horton's expert has never seen code-prescribed performance labels on a single window in Rose Hill. (Moore Depo. Trans. 333:25-334:6). These admissions, coupled with the many other expert opinions that these windows **all** suffer from a manufacturing defect that requires their removal and replacement, eviscerate this argument.

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Horton further argues that "some" homes do not have brick and "some" homes do not have stone. (Horton Memo. Supp. Decert., pp. 12, 18-19) and "individualized inspections are required" for their defense (Horton Memo. Supp. Decert., pp. 14-15, 21). These are the same arguments Horton made two years ago that this Court rejected – nothing has changed. See (Horton's Memo Opp. Cert., p. 17). Furthermore, the inspection deadline is over and this case is set for trial in less than two months.

Horton also maintains that Rose Hill's "hilly topography" somehow warrants the decertification of this already certified Class. This is, again, the exact same argument that Horton made, and this Court rejected, at the original certification hearing. *Compare* (Horton's Memo Opposing Class Certification, pp. 4-5) *with* (Horton's Memo Supporting Class Decertification, p. 7) ("The topography among the Rose Hill lots varies widely because of the hilly condition of the neighborhood, resulting in varying foundation types and drainage characteristics of the Homes"). Notably, it is only Plaintiff's expert, Andy Sherard, who has performed any sort of topography analysis of Rose Hill – and his topography shows that Horton failed to properly grade these lots:

> Q. If you have impediments to the free flow of that water to the drainage areas, doesn't that affect the drainage – overall drainage plan?
>
> A. No.
>
> Q. Why not?
>
> A. **The overall drainage plan is just that, it is an overall drainage plan that is addressing the entire area. If there are fences that may have been installed, it's not going to affect the overall drainage plan.**

(Sherard Depo. Trans. 73:4-13) (emphasis added).

> Q. The second one, it says, improperly sloped rear and side yards that direct water towards the home and/or adjacent homes.
>
> Tell us about that, please.
>
> A. **The rear yards are graded flat and do not adequately handle the water on the lot.**

(Sherard Depo. Trans. 76:24-77:4) (emphasis added).

Q. And do that's what I'm talking about is if – if the original grading and the original surface water lot plan has been changed, you need to take that into account in developing your opinion, right?

Ms. Lynn: Objection.

A. **Not in – not in the overall scheme of the entire neighborhood.**

Q. I understand that you're differentiating between –

A. If there are – in my cost estimate, I took some accountability for some lots that may have been – had – been subject to change.

Q. Can you say to a reasonable degree of engineering certainty that specific lot drainage is incorrect if you don't know if the lot has been modified by a homeowner?

A. Yes. I think I can.

Q. You can.

A. Yes.

Q. How?

A. **Looking at the overall grading of the entire neighborhood in relation – with one lot in relation to the next lot.**

(Sherard Depo. Trans. 170:4-171:2) (emphasis added).

Q. So footnote number 2, you say there are two additional, common, improper conditions as to the Rose Hill homes' side yards. First, the side yards on most lots cannot be properly graded to eliminate the flat areas due to the finish floor elevation of adjoining lots being typically 1-foot to 2-foot differential.

What do you mean by that, Andy?

A. **The area or the distance between the homes does not allow for proper grading to adequately drain the side years.**

(Sherard Depo. Trans. 252:14-24) (emphasis added).

Furthermore, no witness has ever testified that they have seen any difference between the topography of Rose Hill since Horton completed the neighborhood and now. In fact, the defense expert testimony has been the exact opposite:

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Q. Now, did you note any material difference in the 2016 geography that we're seeing here in Plaintiff's Exhibit 35.15 for phase 1 and what you actually toured on-site between 2021 and 2023?

Mr. Grimball: Objection to form.

A. **No, ma'am. I've not made any notes or determination of any material changes.**

Q. I'm going to ask you the same question. I'm going to show you Plaintiff's Exhibit 35.16. This is a similar exhibit, but this time for phase 2. So I'm going to scroll through it and ask you the exact same question, and that is whether you noticed any material difference in the 2016 geography that you see here 35.16 for phase 2 than what you actually toured on-site.

Mr. Grimball: Objection to form.

Q. Here's the close-up of Cardiff and Rowley, close-up of 2016 Sturbridge, Buxton and Dartford, and then a close-up of the other part of phase 2, Reading and Haverhill.

Did you notice any material difference in the 2016 geography noted here in 35.16 of phase 2 and what you actually toured on-site the past two years?

Mr. Haldrup: Objection to form.

A. **No, ma'am, I don't recall noting or quantifying any material differences.**

(Wylie Depo. Trans. 181:24-183:1) (emphasis added).

Q. And are you able to tell me of any substantial differences in the topography and layout that we see in Exhibit 35.15 from 2016 to that which you have reviewed in 2020 and 2023?

A. **No.**

Q. Going to Exhibit 35.16, this is a 2016 Google Earth collection of phase two with the entire phase two being outlined on the first photograph and then the three little subsections of phase two being attached and enlarged photographs. And you can see that phase two is less developed than phase one at this point in time, correct?

. . .

Q. Are you able to identify for me any material differences in the topography that we see in Exhibit 35.16 and that which you saw at Rose Hill in the year 2022 or 2023?

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A. **I don't think there's any major differences.** Of course, the third page – the final page of 35.16 certainly is a lot more barren ground than anywhere else. **There should not be substantial differences between 35.16, page 4, and the ultimate completion.**

(Moore Depo. Trans. 384:11-385:14) (emphasis added).

It is also undisputed that all 220 homes at issue in this case have slab-on-grade foundations so there is no "foundation type differences" as Horton claims. (Whitlock 11/23/20 Aff., p. 3, para. 20) ("The Rose Hill homes are similar in that (1) they are all supported by a concrete slab-on-grade foundation").

Horton (again – same as 2020) moves on to curiously claim that "grading and landscaping differ greatly from home to home, and the homeowners have varyingly improved their properties." (Horton's Memo Supp. Decert., p. 7). This argument fails for three principal reasons.

First, and importantly, many of Horton's decertification arguments are premised around site work, grading, and drainage that Horton has already settled on a class-wide basis for $1.650M dollars. These Settlements evidence that these common issues are proper for class treatment despite Horton's claims of, *i.e.*, alleged "improvements", "repairs", or "maintenance."

Second, the only "improvements" that Horton can cite to) are either (1) a homeowner planting something akin to a rose bush or installing a fence in their yard; or (2) a homeowner correcting defects Horton failed to correct when given the opportunity. What Horton fails to mention is that it was Horton who controlled Rose Hill's HOA until 2017 and therefore Horton who controlled what exterior "improvements" were made by the homeowners. (P. Zitek HOA Depo. Trans. 14:9-16:19). Horton never alerted homeowners during this time that they should not build fences (or they should remover the fences Horton constructed) or that there were underlying defects such as insufficient grading and drainage affecting these lots or that Horton had any issue with the "improvements" Horton now complains over.

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Third, Horton has not established how any of these "improvements" change the underlying defects that are common to Plaintiff and this Class. Horton's argument that "only through individual examination and home-by-home evaluation" can it "adequately defend" itself proves this point. Horton had **years** to develop the evidence it needed – and still needs – to defend itself in this case. Horton did not do this and its failure to do so is self-induced. Ultimately, whether any improvements Horton proves were made that may impact Horton's liability is a question of fact for the jury – not a question for this Court at decertification.

Horton further argues that Zitek's home is "unique" because it has a "structural issue". (Horton Memo. Supp. Decert., pp. 13-14). Zitek's "structural issue" is no different than all other brick homes in Rose Hill. Horton's expert, Steve Moore, agreed that the missing isolation joints between foundation and framing-supported brick is a building code violation, and that no such isolation joint exists in any of these homes. It is this missing isolation joint, among other code violations, that is leading to the common cracking and separating brick at these homes. [16] Horton's focus on common "cracking" bricks is therefore misplaced – Plaintiff need only prove common, **underlying** brick defects, and Plaintiff has done so as evidenced by the ample expert testimony conceding brick code violations.

Horton further argues that the existence of defects and damages "varies widely from home to home" and that "periodic maintenance, *i.e.*, homeowners painting and sealing their windows and doors impact the performance of these systems. This argument also fails because Horton's expert concedes as mentioned *ad nausem* above that common window

[16] Horton also incorrectly states that cracks at Plaintiff Zitek's garage have not occurred since Horton installed a LVL beam in 2008. As both Plaintiff Zitek and her husband repeatedly testified cracks at this location did reoccur which was the primary reason she brought this action. (N. Zitek Depo. Trans. 370:15-18). Pictures of one such crack are confined in Exhibit B.

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and patio door defects and damages exist throughout Rose Hill. Furthermore, any conflicting evidence that Horton proffers on the cause of the deficiencies and the necessary repairs raise common, class-wide issues relating to whether the repairs are necessitated by damages due to latent construction or Horton's, *i.e.*, lack of supervision. Differing opinions on causation between Plaintiff and Defendants, not whether the common latent defects exist do not create individualized issues sufficient to permit decertifying the class. A jury can and should resolve the issue of fault and damages on a class-wide basis – just how Horton has seemingly settled similar issues on a class-wide basis.

2. <u>Steve Moore's Latest Affidavit is Completely Contradicted by His Subsequent Deposition Testimony</u>

This Court should not be persuaded by Moore's 5/1/23 Affidavit that was crafted before his deposition and which is contradicted by the lion's share of his testimony.[17] For example:

Moore asserts in his Affidavit that "different building codes" may apply to Rose Hill, (Moore Aff, para. 22); yet, in his deposition Moore could not recall any significant differences between these Codes. (Moore Depo. Trans. 353-54).

Moore also asserts in this Affidavit that "individualized repairs are required" (Moore Aff. para. 26) but admitted in his deposition that he "had no extrapolation experience – this is the first lawsuit that he's been involved with and the first he's estimated damages for" (Moore Depo. Trans. 367). The estimate Moore produced also concedes that:

- P&T valves need to replaced in all "221" homes;

[17] Moore signed the Affidavit on 5/1/2023 which was submitted to this Court the same day by Horton in support of its Decertification Motions <u>before</u> Moore's deposition in this case on 5/9-11/2023. Since then, other Defendants have refiled this same Affidavit in support of their Motions for Decertification.

- Windows need to be inspected in all "221" homes for weld and/or expansion joint modifications;[18] and

- Weeps need to be repaired in all "150" brick clad homes.

(Pl. Ex. 127.25).[19] Clearly individualized repairs are not necessary, and Moore cannot contradict Dr. Whitlock's damage model showing that class-wide repairs are more suitable when he has no experience in such matters.

Perhaps the most telling unreliable assertion Moore makes in his Affidavit is this one:

> 24. During ABS's inspections, ABS noted that, while there may be a couple of issues reoccurring at multiple homes, there was not one (1) issue that was common and present at all the Homes.

This assertion is wholly contradicted by Moore's testimony. Initially, Moore conceded that the P&T valve defect was a building code violation that was likely present in every home. (Moore Depo. Trans. 25). Additionally, Moore conceded that:

- Flashing was improperly lapped behind at least half of these homes (Moore Depo. Trans. 65; 67);

- The lack of separation between frame and foundation-supported brick in the majority of brick clad homes (which he calculates makes up 2/3 of this Class in his Affidavit) violates the Code (*Id*. at 68-69);

- The MSV at all stone clad homes violates the Code's clearance requirements (*Id*. at 251); and,

- The MSV installed on top of brick at stone clad homes is a "construction defect" (*Id*. at 27).

[18] Moore also conceded in his deposition that he had no evidence to contradict that all these windows suffer from a manufacturing defect as other experts have opined. (Moore Depo. Trans. 369).

[19] Interestingly, Moore couches his estimate with a disclaimer that his estimate "is a preliminary one based on ABS' limited inspection of a limited number of homes". ABS inspected 130 homes – over half of the case – this is certainly not a "limited" number of homes.

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Moore further admitted that the failure of the interior window sealant was widespread as of his firm's 2020 inspections (which Horton agreed were representative of the Class). Whereas in 2020, he attributed this condition to subcontractor responsibility, in 2023 he reversed himself and now attributes this near universal condition to a single class wide defense – homeowner maintenance. Moore's assertion that there are no class-wide construction issues has been proven false.

Moreover, Moore's Affidavit fails to address the true, class-wide issue that transcends all homes and different defects – a lack of quality specifications (design details) provided to the subcontractors on the front end, and a lack of quality control on the back end. One word: Quality, transcends all issues in this case – and Moore admitted in his deposition that he has not seen any of "DRH's quality standards". (Moore Depo. Trans. 379-80). This Court should disregard Moore's Affidavit for all the foregoing reasons. As stated by Dr. Whitlock:

> 18. The conditions, records, and testimony evidence that Horton's inadequate/improper guidance (plans/details/specifications) to and for subcontractors, together with a lack of supervision and quality control, caused or materially contributed to the common defects and damages present in the class homes at Rose Hill.

(R. Whitlock Aff., Ex. B, ¶18).

3. Whitlock's Investigation, Opinions, and Damage Model is Well Supported

Dr. Whitlock's damage model is supported by his years of experience, his inspection of **all** Rose Hill homes, and his detailed estimates of 34 of these homes, all of which are based on **pattern evidence** and **reliable, and uniform, RS Means data**. *See* (Whitlock 7/12/23 Aff., Ex. B).

Dr. Whitlock's damage model is not infected with "sample selection" bias – Horton itself agreed that the homes chosen were a representative sample in the Right to Cure process. *See* (D.R.

Horton/Zitek Consent Representative Right to Cure Compliance Plan). It is undisputed that Dr. Whitlock has visually surveyed all homes that make up this Class and inspected 140 in further detail – 140 out of 220 homes is 64% of this Class's homes. (Whitlock 7/12/23 Aff., Ex. B). Visual inspections of all homes, coupled with detailed interior and exterior inspections of 64% of these homes, is clearly not subject to a sampling debate. Not to mention that many other defense experts largely agree with Dr. Whitlock's opinions as set forth herein.

Horton's expert, Charles Alford, the sole expert challenging Dr. Whitlock's opinions and damage model in this regard is simply wrong. Alford clearly does not understand the facts of the case or Dr. Whitlock's four-year long involvement as outlined by Dr. Whitlock in his latest Affidavit. To wit:

> 5. Based on my review of the Alford file and his deposition it appears Dr. Alford failed to achieve a rudimentary understanding of the underlying facts of the investigation conducted by WDP (and others) regarding Rose Hill and articulated very limited, but incorrect, opinions regarding the Plaintiff's alleged "sampling" and damage model.
>
> 6. Dr. Alford incorrectly believed that WDP had only inspected 30 homes. (Alford, pp. 51-2). WDP inspected all 220 class homes from the exterior, inspected well over half from the interior, and performed testing on approximately 10% of the homes. Further, WDP witnessed the Defendants' testing of an additional 10% or so of the homes.
>
> 7. Dr. Alford's opinions are based upon the incorrect predicate that WDP extrapolated its findings from limited observations; WDP actually observed every home in the class and reviewed other documents and information regarding the homes.
>
> 8. Dr. Alford candidly and repeatedly admits that his statistical opinions do not apply if the engineer has additional knowledge/observations regarding the houses in the subject group by inspection or otherwise. (Alford, pp. 60-1, 121). As WDP had additional knowledge regarding all of the homes in the class, and detailed knowledge regarding the defects in the class homes, Dr. Alford's criticisms of WDP's methodology are inapplicable.

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9. Dr. Alford candidly admits a lack of understanding and experience of construction defects, construction damage estimates, and construction litigation. (Alford, pp. 29-33, 134).

10. Dr. Alford candidly admits that he does not understand or employ "pattern evidence" in his analysis. (Alford, pp. 87-8). Evidence of patterns, *e.g.*, repeated observations of the same or substantially similar symptoms, are an important tool in forensic engineering, and such observations were omnipresent at Rose Hill. The Rose Hill homes evidence a patter of same or similar construction defects in most major exterior components, including cladding (masonry – brick and stone veneer), fenestration products (windows and patio doors) and other waterproofing components (e.g., building wrap and flashing), much of which appears to originate from inadequate design and construction details and specifications on the front end to a lack of quality control during the construction itself.

11. Dr. Alford's criticisms of the damage model published by WDP are similarly misplaced. WDP used its experience and training to select representative groups and samples for the damage model. Dr. Alford does not contest that the thirty-four (34) sampled homes used in the WDP analysis are representative. (In fact, Dr. Alford apparently did not review our work closely and was unaware that WDP sharpened and stratified our estimating with an additional twenty-two (22) homes).

(Whitlock 7/12/23 Aff., Ex. B).

4. <u>Whitlock's Damage Model Supports Class Certification</u>

Plaintiff's damages model also does not need to precisely account for variations in damages among Rose Hill homes contrary to Horton's argument otherwise.[20] Dr. Whitlock's model is reasonably based off proven, common, class-wide defects that require repair and/or replacement.

[20] The rule that damages which are uncertain or contingent cannot be recovered, does not apply as to the uncertainty of the amount, but only to uncertainty as to whether any damage has resulted. *S.C. Fed. Sav. Bank v. Thornton-Crosby Dev. Co.*, 303 S.C. 74, 399 S.E.2d 8 (Ct. App. 1990).

> To recover damages, the evidence must enable the jury to determine the amount of damages with reasonable certainty or accuracy. The existence, causation, and amount of damages cannot be left to conjecture, guess, or speculation. However, proof with mathematical certainty of the amount of loss or damage is not required. The determination of damages may depend to some extent on the consideration of contingent events if a reasonable basis of computation is afforded, permitting a reasonably close estimate of the loss.

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Dr. Whitlock's estimate was also peer-reviewed and approved by a general contractor, Larry Sherman, who has been in the estimator industry for five decades. (Pl. Ex. 24.26, Sherman's peer review letter); *see also* (Sherman Depo. Trans. 118:18-119:17) (testifying that RSMeans is the industry standard and has been relied on by all kinds of construction professionals for a long time); (Sherman Depo. Trans. 122:20-123:4) (testifying that his opinion remains that Dr. Whitlock's master unit cost is a reliable template for estimating the repair costs and scope of repair, and Dr. Whitlock's quantities match closely with his firm's current pricing numbers). No defence expert has challenged Dr. Whitlock's use of RS means data to develop his repair costs or Sherman's review of these costs. (Moore Depo. Trans. 383) (admitting he had no criticism of Sherman's review).

The jury therefore will be able to determine damages to a reasonable degree of certainty using this model, without needing an exact breakdown of "a unit cost for labor and materials, which would vary based on the extent of proven damages at each Home." (Horton's Memo Supporting Decertification, p. 57). Dr. Whitlock's model is supported by the evidence of this case and any mathematical uncertainty as to the amount of damages is irrelevant to the model's support of class certification.

Additionally, Horton only cites *Comcast Corp. v. Behrend* in support of its damages argument. (Horton's Motion for Decertification, p. 15); (Horton's Memo Supporting Decertification, p. 57). However, the reason the *Comcast* Court determined that the damages model

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Pope, 395 S.C. at 434, 717 S.E.2d at 781 (internal citation omitted). "The reasonable cost of repair is . . . competent and probative evidence on the issue of damages, though it need not be determinative." *May v. Hopkinson*, 289 S.C. 549, 559, 347 S.E.2d 508, 514 (Ct. App. 1986) (affirming award of damages based on contractor's repair estimate even though the exact repairs needed were yet to be determined because the removal of defective wood was expected to review additional issues) (citing *Reid v. Harbison Development Corp.*, 285 S.C. 557, 330 S.E.2d 532 (Ct.App.1985), *rev'd on other grounds*, 345 S.E.2d 492 (S.C.1986)).

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did not support class treatment was because "[w]ithout presenting another methodology, respondents cannot show Rule 23(b)(3) **predominance**: Questions of individual damage calculations will inevitably overwhelm questions common to the class." *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013) (emphasis added). **South Carolina has no predominance requirement for class certification.** *Melton ex rel. Dutton*, 283 F.R.D. at 297-98. Thus, this case provides no support for Horton's argument – and neither does its expert's, Dr. Charles Alford, opinions. As explained by Dr. Whitlock:

> 12. Dr. Alford complains that WDP's model was insufficient. However, Dr. Alford was apparently unaware, or ignored, that WDP had taken the original twelve (12) sample home cost estimates and expanded it to include twenty-two (22) additional homes for a total of thirty-four (34). This additional cost estimating, and stratification analyses were in the damage model produced to D.R. Horton and was contained in the Excel spreadsheet that was reviewed with me in my deposition. Dr. Alford testified to have received my Excel spreadsheet but apparently did not review it closely. (Alford, pp. 67-70).
>
> 13. Lastly, Dr. Alford appears to complain of the large standard deviation in WDP's damage model. That is not a reflection of the accuracy of the work; rather, it's an inherent result of having a wide variation in house sizes and complexity in the Rose Hill neighborhood. It does not in and of itself make the damage estimate less accurate or reliable; it simply recognizes the variation in the repair costs in Rose Hill as between simple one-story homes and two-story homes with complex features.
>
> 14. Dr. Alford does not and cannot say that the WDP damage estimate is not accurate. His testimony, based upon an incomplete and erroneous understanding of the predicate facts of this matter, is simply that in the absence of any other information, i.e., in the absence of the exorbitant multitude of facts and observations gathered by WDP in the last four years, that he would have performed this exercise in a different way, but he fails to proffer an example of such.

5. Statute of Limitations (SOL) Does Not Affect Certification

"South Carolina's class certification rule has no predominance or superiority requirement." *Melton ex rel. Dutton v. Carolina Power & Light Co.*, 283 F.R.D. 280, 297-98 (D.S.C. 2012). Accordingly, the potential for affirmative defenses or other individualized issues to arise does not

warrant decertifying a class where important common issues continue to exist. *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 420, 717 S.E.2d 765, 774 (Ct. App. 2011). Where there is a factual dispute as to whether claims are barred by the statute of limitations, the statute of limitations is not an appropriate basis for decertification. *Brooks v. GAF Materials Corp.*, 284 F.R.D. 352, 362 (D.S.C. 2012), *amended in part*, No. 8:11-CV-00983-JMC, 2012 WL 5195982 (D.S.C. Oct. 19, 2012), *clarified on denial of reconsideration*, No. 8:11-CV-00983-JMC, 2013 WL 461468 (D.S.C. Feb. 6, 2013).

Furthermore, as discussed at length in Plaintiff's Memorandum Opposing Summary Judgment, Horton's SOL argument in any context fails because: (1) Plaintiff Zitek testified to having no knowledge of wide-spread, uncorrected, latent defects until 2019; (2) no other homeowner has testified to knowledge of wide-spread, uncorrected, latent defects until 2019; (3) there is ample evidence of Horton's assurances, omissions and attempted repairs spanning from 2013-2019; and, (4) Horton has failed to produce any evidence to the contrary. See (Pl. Memo Opposing SJ).

6. <u>Horton Misunderstands an "Opt-Out" Class</u>

Horton notes in its Motion and Memo Supporting Decertification (and in every homeowner deposition that has taken place in this case) that for homes which have been sold during the lawsuit, "Plaintiff has not provided any updated information as to whether these new *potential* class members have been given notice of this class action and an opportunity to opt-out." (Horton's Memo. Supp. Decert., p. 3, n. 1) (emphasis added). Horton appears to misunderstand how the opt-out procedure works in South Carolina class actions. *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 459, 661 S.E.2d 81, 91 (2008) (adopting the opt-out class action and notification procedure as the exclusive method of class action litigation in South Carolina).

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This Court approved Plaintiff's Notice Plan and Opt-Out forms in 2021. 1/27/21 Order. The opt-out period was open for 30 days. After the close of that opt-out period, there is no longer an option, or requirement, to reopen opt-outs. Purchasers who bought a home after the opt-out period ended stepped into the shoes of the seller for purposes of being a class member. Any purchaser that bought a home from a seller who did not opt-out, automatically because a member of the class by virtue this Court's Order being a person who "own[s] a home developed/built by D.R. Horton within the Rose Hill neighborhood" and did not "properly file a timely request for exclusion from the Class." 1/27/21 Order. Accordingly, this repetitious allegation brought by Horton that Plaintiff has not provided adequate information on opt-outs must be put to rest.

CONCLUSION

Plaintiff satisfied the requirements of Rule 23(a) over three years ago causing this Court to grant class certification; now, more evidence further supports proceeding with this case as a certified class. Accordingly, all Motions for Decertification should be denied.

Respectfully submitted,

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July 13, 2023
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STATE OF SOUTH CAROLINA COUNTY OF ANDERSON 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. _____ 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 Plaintiff, v. Toribio Islas and Alejandro Soto, Fifth-Party Defendants.	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-04-01942 **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO D.R. HORTON'S MOTION FOR SUMMARY JUDGMENT**

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Plaintiff submits this Memorandum Opposing Defendant, D.R. Horton, Inc.'s ("Horton"), Motion for Summary Judgment filed on May 1, 2023.

SUMMARY OF ARGUMENT

This court should deny Horton's Motion for Summary Judgment because Horton built and sold 220 homes in Rose Hill that were constructed in a defective manner under Horton's guidance and watch. Horton's acts and omissions and resulting defects, have proximately caused Plaintiff and the Class's damage. Horton, as the developer, designer, and builder of these homes, owed the Rose Hill homeowners a duty to provide defect-free homes and to ensure that the work it and its subcontractors performed was suitable, building code compliant, and workmanlike.

The unconverted evidence shows that Horton breached these duties. Horton has failed to show the absence of factual disputes regarding these breaches, which failure precludes summary judgment in Horton's favor. Summary judgment is further precluded because Horton has failed to prove that either the Statute of Limitations ("SOL") or spoilation doctrine bars Plaintiff and the Class's claims. [1]

To be absolutely clear, there is already more than enough evidence documented in Plaintiff's Opposition to Decertification to summarily deny Horton's Motion for Summary Judgment, and this Memorandum is literally just making sure there is no doubt remaining.[2]

STANDARD OF REVIEW

[1] Plaintiff already stipulated that her SCUPTA claim was solely on her individual behalf; moreover, for simplicity, Plaintiff consents to the dismissal of this claim once this Court reaffirms class certification.

[2] This Court is hearing decertification arguments on July 17, 2023, followed by summary judgment arguments on July 20, 2023 (7/16/13 Order). The decertification and summary judgment arguments rely on much of the same evidence that is being presented to the Court on July 17th.

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Summary judgment is inappropriate where material facts are in dispute and further inquiry into the facts is necessary to clarify the application of the law. Rule 56(c), SCRCP ("[s]ummary judgment may only be granted where "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 any party is entitled to a judgment as a matter of law.") (emphasis added); *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000) (summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts).

Summary judgment is also inappropriate "where further inquiry into the facts of the case is desirable to clarify the application of the law." *Jackson v. Swordfish Invs., L.L.C.*, 365 S.C. 608, 612, 620 S.E.2d 54, 56 (2005). This is because a court considering summary judgment neither makes factual determinations nor considers the merits of conflicting evidence with respect to a disputed fact. *S.C. Prop & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001); *see also Anderson v. Liber Lobby, Inc*., 477 U.S. 242, 249 (1986) (In deciding summary judgment, "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."). Rather, the court must view the evidence and all reasonable inferences therefrom in the light most favorable to the non-moving party. *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 59, 518 S.E.2d 301, 304 (Ct. App. 1999); *see also Anderson*, 477 U.S. at 248 ("A disputed fact presents a genuine issue if the evidence is such that a reasonable jury could return a verdict for the non-moving party.").

Moreover, a heightened standard for summary judgment is required when evidentiary standards are implicated. *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 218, 578 S.E.2d 329, 334 (2003). In cases applying the preponderance of the evidence standard, "the non-moving party is

only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt.*, Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). This standard requires only "the slightest amount of relevant evidence on an issue to warrant denial of summary judgment." *Harris Teeter, Inc. v. Moore & Van Allen PLLC*, 390 S.C. 275, 294, 701 S.E.2d 742, 752 (2010) (internal quotations omitted).

BACKGROUND AND GENERAL FACTS

Plaintiff incorporates by reference her Memorandum Opposing Class Decertification filed on July 13, 2023.

ADDITIONAL UNDISPUTED FACTS

A. It is Undisputed that Defective Conditions, Including Multiple Code Violations, Exist Throughout These 220 Homes

The uncontroverted evidence in this case shows that these homes are defective. Both Plaintiff's and Defendants' experts agree, for example, that there are stone veneer building code violations, brick veneer code violations, patio door-related code violations, MEP-related code violations, weather resistant barrier-relate code violations, flashing-related code violations, and no evidence of window code compliance, which is itself a building code violation. *See* Plaintiff's Memorandum Opposing Decertification for an exemplar but lengthy list of construction defects (hereinafter, "Pl. Memo. Opposing Decert.")

B. It is Undisputed that Horton Developed, Designed, and Constructed All 220 Homes

The evidence further shows that Horton is responsible for the development, design, construction, and supervision of all 220 homes that are a part of this Class. Horton purchased and developed these lots; Horton is listed as the designer on the model plans purportedly used for these homes; Horton pulled the permits and admits that it was the "general contractor" of these homes;

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Horton selected the products used in these homes; and Horton hired the subcontractors who its expert now blames for the lion's share of the several dozen code violations existing in these homes. *See* (Pl. Memo Opposing Decert).

The evidence also shows that Horton was relied upon to act as the "conductor" in delivering code-compliant homes and that, as such, Horton was responsible for, *inter alia*, ensuring that the site was suitable for the construction of these homes, designing adequate support for the brick and stone clad walls built on the exterior of these homes, properly vetting the, *i.e.*, windows and doors used in these homes, and **most importantly**, providing its subcontractors with sufficient instructions, training, plans, oversight, and quality control. *Id.*

C. Horton's Plans, Quality Control, and Supervision Were Inadequate

The evidence also shows that Horton failed in its role as the "conductor" in many respects. *Id.* (listing Horton's many failures based on the evidence, its own admissions, and expert testimony). As stated by Dr. Whitlock:

> 18. The conditions, records, and testimony evidence that Horton's inadequate/improper guidance (plans/details/specifications) to and for subcontractors, together with a lack of supervision and quality control, caused or materially contributed to the common defects and damages present in the class homes at Rose Hill.

(R. Whitlock Aff., Ex. A, ¶18).

In truth, enough evidence exists on these points to grant summary judgment **in *Plaintiff and the Class's favor*;** however, Plaintiff withdrew this Motion rather than risk a successful ruling resulting in an appeal which delays this trial.

ARGUMENT

A. There is Unconverted Evidence Supporting Plaintiff and the Class's Negligence Claims that Precludes Summary Judgment in Horton's Favor

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Horton argues that it is entitled to summary judgment on Plaintiff's and the Class's negligence claims because there is "no evidence that Horton breached any standard of care" or "expert testimony on the applicable standards of care." *See* (Horton's SJ Motion, p. 4, paras. 5, 6, 10).

1. South Carolina Law Defines the Standard of Care a Builder Like Horton Owes to Homeowners

This argument is unfounded because in South Carolina **any builder who violates applicable building codes or sells defective homes has breached its standard of care:**

> The Court of Appeals itself correctly recognized in *Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 344 S.E.2d 869 (Ct.App.1986) that a violation of a building code violates a legal duty for which a builder can be held liable in tort for proximately caused losses. *Terlinde* imposes a legal duty on builders to undertake construction commensurate with industry standards. Where a building code or industry standard does not apply, public policy further demands the imposition of a legal duty on a builder to refrain from constructing housing that he knows or should know will pose serious risks of physical harm. We recognized such a duty, which should extend to foreseeable parties, in *Roger*s. Building a house which one knows or should know will later be sold by a party to an innocent buyer is an act adequate to constitute placing that house into the stream of commerce. Any builder who violates such a duty should justly be held accountable for the losses that his breach caused. . .

Kennedy v. Columbia Lumber & Mfg. Co., 299 S.C. 335, 346, 384 S.E.2d 730, 734 (1989) (emphasis added).

2. Horton Admits It's the "General Contractor" and "Supervisor" of Construction

Here, there is no dispute that Horton is a builder with this same standard of care because Horton admitted in discovery that it was "to perform obligations as the general contractor at Rose Hill in a workmanlike manner in compliance with all applicable codes, regulations, industry standards, plans and specifications, and manufacturer instructions." (Horton's Responses to M&L

Reyna's Requests for Admissions, Ex. B) (emphasis added); *see also* (Pl. Ex. 101.1, Zitek Building Permits) (listing Horton as the "general contractor").

Horton also admits that its role was to "supervise" construction, (Horton's SJ Motion, p. 4, para. 10), and its superintendent and construction manager employee job descriptions both indicate that "supervision" entailed ensuring code compliance and "quality control". *See* (Pl. Memo Opposing Decert.). Horton's expert, Steve Moore, agreed in his deposition in which he testified that Horton was the "conductor" responsible for developing and constructing these homes. (Moore Depo. Trans., pp. 285-87); *see also* (Geraghty Depo. Trans. 174:15-175:9).

3. Horton's Expert Admits that Many Building Code Violations Exist at Rose Hill and the Evidence Shows that Horton's Design and Supervisory Failures Caused These Problems

There is also no legitimate dispute that Horton breached its standard of care when (1) Horton **admits** in its Supporting Memorandum, p. 9, that evidence of building code violations "may be negligence ***per se***"; (2) Horton's expert, Steve Moore, acknowledges that these homes suffer from multiple code violations; and, (3) the unconverted evidence shows that Horton failed in its "conductor" role by providing inadequate plans, quality control and supervision that led to these violations. *See* (Pl. Memo Opposing Decert.) (citing Moore's admissions and the overwhelming evidence and testimony showing that Horton failed to provide sufficient plans, oversight, and quality control).

Horton's "damages" defense is a red herring. (Horton Memo. Supp. SJ, pp. 9-10). These homeowners have been damaged as evidenced by the estimated repair costs produced by **both** Horton's and Plaintiff's experts. *See* (WDP Flooring Repair Scope & Cost Est., Ex. C); (Pl. Ex. 24.18, Sherard Report and Estimate); (Pl. Ex. 24.26, Sherman peer review letter); (Pl. Ex. 127.25, ABS Alternative Repair Estimate). There is ample evidence of stained windows, deteriorating

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patio doors, cracking slabs, and separating exterior brick and stone clad walls that preclude summary judgment. *See* (Pl. Memo Opposing Decert.)

While there is ample evidence of damage and consequential damage, it's worth noting the irony of this argument by Horton. Essentially, Horton is arguing that the conceded building code violations and construction defects haven't caused or permitted enough water intrusion, for the homeowners to have been adequately damaged to bring suit. Plaintiff looks forward to watching Horton argue that to the jury; and this Court should give it no quarter either.

B. <u>The Law and The Evidence Supports Plaintiffs' Implied Warranty Claims</u>

Horton next argues that it is entitled to summary judgment on Plaintiff's and the Class's implied warranty claims because these claims "are not supported by the facts or the law." *See* (Horton's SJ Motion, p. 4, paras. 7-9). This argument also fails for the following reasons:

1. <u>Horton Implicitly Warranted the Habitability, Workmanship, Merchantability, and Fitness of These Homes as Matter of Law</u>

The law clearly supports Plaintiff's and the Class's implied warranty claims because in South Carolina builders of new homes such as Horton provide homeowners with four, <u>automatic</u> guarantees: (1) Habitability; (2) Workmanship; (3) Merchantability; and (4) Fitness. S.C. Code §§ 32-2-314-15; *Fields v. J. Haynes Waters Builders, Inc.* 376 S.C. 545, 561, 658 S.E.2d 80, 88-89 (2008)("[T]his Court has embraced the notion that in a home, a builder warrants that the home is fit its intended use as a dwelling, that the home was constructed in a workmanlike manner, and that the home is free of latent defects. This warranty extends not only to the original purchasers of the home. . .but to subsequent purchasers. . ."); *see also Lane v. Trenholm Bldg. Co.,* 267 S.C. 497, 500, 229 S.E.2d 728, 729 (1976) (holding "when a new building is sold there is an implied warranty for fitness for its intended use which springs from the sale itself"); *Id.* at 503, 229 S.E.2d at 731 ("[The seller's] liability is not founded upon fault, but because it has profited by receiving

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a fair price and, as between it and an innocent purchaser, the innocent purchaser should be protected from latent defects.").

However, there is ample evidence in the record supporting Plaintiff's and the Class's implied warranty claims, as set forth in additional detail in Plaintiff's Memorandums Opposing Decertification.

2. Horton Cannot Rely on Its Unconscionable Disclaimers for Two Reasons

Horton cannot disclaim these automatic guarantees in this case for two reasons. This Court already found that Horton's disclaimers are unconscionable in its Order Granting Class Certification and Denying Arbitration; and this finding is the law of the case. Second, the law disfavors these disclaimers, and they are unenforceable.

a. Horton Cannot Rely on Its Disclaimers Because the Law of the Case is that The Disclaimers are Unconscionable

Horton cannot disclaim these automatic guarantees in this case because this Court already found that Horton's disclaimers are unconscionable in its January 27, 2021 Order Granting Class Certification and Denying Arbitration:

> This Court also finds that arbitration is unenforceable because Zitek's purchase agreement is an adhesion contract and its arbitration provision contains oppressive terms. . .
>
> ***
>
> Second, this Court finds the agreement's arbitration provision contains oppressive terms that disclaim all implied warranties and waive Horton's liability "for monetary damages of any kind."

(1/27/21 Order, p. 11). Horton failed to appeal this Order and therefore it is the law of the case. *See Brading v. County of Georgetown*, 327 S.C. 107, 113, 490 S.E.2d 4, 7 (1997) (holding that an unchallenged ruling, right or wrong, is the law of the case); *see also Ackerman v. 3-V Chem., Inc.*, 349 S.C. 212, 214-15, 562 S.E.2d 613, 615 (2002) (finding trial court did not have jurisdiction

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when motion was filed more than ten days after receipt of the notice of the written order); *Pruitt v. State*, 310 S.C. 254, 256, 423 S.E.2d 127, 128 (1992) ("Even after an order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by § 17-27-80 and Rule 52(a), SCRCP."); *Pitman v. Republic Leasing Co.*, 351 S.C. 429, 432, 570 S.E.2d 187, 188-89 (Ct. App. 2002) (holding that trial court lacked subject matter jurisdiction when petitioner failed to file motion within ten days of judgment).

b. Horton Cannot Rely on Its Disclaimers Because the Law Disfavors These Types of Disclaimers Absent Exceptional Circumstances Not Present Here

Even if the above was not the law of the case, the law of South Carolina is that a seller may not disclaim the warranty of habitability without proof that the disclaimer was conspicuous, known to buyer, and separately bargained for:

> We agree with the Supreme Court of Alabama "that the principle of freedom of contract permits a party to effectively disclaim the implied warranty of habitability. To maintain the protection of purchasers, however, disclaimer can be permitted only if strict conditions are satisfied. We adopt the requirements set forth by the Washington Court of Appeals: the disclaimer must be (1) conspicuous, (2) known to the buyer, and (3) specifically bargained for. This standard is to be applied strictly and will be met only in rare circumstances. It will protect buyers but also give them freedom to purposefully bargain for a price discount or other desired benefit. Denying buyers that freedom would be unduly paternalistic. In this case, the disclaiming language within the four corners of the deed does not, standing alone, lead to the conclusion that the standard we adopt was satisfied.

Kirkman v. Parex, Inc., 369 S.C. 477, 485, 632 S.E.2d 854, 858 (2006) (internal citations and quotations omitted). Here there is no evidence that the alleged waiver of implied warranty was separately bargained for, or that any other criteria were met. Therefore, the attempted waiver is unenforceable as a matter of law.

3. There is Evidence of Unsafe Conditions that Preclude Summary Judgement as to the Implied Warranty of Habitability

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Horton claims that Plaintiff and the Class have not proven that their homes are unoccupiable. (Horton SJ Motion, p. 4, para. 7). This is not Plaintiff's burden. The "habitability" of a home does not turn on whether a person actually lives there; rather, "habitability" is defined as the "[t]he condition of a building in which inhabitants can live free of serious defects that might harm health and safety…." *Blacks Law Dictionary* (8th ed. 2004).

Here, there is evidence that unsafe and dangerous conditions including stone and brick that is falling off and separating from walls. (Pl. Ex. 24.1, Whitlock Life Safety Letter re: stone). In fact, Dr. Whitlock testified that during his investigations several pieces of stone fell off homes with just a mere touch and hit one of his staff:

> Q. I've seen your photographs of the large stones that have fallen off, but I haven't seen any of the stacked thin stone that you're talking about that is put on the lath falling off, but you may have.
>
> A. Well, you may be talking about something else. I have seen stone fall off of many homes. I have touched stone that fell off. And people who work for me doing a survey touched a piece of stone, and it fell on him.

(Whitlock Depo. Trans. 164:20-165:4); *see also* (Whitlock Depo. Trans. 2133:8-21) ("I saw stone in various locations that had already fallen off around the project, and when I was there, my staff actually touched some stone that fell and I did as well.").

***

> Q. Have you seen any stacked stone on the front exteriors of these, the manufactured, thin – you called it stucco, basically, stone falling off the homes?
>
> A. Yeah. One fell off and hit an employee of mine.

(Whitlock Depo. Trans. 164:9-15).

Plaintiff Zitek similarly testified that stone had fallen off and struck one of her neighbors in the head:

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> Q. When stone has fallen, there is a concern that has been raised by your experts and by you in your testimony about the stone hitting someone. Are you aware of stone actually having fallen and struck anyone at Rose Hill.
>
> A. Yes, actually. I thought it was brick yesterday, but it was actually the stone that had fallen off on Kettering Court, and that was the Hills, Mrs. Hill. When she came out of her house, it had fallen on her.

(N. Zitek Depo. Trans. 728:14-23).

Not only is there stone and brick separating from these homes, there is also evidence of elevated radon levels in the interiors of these homes. *See, e.g.*, (Whitlock Depo. Trans. 465:1-467:3; 1575:15-1576:5); (Whitlock Life Safety Letter re: Radon, Ex. D); (Watkins Radon Report, Ex. E). As explained by Dr. Whitlock in his life safety letter to these homeowners:

> I have documented many cracks and unsealed areas in the floor slabs of these homes. These cracks and unsealed areas can allow for radon exposure which, according to the Environmental Protection Agency ("EPA"), is a carcinogen. Further, it was been documented that there is recognized risk for radon emissions in the Upstate area where these homes are located. Helpful information about radon as well as test kits can be found on the EPA's website at www.epa.gov.
>
> (Whitlock Life Safety Letter re: Radon, Ex. D).

Homeowner Kyle Watkins proceeded to have his home tested using the EPA's test kit. Watkins' test result came back with a radon level of 3.7 pCi/L. (Ex. E) and a recommendation to correct the problem because this radon level "poses a significant health risk" according to both the EPA and the World Health Organization. *Id.* This Court need look no further than this test result evidence of "harmful" and therefore "inhabitable" conditions that preclude summary judgment on Plaintiff's implied warranty of habitability claim.

Of course, all this ignores the disgusting photos of widespread water intrusion and damage at windows and doors and fractured brick facades appended to the 2020 submissions in support of class certification, when some homes were less than three years old, which factored into the original certification, and which conditions remain unsolved by Horton today.

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4. <u>There is Extensive Evidence that Horton Improperly Developed These Homes</u>

Horton next claims that it did not breach an implied warranty by developing Rose Hill improperly. (Horton SJ Motion, p. 4, para. 8). It is unclear what Horton's point is – whether Horton believes there is no such warranty or whether Horton believes there is no evidence of Horton's breach of this warranty, both are wrong.

First, developers (sellers) do extend an implied warranty to the ultimate purchasers of it's the homes in its development even if the developer contends it did not act as the "builder" of said homes:

> In *Lane v. Trenholm Building Co.*, 267 S.C. 497, 229 S.E.2d 728 (1976), we were faced with a set of facts—a developer/seller who did not also build the home—which was not adequately addressed by our existing rules protecting new home buyers. We therefore expanded our rules accordingly.
>
> As previously outlined, in *Lane* **we extended our rule to hold a developer liable in warranty for selling a new home, although he was not also the builder.** In so doing, we discussed South Carolina's historic tendency to reject caveat emptor and to embrace the maxim caveat venditor. *See Timrod v. Shoolbred*, 1 Bay 324 (1793); *Champneys v. Johnson*, 2 Brevard 268 (1809); *Smith v. McCall*, 1 McCord 220 (1821). We have therefore taken judicial cognizance of the fact that a modern buyer of new residential housing is normally in an unequal bargaining position as against the seller. *See Terlinde v. Neely*, 275 S.C. 395, 398, 271 S.E.2d 768, 769 (1980)
>
> ***
>
> **We have made it clear that it would be intolerable to allow builders to place defective and inferior construction** into the stream of commerce. *See Rogers v. Scyphers*, 251 S.C. 128, 135–36, 161 S.E.2d 81, 84 (1968).

See Kennedy v. Columbia Lumber and Mfg. Co., 299 S.C. 335, 343-44, 384 S.E.2d 730, 735-36 (1989) (emphasis added).

Second, there is evidence that Horton is the developer (seller) and breached this warranty as evidenced by the dozens of building code violations and other defective conditions commonly documented in these homes. *See* (Pl. Memo Opposing. Decert.).

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Third, Horton's argument that implied warranties do not extend to "used" homes is wrong. (Horton Memo. Supp. SJ, p. 11). The *Arvai* case that Horton cites does not apply to the subsequent purchasers in this action because Horton built ***and*** sold these homes, so the implied warranty of habitability discussed in *Arvai* is not destroyed by lack of privity. *Arvai v. Shaw*, 289 S.C. 161, 345 S.E.2d 715 (1986). As for the implied warranty of workmanlike service, it is hornbook law, confirmed repeatedly by our Courts, that a purchaser may sue a builder on his implied warranty of service, despite the purchaser's lack of contractual privity. *Smith v. Breedlove*, 377 S.C. 415, 422 661 S.E.2d 67, 71 (2008) ("Although the warranty of workmanlike service arises out of the construction contract to which the builder is a party, a subsequent purchaser may sue a professional builder on the implied warranty of workmanlike service despite the lack of contractual privity").

Fourth, and at minimum, the facts and evidence, taken in a light most favorable to the Plaintiff, the non-moving party, creates a genuine issue of material fact as to Horton's breach of all implied warranties precluding summary judgment in its favor.

C. The SOL Does Not Bar Any of the Class's Claims

Each of Plaintiff's claims also survive summary judgment as to the applicable SOL for three, primary reasons: (1) Plaintiff and the Class did not know of these neighborhood defects until around the time this suit was filed in 2019; (2) Plaintiff believed (because of representations made by Horton) that any issues reported during Horton's warranty period were isolated occurrences and either repaired by Horton or represented by Horton to not be an issue; (3) Plaintiff relied on these, and other, representations from Horton; and (4) even if Horton can raise a specter of doubt as to an accrual date on both Plaintiff's negligence and implied warranty claims, sufficient evidence exists to render the question one of fact for the jury.

1. The Evidence Shows Plaintiff and the Class Did Not Discover Uncorrected Class-Wide Defects Three Before 2019

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In South Carolina, the SOL begins to run from the date the claimant knew or should have known that a cause of action exists. The clock starts ticking when "the injured party knows, or should have known by the exercise of reasonable diligence that **a cause of action arises from the wrongful conduct**." *Martin v. Companion Healthcare Corp*., 357 S.C. 570, 575, 593 S.E.2d 624, 627 (Ct. App. 2004) (emphasis added). The standard as to when the limitations period begins to run is an objective one rather than a subjective one and should be considered on a case-by-case basis. *Walbeck v. I'On Co., LLC,* --- S.E.2d ---, 2023 WL 1809318, *5 (2023) ("Specifically, the question of when a plaintiff discovered, or should have discovered the alleged harm is for the jury to decide because it is an objective question").

Here, there is no evidence that Plaintiff Zitek knew of the widespread, latent defects that are a part of this suit before September 2016 (three years before suit filed). On the contrary, Zitek testified:

> Q. You weren't aware of any issues when you filed a lawsuit about that issue of standing water in your backyard and claimed millions of dollars? That's your testimony?
>
> Ms. Lynn: Objection.
>
> A. **I did not know we had that issue until the engineers came out and told us that there was an issue in 2019.**

(N. Zitek Depo. Trans. 275:6-13) (emphasis added).

> A. **We didn't know that there was any issues until 2019**. Actually -
>
> Q. 2019. And how did that come to be? Did you just notice one window and then kind of investigate all the other windows or kind of what was the process on kind of identifying? Because I believe that you said earlier that all your windows are kind of experiencing this same issue.
>
> A. **We didn't know there was an issue until the engineers came out and did some destructive test, and then we were a little more aware and**

went around through all the windows and noticed that it was the same on all of them.

(N. Zitek Depo. Trans. 678:14-679:2) (emphasis added).

Notably, Horton does **not** support its SOL argument with **any** absent class member discovery or testimony in either its Motion or Supporting Memorandum. *See* (Horton SJ Motion); (Horton Memo. Supporting SJ). The other homeowners that Horton deposed also articulated that they did not know of uncorrected defects – latent or otherwise – until well after the expiration of Horton's warranty period.

Paul Zitek, for example, testified that Horton's employees consistently assured him his and his wife's issues were being corrected since the day they moved in all the way through 2018-2019:

Q. Okay. This next one on January 28, 2014 says, "pull door and add pan." Do you remember that?

A. Pull door, add pan? Yes, sir.

Q. Okay. Is that a back door?

A. Yes, sir.

***

Q. Do you now why this was done?

A. Yes.

Q. Why?

A. Uh, we were told by Carl that they were having a lot of issues with water coming in underneath the doors because the – these pans were not put in when the house was built. So they took out the door. They put the pan in and they put the door back on it.

(P. Zitek Depo. Trans. 138:3-20).

***

Q. And you say, "Carl, please get these other things fixed, including the cracking concrete." What was Carl's response?

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A. Carl – on the last day that I, personally, saw Carl, uh, they came out and attempted to repair my water spigot and stood there and wrote down all the minor things that we wanted them to take care of and, and was told point blank, "We will take care of it. We will get back in touch with you" and I never heard another word from Carl since then.

(P. Zitek Depo. Trans. 66:25-67:9).

***

Q. Okay. And did you have discussions with anybody about the fact that the brick didn't match the back of your house?

A. Yes, sir.

Q. Okay. Who and when?

A. We talked to Carl on several occasions. We talked to Jim, uh, on several occasions that "this does not match" and we were told that they would – "the grout doesn't match either" – that they would come out and paint the grout if it did not fade to match the other.

Q. Okay. Could you see a difference when they were putting it up?

A. Yes, sir.

Q. Did they tell you why they couldn't match it?

A. They – all they said was "It'll be okay. We'll take care of it."

(P. Zitek Depo. Trans. 87:8-19).

Reed Cole testified that Horton "fixed" his concrete issue and that Horton had purportedly repaired other issues during his warranty period:

Q. Okay. What is this here?

A. That is where water was leaking through the concrete, and Sealing Agents came in per a warranty request or somehow I got in touch with D.R. Horton, and they came and fixed it. Water was seeping through the concrete.

(Cole Depo. Trans. 178:11-16).

Emilia Dimitrovia further testified that Horton addressed her warranty issues:

Q. So your back door and the trim around the back door are in the same condition they were in as the day you moved into the house, correct?

Ms. Funai: Objection.

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A. No, they are in the same –

Q. When I say that same condition, I mean you nor anyone else has ever made any repairs or any modifications including painting or caulking or anything else to the backdoor and the trim around it since you moved into the house, correct?

Ms. Funai: Objection.

A. Only D.R. Horton.

Q. And what did D.R. Horton do to the back door after you moved in?

A. They painted it and installed trims after we moved in.

(Dimitrova Depo. Trans. 166:10-167:1).

Q. Did D.R. Horton make any repairs to any windows or windowsills at any time after you moved into the house?

A. I submit a warranty claim on the one-year inspection about all the cracks for the windows, and they just recaulked them.

(Dimitrova Depo. Trans. 167:19-24).

Even if this were not the case, notice of one problem is not notice of all problems, especially latent ones. In *McAlhany v. Carter*, for example, our Court of Appeals expressly stated notice of a potential negligence claim for termite damage was distinct from notice of a potential negligence claim for mold damage. *McAlhany v. Carter*, 415 S.C. 54, 65-66 781 S.E.2d 105, 112 (Ct. App. 2015). The *McAlhany* plaintiff presented evidence that he did not discover mold in his home until June 2008 or August 2009, and that he saw active termites in his home in October 2007. *Id.* The *McAlhany* Court held the trial court erred; summary judgment on the SOL could not be decided as a matter of law on the home buyer's mold-related claim based on when he knew of his potential termite claim. *Id.*[3]

[3] *See also Dineen v. Pella Corp*., 2015 U.S. Dist. LEXIS 147237, *20, 2015 WL 6688040 (D.S.C. Oct. 30, 2015) ("there is no reason to think the failure of a single sash seal should have led the Dineens to suspect, much less discover, a product-wide design defect,") (applying Florida law); *Performing Arts Ctr. Auth. v. Clark Constr. Group, Inc*. 89 So. 2d 392, 394, 2001 Fla. App. LEXIS 6178, *5, 26 Fla. L. Weekly D 1177 (Fla. Dist. Ct. App. 4th Dist. 2001) (finding summary

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It follows that the existence of "warranty" or isolated issues at RH could not give Zitek or other homeowners notice of any other issues, much less of any defects, especially considering Horton's assurances/omissions and repair attempts happening at the same time. Summary judgment on SOL grounds should therefore be denied.

2. <u>Horton's Assurances, Coupled With Its Omissions, Estop it From Relying on the SOL</u>

Even if this Court were to find that Plaintiff Zitek, or other homeowners, should have known before 2016 that common, latent defects existed in their home, equitable estoppel applies to prevent Horton from asserting the SOL as a defense because there is *ample* evidence that **<u>Horton's own conduct induced</u>** Plaintiff and the Class into believing that their homes were performing adequately and did not contain latent defects. *Dillon*, 286 S.C. at 219-20, 332 S.E.2d at 561 ("A defendant will be estopped to assert the statute of limitations in bar of a plaintiff's claim

judgment improper "where the manifestation [of a defect] is not obvious but could be due to causes other than an actionable defect,"); *Williams v. Jama, Inc.*, 1998 Mich. App. LEXIS 2547, *10, 1998 WL 2016623 (Mich. Ct. App. Mar. 17, 1998) ("[I]t is one thing for plaintiff to know that he is having problems with the milking system and another to know that the problems persisted because of [defendant's negligence],");*De Groft v. Lancaster Silo Co.*, 527 A.2d 1316, 1325, 72 Md. App. 154, 173, 1987 Md. App. LEXIS 359, *27, 4 U.C.C. Rep. Serv. 2d (Callaghan) 20 (Md. Ct. Spec. App. 1987) ("[T]he mere fact appellant knew the silo was leaning in 1977 does not, of necessity, establish that he was aware that a wrong had occurred, nor does the fact he made calls to appellee necessarily indicate he knew appellee was responsible for that wrong,");*A. J. Aberman, Inc. v. Funk Bldg. Corp.*, 278 Pa. Super. 385, 398, 420 A.2d 594, 601, 1980 Pa. Super. LEXIS 2647, *21 (Pa. Super. Ct. 1980) ("We do not suggest that these first leaks alone gave notice to anyone who was reasonably diligent of a possible defect in the roof,"); *Cartmell v. Slavik Co.*, 68 Mich. App. 202, 206, 242 N.W.2d 66, 68, 1976 Mich. App. LEXIS 693, *6-7 (Mich. Ct. App. 1976) ("Knowing that there are leaks and knowing that there are leaks caused by faulty material or workmanship in the roof are two different things.").

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when the delay that otherwise would give operation to the statute has been induced by the defendant's conduct.") (internal citations omitted).

The doctrine of equitable estoppel as it relates to the SOL was analyzed by the South Carolina Court of Appeals in the construction context in *Magnolia North*:

> [a] defendant will be estopped to assert the statute of limitations in bar of a plaintiff's claim when the delay that otherwise would give operation to the statute has been induced by the defendant's conduct. The doctrine is, of course, most clearly applicable where the aggrieved party's delay in bringing suit was caused by his opponent's intentional misrepresentation; **but deceit is not an essential element of estoppel. It is sufficient that the aggrieved party reasonably relied on the words and conduct of the person to be estopped in allowing the limitations period to expire**.
>
> **The conduct may involve either inducing the plaintiff to believe that an amicable adjustment of the claim will be made without suit or inducing the plaintiff in some other way to forbear exercising his right to sue.** Some courts hold that repairs by a defendant may toll the statute of limitations. **One's assurances to an injured party that defects can be corrected coupled with his attempts to correct them is conduct that may lead the injured party to reasonably believe that it will receive satisfaction without resort to litigation**.

See Magnolia N. Prop. Owners' Ass'n v. Heritage Cmties., Inc., 397 S.C. 348, 372-73, 725 S.E.2d 112, 125 (Ct. App. 2012) (emphasis added).

Whether a "defendant's conduct lulled a plaintiff into a false sense of security" is ordinarily one of fact. *Lovell v. C.A. Timbes, Inc.*, 263 S.C. 483, 210 S.E.2d 610 (1974). Inducement on the part of the defendant may consist "of an express representation that the claim will be settled without litigation or conduct that suggests a lawsuit is not necessary." *Black v. Lexington Sch. Dist. No*. 2, 327 S.C. 55, 61, 488 S.E.2d 327, 330 (1997). Summary judgment on the estoppel issue is **inappropriate** when there is evidence of conduct on the defendant's part warranting estoppel. *Id.* Here, there is evidence of this including the facts that:

Horton repaired the Zitek home multiple times and assured them everything was repaired. *See* Section C(1), *supra*.

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Horton told the Ziteks that so long as water does not stand in their yard for more than 24 hours there was no problem:

> Q. Did you ever have surface water issues? Do you know what surface water is?
>
> A. Standing water.
>
> Q. Rainwater.
>
> A. **Yes**. Not at this time when we had first purchased it. Probably six months in, there was water standing in the backyard. And Keith and Carl had been there, and we had pointed it out to them.
>
> **And they told us that that was actually normal** because it was clay and nothing to worry about. As long as it wasn't standing there more than 24 hours, **it was nothing to worry about**. Kind of laughed at us that this wasn't Midwest soil, dirt, that this was clay, and that's what happened. **So we never though another thing about it.**

(N. Zitek Depo. Trans. 114:7-23) (emphasis added).[4]

Pam Williamson, Horton's warranty department head, also testified that Horton repaired any issues in these homes:

> Q. So the only basis you would have to assert that the plaintiffs have delayed too long in bringing their claims is whatever the terms are of the – is it RWC warranty?
>
> A. The RWC warranty is –
>
> Mr. Imhoff: Object to form.
>
> A. -- our warranty. Legal claims, I have no idea. I'm not an attorney.
>
> Q. But as a factual matter, you're not suggesting, for instance, that Ms. Zitek should have sued you-all for the 2017 defects in 2017 because you-all did the repairs in 2018, right?

[4] Note that Horton's Supporting Memorandum, (Memo Supp. SJ, p. 6), claims that "Zitek noticed water issues after six months of moving in" but Horton failed to mention that its own employees assured here that this was "not a problem". All other 2013 "points" made by Horton as to Zitek fall within her warranty period and its undisputed that Horton attempted to repair these problems up and through 2019.

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A. It's warranty timeframe.

Q. You-all did the repairs, right?

A. Yeah. They were covered under warranty.

Q. **In theory, you-all fixed whatever the problems were, correct**?

A. **That is correct.**

(Williamson Depo. Trans. 247:16-248:8) (emphasis added).

Plaintiff and the Class relied on these, and other, examples of conduct and representations of Horton, as testified to by multiple homeowners. It is precisely this circumstance when a Court, sitting in equity, should apply estoppel. *See, e.g.*, *Centex Homes v. S.C. State Plastering, LLC*, No. 4:08-CV-2495-TLW, 2010 WL 2998519, at *6 (D.S.C. July 28, 2010) ("The Court concludes, even if the alleged defects challenged in this case can be traced to the original construction completed in 2001, that the subsequent 2002 repairs create an issue of fact as to whether Carolina Drywall is estopped from asserting a statute of limitations defense based on its attempt to correct the alleged defects in lieu of suit."); *see also Dillon Cty. Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 219, 332 S.E.2d 555, 561 (Ct. App. 1985), *overruled on other grounds by Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 462 S.E.2d 858 (1995) ("One's assurances to an injured party that defects can be corrected coupled with his attempts to correct them is conduct that 'may lead the injured party to reasonably believe that it will receive satisfaction without resort to litigation.'") (emphasis added).[5]

[5] *See also Pilz v. FDIC*, 1997 117 F.3d 1414, 1997 WL 360639, *4 (4th Cir. July 1, 1997) (denying summary judgment on the notice issue, explaining "[e]ven when Plaintiff have some reason to suspect they may have a claim, Maryland courts have been unwilling to resolve the notice issue as a matter of law, especially when a plaintiff has relied on the defendant's or some other skilled person's assurances that there was no problem") (emphasis added); *Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 373, 725 S.E.2d 112, 126 (Ct. App. 2012) ("Here, until the turnover, Appellants assured the unit owners the construction defects would be

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Horton's attempts to overcome the operation of equitable estoppel are unavailing. Horton incorrectly (and without supporting precedent) states that Plaintiff's equitable estoppel defense "has no basis in the facts or law" but the above points clearly show otherwise. Again, and as testified by the homeowners Horton deposed – Horton either assured the homeowners their isolated issues were non-issues or allegedly repaired those issues. *See* Section C(1), *supra.*

3. <u>Multiple Inferences Still Exist as to What Plaintiff and the Class Knew, When They Knew it, and Whether it Rose to a Level to Trigger Notice of These Claims</u>

Plaintiff believes the evidence squarely establishes that neither the Plaintiff nor the Class knew they had a cause of action regarding these common, latent defects until 2019. However, at minimum, Plaintiff has proffered sufficient evidence to render this a question of fact for the jury. As recently held by the South Carolina Supreme Court in *Walbeck, v. I'On Co., LLC*, --- S.E.2d ---, 2023 WL 1809318, *5 (2023):

> Because the myriad of evidence adduced during this lengthy trial presented quintessential jury issues, we disagree with the court of appeals' reversal of the jury verdicts. We find the trial court properly submitted Homeowners' claims and the issue of the statute of limitations to the jury, and we find its verdict was supported by the evidence.

Id.; see also Logan v. Cherokee Landscaping & Grading Co., 389 S.C. 611, 618, 698 S.E.2d 879, 883 (Ct. App. 2010) ("If there is conflicting evidence as to whether a claimant knew or should have known he or she had a cause of action, the question is one for the jury."); *Turner v. Milliman*, 381 S.C. 101, 671 S.E.2d 636 (Ct. App. 2009) (As long as there is "more than one reasonable

repaired, and, as a result, the owners were justified in relying on those assurances. At the time these representations were made, a reasonable owner could have believed that it would be counterproductive to file suit before giving Appellants the opportunity to honor the representations, especially given Appellants' efforts to make some repairs.").

inference as to when the [Plaintiffs] knew or should have known they had a claim against [Defendant]," summary judgment on the expiration of the statute of limitations is inappropriate).

Walbeck was a complex case that addressed a developer's failure to turn over the amenities, – namely a deep-water dock and boat ramp, neighborhood clubhouse, and associated parking – that developer had promised to the homeowners/HOA.. *Walbeck,* 2023 WL 1809318, at *4. The facts of the case "are not for the weary"; however, applicable to the instant case is the presence of conflicting discovery facts, developer misrepresentations and omissions, and developer control that our appellate courts' analyzed at length when deciding whether the homeowners' and HOA's claims were barred by the SOL.[6] *Id.* at *3.

The homeowners filed a derivative action in 2010 and proceeded to trial in 2014. *Id.* at *10. At trial, the developer argued that it was entitled to a directed verdict on SOL grounds because the homeowners were on notice that the HOA did not own the civic areas promised as early as 2001 when these areas were "completed" and no later than 2005 when a proposed budget purportedly sent to HOA members included a line item suggesting that these civic areas were being "rented" by a third-party. *Id.* at *19. The homeowners argued that developer promulgated a decade-long scheme in which it continually promised to convey the civic areas to the HOA but was secretly working behind the scenes to sell these areas for profit and that there was ample, conflicting evidence as to when the homeowners actually knew that they had a claim against the developer. *Id.* The civic areas were ultimately sold by the developer to a third-party on August 5, 2009, and the trial court was left to determine whether this date was the "notice" date, or an earlier date as argued by the developer. *Id.*

[6] Class Counsel represented the I'On homeowners in *Walbeck*.

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The trial court found that the evidence in record created questions of fact as to when the homeowners actually knew that developers never intended to convey the civic areas to the HOA; denied the developer's directed verdict motion; and left the jury to decide when the homeowners discovered their claims. *Id.* at *13. The jury ultimately found that the homeowners discovered their claims on August 5, 2009 (the date the civic areas were sold to a third-party for profit) and returned a $1,750,000 verdict in the HOA's favor. *Id.* at *14. The developer appealed and the Court of Appeals reversed the verdict, finding that the trial court erred in submitting the SOL question to the jury. *Id.* at *13. The Supreme Court granted certiorari and in a landmark decision issued in February of this year the Supreme Court overturned the Court of Appeal's SOL ruling and reinstated the HOA's verdict, finding that:

> We believe this case is similar in some respects to *Stoneledge at Lake Keowee Owners' Ass'n v. IMK Development Co., LLC*, 435 S.C. 176, 177, 866 S.E.2d 577, 578 (2021), **where the Court implicitly acknowledged that although defendants in that case may have had a colorable argument as to the running of the statute of limitations, this Court nonetheless affirmed the jury's verdict**. *See id.* ("Application of both the basic three-year limitations period and the discovery rule in any given case **can present factual issues for a jury to resolve**. ... [**W]e are constrained by our standard of review and conclude that under the facts of this case, there was a jury issue as to whether the statute of limitations had expired** by the time the action was commenced against [the defendant]"). In *Stoneledge*, the jury found in favor of the homeowners after the trial court denied defendants' motion for directed verdict based on the statute of limitations. **As is the case here, there was a question of fact as to when Homeowners were put on notice**.
>
> Because ample evidence was presented supporting the jury's determination of when Homeowners were on notice, the jury's verdicts are reinstated. **While there is an argument that the budgetary provision relied on by the court of appeals could have led to notice, the jury was cognizant of that argument but was convinced by the ample contrary evidence. That finding, because it was supported by sufficient evidence, should not have been overturned on appeal**. Accordingly, we find that these claims are timely.

Id. at *19 (emphasis added).[7]

Just as in *Walbeck,* the evidence proffered here to date creates, at the very least, a question of fact regarding their discovery that a cognizable cause of action existed against Horton. As such, summary judgment should be denied.

D. <u>Spoilation Does Not Bar Plaintiff's Claims</u>

Horton's argument that spoliation bars Plaintiff's claims is also incorrect for multiple reasons.

1. <u>Horton's Spoliation Argument is Untimely, Substantively Unfounded, and Procedurally Deficient</u>

Horton raised spoliation as a defense in its Second Amended Answer and now as a ground for Summary Judgment. This is not the proper procedure for alleging spoliation of evidence, as the doctrine of spoliation is an evidentiary rule, not a claim or defense. *Hodge v. Wal-Mart Stores, Inc.*, 360 F.3d 446, 450 (4th Cir. 2004) *quoting Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 155 (4th Cir. 1995) ("[S]poliation is not a substantive claim or defense but a 'rule of evidence,' and thus is 'administered at the discretion of the trial court.'"). The proper way to raise the issue of spoliation is through a Motion for Sanctions for spoliation, which Horton has not done. Even if Horton were to bring such a motion now, South Carolina and other Courts agree that it would be untimely:

"The least disruptive time to undertake . . . [a spoliation motion] is during the discovery phase, **<u>not after it has closed</u>**." *Goodman v. Praxair Servs., Inc.*, 632 F. Supp. 2d 494, 508 (D. Md. 2009) (emphasis added). "[A] court should examine the temporal proximity between a spoliation motion and motions for summary judgment." *Id.*; *see also Glenn v. Scott Paper Co.*,

[7] There is a pending reconsideration of the Supreme Court's Order that was granted, but it relates solely to the attorneys' fees awarded to Class Counsel under the ISLA statute.

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Civ. A. No. 92–1873, 1993 WL 431161, at *17 n. 3 (D.N.J. Oct. 20, 1993) (spoliation argument used to defend a motion for summary judgment was untimely, as the plaintiff did not raise any concerns "during the discovery phase or bring them to the attention of the magistrate [judge]"); *Ferrone v. Onorato*, No. 05–303, 2007 WL 2973684, at *10 (W.D.Pa. Oct. 9, 2007) (spoliation argument should have been made in "**appropriate discovery motion," and not in "opposition to [motion for] summary judgment**") (emphasis added).

> The lesson to be learned from the cases that have sought to define when a spoliation motion should be filed in order to be timely is that there is a particular need for these motions to be filed **as soon as reasonably possible** after discovery of the facts that underlie the motion. This is because resolution of spoliation motions are fact intensive[.]

Goodman, 632 F. Supp. 2d at 508 (emphasis added). "Spoliation allegations and sanctions motions **distract from the merits of a case, add costs to discovery, and delay resolution.**" *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 269 F.R.D. 497, 526 (D. Md. 2010), *aff'd in part, modified in part*, No. CV MJG-06-2662, 2010 WL 11747756 (D. Md. Nov. 1, 2010) (quoting *Rimkus Consulting Grp., Inc. v. Cammarata*, 688 F. Supp. 2d 598, 607 (S.D. Tex. 2010)) (emphasis added).

At the time of this Memorandum, discovery in this case has been closed for over a month, and the deadline for inspection of homes has been closed for four months. Horton inspected more than half of the 220 class homes and has had ample time during this lawsuit to bring a spoliation motion. At this juncture, the "defense" of spoliation is nothing more than a red herring and an attempt to distract from Horton's clear liability in this case. This Court should agree and deny summary judgment on the spoliation ground because this is the improper vehicle to request such relief and it's too late for Horton to bring a sanction motion properly.

2. There is No Evidence of Spoilation

Plaintiff's experts documented all of their work and observations exhaustively and left the vast majority of the class homes untouched and available for Horton to perform its own testing –

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which it did. As a consequence, Horton cannot point to any prejudice – the Court permitted Horton to pick the homes (which Horton agreed were representative during its Right to Cure process) and conditions that it wished to test. Horton cannot show the Court any condition that it did not get an opportunity to test; and it cannot show the Court that any conditions that Horton tested were any different then what Plaintiff tested – so it can't show spoliation and it can't show any prejudice even if there was "spoliation."

If Horton is referring to activities by homeowners, this is baseless as 1) very few alterations have occurred; 2) most occurred prior to homeowners knowing of the existence of litigation or its subject matter; 3) most were attempts to mitigate continuing damage or problems; and 4) the few that may have been otherwise occurred without scienter or intent. And, given the mitigation context, and the availability of other identical conditions to observe and test, there is and can be no prejudice.

3. Horton Cannot Prove Requisite Willful Conduct or Prejudice

The most severe sanctions for spoliation, such as summary judgment or default judgment, are usually only justified where there is evidence of bad faith, or "if the **prejudice to the defendant is extraordinary**, denying it the ability to adequately defend its case." *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 593 (4th Cir. 2001) (emphasis added). Here, Horton is entitled to neither because it cannot show any bad faith or willful conduct or prove prejudice caused by alleged spoliation of evidence by Plaintiff or absent class members for the following reasons.

4. Horton Can't Show Spoliation by any Absent Class Member

Horton cannot show any willful conduct or claim prejudice caused by alleged spoliation of evidence based on repairs and alterations made by absent class members in this case. A key factor of a class action lawsuit is that an absent class member "is not required to do anything" but "sit

back and allow the litigation to run its course." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 810, n. 2 (1985). Consequently, absent class members are under no obligation to have a specific understanding of all defects at issue or take directions from Class Counsel regarding repairs or alterations.

Despite this, Plaintiff has done her due diligence and disclosed all repairs and alterations within her knowledge performed by absent class members. Additionally, Horton is privy to the original condition of the homes and the repairs and alterations made because Horton built them or performed the repairs through the warranty process. Class Counsel is acutely aware of the realities of having a large class comprised of homeowners and did what was necessary to present a fair representation to all Defendants of known work performed by absent class members over the last nearly four years.

As to Plaintiff Zitek. Horton has specific knowledge of Zitek's home in its original condition, as Horton constructed the home and performed extensive repairs on the home before suit. Zitek has disclosed every alteration made to her house during the lawsuit, none of which destroyed evidence as Horton alleges. During her deposition, Zitek testified to these alterations. *See* (N. Zitek Depo. Trans. 256) (the Ziteks put in a pool in 2020); *Id.* at 35-42 (Zitek gives detailed testimony regarding a washing machine leak just weeks before her deposition which damages her flooring and was set to be replaced through her insurance). Repairing plumbing leak damage after sworn notice to Horton can't constitute spoliation, as a matter of law.

Further, this Court extended the deadline for inspections in this case three times, yet Horton never made a formal request to inspect the Zitek home during its inspections of over half of the homes in Rose Hill. It wasn't until after this deadline had passed that Horton asked to inspect the

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Zitek home, which this Court denied. *See* 5/8/23 Order ("The Defendant's request for further testing of the Zitek home is denied.").

If there is any spoilation, it is by Horton, who has failed to produce accurate warranty records, homeowner communications, photographs, and job documents. For example, Horton has been unable to find its copy of the photographs Zitek sent to Horton, and its internal communications about those photographs. As such, Horton has not proven the extraordinary prejudice it must prove for spoilation.

Plaintiff has not spoiled anything. Contrast this with *Silvestri v. Gen. Motors Corp.*, for example, where a motorist brought a products liability action against the vehicle manufacturer, General Motors, alleging that the airbag did not deploy as warranted. 271 F.3d 583 (4th Cir. 2001). The district court dismissed the plaintiff's claims because he failed to give General Motors notice of his claim and an opportunity to inspect the vehicle, which the district court deemed "the sole piece of evidence in this case," before it was repaired. *Id.* at 585. The appellate court agreed with the district court's finding that "the spoliation was highly prejudicial. It denied General Motors access to the only evidence from which it could develop its defenses adequately." *Id.* at 594. Additionally, the court determined that "the evidence that was preserved was incomplete and indefinite." *Id.*

In contrast to *Silvestri*, there is no "sole piece of evidence" in this case and the preserved evidence is substantial. The repairs and alterations done by all homeowners amounts to just a fraction of the evidence of persistent, widespread construction defects throughout Rose Hill. Even without this evidence, Horton has inspected, or had the opportunity to inspect, a vast majority of homes with defects still in the original condition as Horton left them. The fact that the overwhelming evidence available to all parties is unfavorable to Horton's case does mean that the

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unavailability of the alleged spoliated evidence hurts Horton's case further. In fact, the repairs and alterations made by homeowners would be prejudicial to Plaintiff's case more than any other party. Given that these changes were made primarily to mitigate defects caused by Horton, the unavailability of this evidence takes away from what Plaintiff can use to support her case and may even result in a reduction of damages.

Further, Horton has made clear that a main defense to Plaintiff's claims is a lack of homeowner maintenance. It would be contradictory for Horton to blame construction defects on the homeowners' lack of maintenance, while also claiming repairs or alterations performed to fix existing issues constitute spoliation.

Horton is simply unable to prove that spoliation occurred or is prejudicial to its case.

5. <u>Spoliation is a Question of Fact Precluding Summary Judgment</u>

In addition to all the foregoing points, there are questions of fact as to Horton's spoliation claims, which precludes summary judgment. It is for the jury "to determine whether the party has offered a satisfactory explanation for that failure," and if the jury "find[s] the explanation unsatisfactory, [it is] permitted—but not required—to draw the inference that the evidence would have been unfavorable to the party's claim." *Stokes v. Spartanburg Reg'l Med. Ctr.*, 368 S.C. 515, 522, 629 S.E.2d 675, 679 (Ct. App. 2006). Further, spoilation has to occur in anticipation of litigation and, at a minimum, there is a question of fact as to whether spoilation occurred here. Therefore, summary judgment must be denied.

6. <u>Horton's Latest Arguments Do Not Change This Inevitable Results</u>

The brunt of Horton's remaining "spoilation" argument is an argument this Court has already heard before about inspections that occurred before this suit was filed and served upon Horton. (Horton Memo. Supp. SJ, pp. 13-14). This argument is untimely and procedurally

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improper for the same reasons detailed above, and even if it was not, it does not serve to bar Plaintiff and the Class's claims because Horton cannot show, *i.e.*, how it was prejudiced when it received Plaintiff's experts' entire files, had the opportunity to inspect these homes both before and after Plaintiffs' experts, or how any evidence was intentionally destroyed.

E. Horton Has Waived its Mitigation of Damages Argument, and Even if Not, Mitigation is a Question of Fact Which Precludes Summary Judgment

Horton raised "mitigation" as one of its summary judgment grounds in its Motion; however, Horton abandons this argument in their Supporting Memorandum. Horton's original ground cursorily states: "Plaintiff and class members failed to mitigate their damages, as shown by record evidence". (Horton SJ Motion, para. 11). Horton does not cite to this "record evidence" and Horton does not mention "mitigation" or this "record evidence" in its Supporting Memorandum. (Horton Memo Supp. SJ). Horton has therefore waived this argument.[8]

Even if not waived, mitigation is yet another ground that Horton relies on that is a question of fact for the jury: "Whether the party acted reasonably to mitigate damages is ordinarily a **question for the jury**." *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 285, 573 S.E.2d 830, 838 (Ct.App.2002) (emphasis added). *See also Lyons v. Fid. Nat. Title Ins. Co*, 415 S.C. 115, 134, 781 S.E.2d 126, 136 (Ct. App. 2015), vacated pursuant to settlement (Aug. 26, 2016) ("The reasonableness of a party's actions to mitigate damages is a **question of fact** which cannot be decided as a matter of law when conflicting evidence is presented.") (emphasis added).

[8] *See Brown v. Cherokee Cnty. Sch. Dist.*, No. 2017-001466, 2020 WL 241582, at *8 (S.C. Ct. App. Jan. 15, 2020) (defendant's issues were abandoned because she failed to cite any supporting authority for her arguments); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (providing a party abandons an issue by "fail[ing] to provide arguments or supporting authority for his assertion"); *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106 n.3, 439 S.E.2d 283, 285 n.3 (Ct. App. 1993) (stating an issue is deemed abandoned on appeal and, therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority).

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1. Any Alleged Failure to Mitigate by Homeowners Was Reasonable

"A party injured by the acts of another is required to do those things **a person of ordinary prudence would do under the circumstances**, but the law does not require him to exert himself unreasonably or incur substantial expense to avoid damages." *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 285, 573 S.E.2d 830, 838 (Ct. App. 2002). "It is the undoubted general rule that it is the duty of the owner of the property, which is injured by the negligence of another, to **use reasonable means** to minimize the damages." *Newman v. Brown*, 228 S.C. 472, 480, 90 S.E.2d 649, 653 (1955). "Moreover, the party who claims damages should have been minimized has the burden of proving they could reasonably have been avoided or reduced." *Moore v. Moore*, 360 S.C. 241, 262, 599 S.E.2d 467, 478 (Ct. App. 2004) *quoting Chastain v. Owens Carolina, Inc.*, 310 S.C. 417, 420, 426 S.E.2d 834, 835 (Ct. App. 1993).

Contrary to Horton's allegation, Rose Hill homeowners have made many attempts to mitigate damages caused by Horton.[9] It is reasonable for homeowners to mitigate damages by, *e.g.*, calling an HVAC contractor to make repairs when their air conditioning goes out in the middle of August.[10] However, it is not reasonable for the average homeowner to understand ***latent*** defects or how to fix them,[11] *i.e.*, patio doors that should not be exposed to weather, windows with weak sill to jamb corner connections, floors that are attached to roof trusses, brick and stone that is inadequately adhered to exterior walls, and torn WRB under siding.[12]

[9] Horton's spoliation of evidence argument alone proves this point for Plaintiff.
[10] Note that these are the exact type of mitigation measures Horton also alleges amount to spoliation of evidence to justify summary judgment in its favor.
[11] In fact, Horton's own employees and experts do not understand the details of these defects, making it illogical to argue that homeowners should.
[12] Horton's initial reports also place blame on its subcontractors for existing defects which in and of itself creates an issue of fact precluding summary judgment.

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Horton, who has the burden of proving homeowners could have reasonably reduced damages, would suggest that painting over a rotting patio door or caulking over cracked miters on every window would (1) reduce damages and fix the homeowners' problems, and (2) should be done routinely as normal home maintenance. Such a "solution" is far from reasonable – painting a patio door that was never rated for exterior exposure and caulking a window with a manufacturing defect does not fix the latent problems this class action is all about. There is no way these homeowners could reasonably reduce these types of defects or related damages – they do not have the hundreds of thousands of dollars Plaintiff's expert estimates it will cost to replace all their windows, patio doors, brick, stone, floors, siding, etc. *See* Plaintiff's Memorandum Opposing Class Decertification.

Further, it is not reasonable for Horton, "America's #1 Homebuilder," to expect these homeowners to mitigate their problems when Horton could not do so itself. In many instances, homeowners reported issues to Horton, and Horton did repairs itself, which resulted in the same or worse issues as originally existed. Horton's expert does not even know how, i.e., these windows can be fixed "in place" as he recommends. If Horton and its expert cannot even mitigate these issues Horton certainly cannot argue that innocent homeowners with no construction experience reasonably could have done so themselves.

2. <u>Mitigation of Damages Directly Contradicts Horton's Own Spoliation Argument</u>

Horton's mitigation of damages ground also directly conflicts with its spoliation ground. Horton's motion claims a failure to mitigate damages, directly followed by a claim that "Plaintiff and class members systemically made changes and/or repairs to the homes." (Horton SJ Motion, p. 4, para. 12-13). As discussed in the previous section, most alterations and repairs made by

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homeowners were done so for the **sole purpose of mitigating defects** created by Horton's own sub-standard construction.

Horton simply cannot use homeowner alterations and repairs both as a sword and a shield It is untenable to say that homeowners failed to mitigate damages while also spoliating evidence – the fact that Horton is doing exactly that here shows that there are questions of fact as to both spoilation and mitigation that preclude summary judgment.

F. Right to Cure Issues are a Question of Fact Precluding Summary Judgment

Finally, Horton alleges neither Plaintiff nor her experts produced any evidence for a few issues outlined in her statutory Notice to Cure letter. This is simply incorrect, and evidence exists for every issue listed by Horton. This evidence, outlined below, creates a question of fact precluding summary judgment.

1. Improperly installed front doors

Evidence of improperly installed front doors includes Horton's own expert reports which note:

- "At front door, light is visible from the interior on the latch side just above threshold. *Responsibility: Door installer (Framer) and/or Door manufacturer*. *Recommendation: Install new weather stripping to cover gap down to threshold.*" (Pl. Ex. 24.4, ABS August 28, 2020 Report pp. 11, 16);

- "At front door, light is visible at the threshold on the latch side. *Responsibility: Door installer (Framer) / Door manufacturer. Recommendation: Install new weather stripping to cover gap down to threshold.*" *Id.* at 2;

- "At front door, some slight trim separation at miter joint. *Responsibility: Painter*. *Recommendation: Reseal joint.*" *Id.* at 14;

- "The steel shelf angles at the overhead garage door and the front entry door are unpainted. At the front entry door, WRB is visible between the shelf angle and the door frame. *Responsibility: Painter*. *Recommendation: Clean, prime, and paint exposed shelf angles.*" *Id.* at 19.

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2. <u>Improperly installed flooring</u>

Evidence of improperly installed flooring includes Plaintiff's expert report and deposition testimony as well as Defendants' expert report and deposition testimony. For example:

Dr. Whitlock produced a flooring report in November 2022 outlining the common flooring issues he documented including:

- "[I]t was observed that the bottoms of the truss chords were toe-nailed to the top plates of partition walls, instead of floating above. This type of fastening restricts the partition wall from moving when someone walks over the floor beside the wall. This relative movement (stationary wall/moving floor) creates the squeaking sound from nails driven through the sole plates of the partitions into the floor sheathing. Additionally, nails throughout the floors had missed, or were loose within, the floor joists causing squeaks." (November 9, 2022 Flooring Report p. 2, Ex. F);

- "As to the hardwood flooring, the separations that did not relate to substrate movement, i.e., slab cracking/low spots, were due to either inadequate or missing flooring adhesives for the wood flooring to the concrete allowing the planks to move relative to each other, resulting in gaps at the ends of planks." *Id.*

Horton's expert also documented even more flooring defects in his 2020 reports:

- "The master bathroom tile had a hairline crack across the width of the bathroom for a total of approximately eight (8) to ten (10) cracked floor tiles. *Responsibility: Tile installer. Recommendation: Remove broken tiles. Inspect substrate for sufficient stiffness. Reinstall tile with proper setting bed.*" (Pl. Ex. 24.4, ABS August 28, 2020 Report p. 8);

- "One (1) isolated gap was present within the hardwood flooring adjacent to the stairs. ABS measured the gap to be 1/8" wide. *Responsibility: Floor installer. Recommendation: Reinstall floor to remove gap.*" *Id.* at 10;

- "At the master bathroom door to closet, there is separation between the trim and the floor tile. The homeowner claims it is due to the wall framing being fastened to the roof trusses. *Responsibility: Trim installer. Recommendation: Reinstall trim flush with floor. Check floor framing for excessive deflection.*" *Id.* at 12;

- "Several locations in the engineered wood flooring have gaps between the board along the butted, short ends. *Responsibility: Flooring installer.*

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Recommendation: Remove boards that are too short and replace with new to match existing." *Id.* at 15;

- "Living room carpet tacks could be felt under foot-applied pressure at kitchen and section of carpet not cut evenly at fireplace. *Responsibility: Carpet installer. Recommendation: Tighten and/or replace living room carpeted area and provide full coverage over tacks.*" (Pl. Ex. 24.6, ABS October 9, 2020 Report p. 2);

- "Master bathroom floor squeaked near tub under heavy foot pressure. *Responsibility: Framer. Recommendation: Temporarily pull up vinyl floor covering, re-fasten subflooring, and re-lay floor covering.*" *Id.* at 2-3;

- "Hardwood floor planks abutting 1st-story rear facing fixed exterior double door were warped, discolored, and stained. *Responsibility: Door installer (Framer), Weather Barrier installer, and/or Homeowner. Recommendation: Repair and/or replace floor.*" *Id.* at 5.

In light of Horton's own admissions, there was no need for Plaintiff to hire a flooring installation defect expert.

3. <u>Improperly installed wall framing</u>

Evidence of improperly installed wall framing includes testimony from Horton's superintendent, Keith Waddell, who testified:

Q. You mentioned, generically speaking with Mr. Lucey, that Bravo was just one of the bad things about this project. What can you tell me specifically about Bravo that was bad?

A. Not framing his houses correctly, not finishing his houses, not coming back and doing the punch list that I gave him, literally just not doing things. It was – he was always there to get paid and get the money, and he was just a really, really bad actor.

Q. Are we talking – when you say framing the houses incorrectly, you mentioned before like they might miss a window here and there. What else, if anything?

A. Oh, missing doors, putting doors in the wrong place, maybe a kitchen knee wall not level, maybe it's out of square, missing entire walls, maybe putting in too many walls. And then never coming back and fixing it.

(Waddell Depo. Trans. 164:3-21).

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4. Drywall cracking

Evidence of drywall cracking includes testimony from homeowners and Dr. Whitlock:

> Q. Okay.
>
> A. Drywall – they did drywall touch-ups, things like that, but our drywall has cracked again throughout the house.

(Dalton Depo. Trans. 47:7-10).

> Q. What are those issues?
>
> A. In some homes the foundations weren't adequately prepared, and those homes have settled such that there are large cracks that run through the – through the homes, through the garages, through the foundation walls and have caused cracks in drywall and in masonry.

(Whitlock (Expert) Depo. Trans. 90:1-7).

Further evidence of drywall cracking is documented in photos of homes in Rose Hill. *See, e.g,* (Photo of 8 Kettering Garage, Ex. G).

5. Improperly installed roofs (flashing only)

Evidence of improperly installed roofs includes missing roof-to-wall flashing such as that documented by Dr. Whitlock:

- Missing kickout flashing at roof-to-wall intersection evidenced by photos in Rhett Whitlock's stone veneer PowerPoint. (Pl. Ex. 24.12, WDP Adhered Stone Veneer Preliminary Findings and Code Violations).

6. Improperly installed vinyl siding

Evidence of improperly installed vinyl siding includes:

- "Buckled vinyl siding at interior corner of fireplace extension. Cause is not evident. *Responsibility: Vinyl siding installer and Fireplace installer. Recommendation: Further investigation to determine cause of the buckling.*" (Pl. Ex. 24.4, ABS August 28, 2020 Report p. 15);

- "One piece of vinyl siding at the ceiling level was partially displaced downward. *Responsibility: Vinyl siding installer. Recommendation: Reattach displaced siding.*" (Pl. Ex. 24.6, ABS October 9, 2020 Report p. 2);

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- "A portion of the vinyl siding on the right eft elevation exhibited an area of anomalous buckling. This condition was noted at the rear fireplace bump-out as well. DTF P145/177 *Responsibility: Siding Installer. Recommendation: Remove and replace damaged siding.*" (Pl. Ex. 127.30b, ABS February 28, 2023 Draft Summary Report p. 14);

- "A portion of the vinyl siding on the left elevation exhibited an area of anomalous buckling. This condition was noted at two (2) isolated locations on the rear elevation. DTF P539/47/70 *Responsibility: Siding Installer. Recommendation: Remove and replace damaged siding.*" *Id.* at 21.

7. <u>Plumbing or HVAC leaks</u>

HVAC related issues have been settled out of this case. However, Plaintiff is showing the existence of such evidence out of an abundance of caution in the event settlement is not approved by the Court. Evidence of plumbing or HVAC leaks includes:

- "2nd-story hallway HVAC register had water staining and ceiling Gypsum wall board tape joint damage. No evidence of moisture intrusion from roof leak. Attic observations revealed staining and corrosion in the HVAC pan and OSB floor decking. *Responsibility: HVAC installer. Recommendation: Check HVAC ductwork for leaks and repair as required. Repair, conceal, and repaint stained Gypsum wall board.*" (Pl. Ex. 24.6, ABS October 9, 2020 Report p. 6);

- Multiple homeowners testified to plumping or HVAC related leaks:

Q. All right. Same day. June 22, 2022, cut ceiling in kitchen in two areas and find out what's leaking. Found toilet leaking and replaced wax ring. Do you see that?

A. I do.

Q. Do you know anything more about the leaking from the bathroom other than what's stated here in this invoice?

A. I do not. This person that did this initial one said that the reason we had the leak in the second location – his assumption was where it was coming down from the toilet and it traveled the pipe over to the other side, and the way that the water just tilted and the pipes ran, it start leaking down from there. He thought it was all connected initially.

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Q. That was 5. Here's another one. This is maybe a week later. Were you still having the leak? Is that why they had to come back?

A. Yes. We called them back.

Q. So he fixes the toilet, he thinks everything is done and he leaves. A week goes by, you still have the leaking and you call him back out; is that right?

A. Correct.

Q. So they come back out on June 29th and find the hot water supply line for the bathtub was leaking due to improper installation. Damaged section cut out, replaced, no other leaks or issues found. And it looks like they didn't charge you anything for that; is that right?

A. They did not because the first time they came out, the issue was not fixed is my understanding.

(Robinson Depo. Trans. 72:8-73:16).

Q. All right. So this is Dartford – I'm sorry, 102 Dartford, 1 through 5. All right. So June 29th, 2018, it looks like you had some HVAC work done by Complete Heat and Air.

A. Yes.

Q. What happened?

A. Went to turn on the air-conditioner, and it wasn't cold, so I called them. They sent out a repair technician. He found that all the refrigerant had leaked out. He found that all the refrigerant had leaked out. He found a leak on the condenser coil outside. He said it couldn't be repaired, so they had to order a replacement coil, put it in, recharge the system, and –

Q. Why didn't you call Long?

A. So I basically use contractors that I have confidence in.

Q. Yeah.

A. And Complete Heating and Air came highly recommended to me so that's why I chose them.

(Watkins Depo. Trans. 102:21-103:8).

As shown above, there is evidence of every issue Horton listed in its Motion. Accordingly, these issues are a question of fact precluding summary judgment.

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CONCLUSION

Horton's motion for summary judgment should be denied. Plaintiff and the Class have satisfied their burden regarding their claims[13] because they have shown evidence that: (1) Horton's acts and omissions resulted in construction defects in violation of Horton's duties; (2) Horton breached the implied warranties they owed Plaintiff and the Class; and (3) the foregoing have caused Plaintiff and the Class damage.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

s/ Justin Lucey

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July 14, 2023
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[13] Jury charges relevant to several issues herein are attached as Ex. H and hereby incorporated by reference.

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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 MOTION TO ALTER OR AMEND ORDER DENYING MOTION FOR DECERTIFICATION**
D.R. HORTON, INC. Third-Party Plaintiff vs AJ LANDSCAPING & GRADING, LLC, A/K/A AJ LANDSCAPING & GRADING, LLC; ALLPRO TEXTURES, LLC; ALPHA OMEGA CONSTRUCTION GROUP, INC.; AMERICAN CONCRETE AND PRECAST, INC.; A/K/A ACP CONCRETE, INC.; A&J FRAMING, INC; ALPHA E.M.C.; A-Z, INC.; ATLANTA FLOOR DESIGNS CENTER; A GRADE ABOVE OTHERS, LLC; BRAND-VAUGHAN LUMBER CO, INC.; BKF BUILDERS, INC.;BUILDERS DESIGNHOUSE, LLC; BMC EAST LLC D/B/A COLEMAN FLOOR, LLC; BUILDERS FIRSTSOURCE SOUTHEAST GROUP, LLC, A/K/A BUILDERS FIRSTSOURCE, INC; BRAVO CARPENTERS, INC.; CARYL MECHANICS II, INC., A/K/A CARYL MECHANICALS, INC.; CANNADAY SIDING & GUTTER, INC.; CORTES PAINTING, LLC; CBU ENTERPRISES, INC.; CPI SECURITY SYSTEMS, INC.;	

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

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Third-Party Defendants

Defendant, D.R. Horton, Inc. ("D.R. Horton") moves pursuant to Rule 59(e), SCRCP, and the Court's inherent authority, for the Court to reconsider its Order Denying D.R. Horton's Motion for Decertification (the "Order") to address the following arguments raised by D.R. Horton that were not addressed in the Court's Order:[1]

1. On a motion for decertification, the Court must undertake a rigorous analysis of whether the challenged Rule 23 requirements for class action remain satisfied;
2. Maintaining this action as a class will strip D.R. Horton of its due process rights to present available defenses against absent class members;
3. Zitek's home is not common and typical of the absent class member because Zitek had a unique structural issue not identified an any other Rose Hill Home, it does not have several of the alleged brick and stone defects, it has no flooring issue, and the grading has been significantly modified since purchase in 2013;
4. Variations in construction conditions among the homeowners demonstrate that individual inquiries will be necessary to fully and fairly evaluate the alleged construction defects at each Rose Hill Home;
5. Whitlock's statistical sampling methodology for evaluating liability is defective and suffers from sample selection bias. Similarly, Whitlock's damages model is unreliable. Neither can be used to support class certification.

[1] D.R. Horton fully incorporates herein its Motion for Decertification and Memorandum in Support filed July 12, 2023, along with additional supporting documents filed July 18, 2023.

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I. INTRODUCTION

On January 27, 2021, the Court conditionally certified this class action for 234 homes in the Rose Hill subdivision in Easley, South Carolina, and the class is currently 221 homes (collectively, the "Rose Hill Homes," or the "Homes", or, individually, "Home"). Very little discovery had taken place at the time of the Court's initial grant of class certification. Extensive discovery has revealed that this matter is not appropriate for class-wide determination given the extensive variations among the individual Homes.

Discovery at Conditional Certification	Discovery Since Certification
- 3 Whitlock Affidavits - ~100 select photos of alleged defects - No depositions - No destructive testing by any defendant	- 8 days of Dr. Whitlock's deposition - 16 Expert Depositions - 8 D.R. Horton Employees - 19 Rule 30(b)(6) Depositions - Class representative & spouse depositions - 12 current homeowners, 1 former homeowner depositions - Thousands of pages of written discovery & documents exchanged - ~8 Days of Destructive Testing on ~30 Homes

Such wide-ranging allegations (thirteen categories of defects along with additional subcategories) necessitated extensive discovery and warrants full reconsideration of class certification granted more than two years ago when very little information was known about the extent of the alleged defects throughout the 221 Rose Hill Homes. D.R. Horton asks the Court to reconsider its Order and grant decertification.

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II. ARGUMENT

A. The Standard is the same for Class Certification and Decertification

The standard for evaluating class decertification is the same as the standard for evaluating class certification. When determining class certification, the Court must thoroughly analyze each of the Rule 23 prerequisites. "In deciding whether class certification is proper, the court must apply a *rigorous analysis* to determine each prerequisite is satisfied. Gardner v. S.C. Dep't of Revenue, 353 S.C. 1, 21, 577 S.E.2d 190, 200 (2003) (citing Waller v. Seabrook Island Property Owners Ass'n, 300 S.C. 465, 467, 388 S.E.2d 799, 801 (1990) (emphasis added). The party seeking class status bears the burden of proving that all five prerequisites are satisfied. Rule 23(a), SCRCP; Gardner, 353 S.C. at 20, 577 S.E.2d at 200 (citing Waller, 300 S.C. at 467, 388 S.E.2d at 801)). "The failure of the proponents to satisfy any one of the prerequisites is fatal to class certification." Gardner, 353 S.C. at 20-21, 577 S.E.2d at 200.

The standard is the same for decertification as for class certification. Brooks v. GAF Materials Corp., No. 8:11-cv-00983-JMC, 2012 WL 5195982, at *5-6 (D.S.C. Oct. 19, 2012) (denying plaintiff's argument that the court applied the wrong standard to decertify the class and stating that courts "consider the same standard for class decertification as they do for class certification"). Plaintiff cites a later Brooks court decertification decision (after the case had moved to another federal judge) for the proposition that a court should not modify its previous certification filing absent a significant intervening event or compelling reasons to do so. Brooks v. GAF Materials Corp., 301 F.R.D. 229, 230 (D.S.C. 2014). By the time of this decision in 2014, the Brooks court had considered at least three rounds of briefing on class certification, once decertifying the class because the definition was too indefinite and later certifying with a revised definition. Brooks v. GAF Materials Corp., 2013 WL 461468, at *6 (D.S.C. Feb. 6, 2013). Even

after multiple considerations of class certification, the Brooks court affirmed the principle that "the court has *an affirmative obligation* to reverse an order certifying a class 'if it becomes apparent, at any time during the pendency of the proceeding, that class treatment of the action is inappropriate.'" Brooks v. GAF Materials Corp., 301 F.R.D. 229, 230 (quoting Stott v. Haworth, 916 F.2d 134, 139 (4th Cir. 1990)) (emphasis added). The Brooks Court also affirmed that "[t]he standard is the same for class decertification as it is with class certification: a district court must be satisfied that the requirements of Fed. R. Civ. P. 23(a) and (b) are met to allow plaintiffs to maintain the action on a representative basis." Id. at 230 (citing Marlo v. United Parcel Serv., Inc., 639 F.3d 942, 947 (9th Cir. 2011)).

South Carolina appellate courts reviewing rulings on decertification motions routinely cite the same Rule 23 class certification standard and note that certification remains modifiable until a ruling on the merits. No South Carolina court has required any additional showing on decertification, such as that suggested by Plaintiff. Hensley v. S.C. Dep't of Soc. Servs., 429 S.C. 144, 154, 838 S.E.2d 510, 514 (2020) (ruling class certification not immediately appealable and observing that the lower court will eventually need to determine whether individualized inquiries are necessary which will determine whether the action can be maintained as class action); Pope v. Heritage Cmtys., Inc., 395 S.C. 404, 421-22, 717 S.E.2d 765, 774 (Ct. App. 2011) (reviewing the denial of motion to decertify using same standard as used for class certification, and citing Gardner); Smith v. Progressive Halycyon Ins. Co., No. 2015-UP-392, 2015 WL 4632794 (S.C. Ct. App. Aug. 5, 2015) (affirming lower court's decertification order and observing that the opinion "does not prevent the circuit court from revisiting the issue of class certification based on further developments in the case").

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The Order notes that another judge in this case granted class certification. The fact that Judge Maddox initially certified the class does not mean that a decertification ruling would run contrary to the rule that one circuit court judge may not overrule another. The South Carolina Supreme Court addressed this concern in Salmonsen and noted that because "class certification may be altered at any time prior to a decision on the merits," such a change in the class certification ruling would not run afoul of this principle. Salmonsen v. CDG, Inc., 377 S.C. 442, 454, 661 S.E.2d 81, 88 (2008); *see also* King v. Am. Gen. Fin., Inc., 386 S.C. 82, 687 S.E.2d 321 (2009) (observing without issue the class was certified and subsequently decertified by a different judge).

Assuming *arguendo* that a higher standard was required for decertification, the exponential amount of new information that the parties have gathered through discovery since initial class certification certainly qualifies as a significant and compelling reason to reconsider the original order when very limited discovery had been conducted. The Court did not have the same information before it in January 2021 to make a fully informed *and unalterable* decision on class certification.

In fact, our Supreme Court expects circuit courts to fully revisit class certification when it has become apparent that class treatment is, or may be, inappropriate. Hensley, 429 S.C. at 154, 838 S.E.2d at 514 (identifying numerous questions that will require the circuit court to revisit certification). Decertification is appropriate when it has become apparent that individualized inquiries of class members are necessary to resolve the issues in the case. Gardner v. S.C. Dept. Rev., 353 S.C. 1, 20-21, 577 S.E.2d 190, 200 (2003) (reversing class certification for lack of commonality where each class member would have to individually show prejudice to prevail under the statutory cause of action).

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Here, the Order does not adequately review the four challenged prerequisites to Rule 23 certification—commonality, typicality, adequacy of representation and numerosity—in light of the documentation submitted for review. The Order notes that "there are many variances between the homes in the subdivision" and that the "individual differences in the homes . . . are factual questions for trial." (Order). Yet, the Order does not explain how D.R. Horton will be able to present these factual differences to the jury when it has only been permitted to depose twelve homeowners (less than 10% of the absent class members) and many Homes have never had the destructive testing necessary to fully and fairly evaluate the existence of any alleged defects and damages and properly analyze causation. As such, D.R. Horton requests that the Court reconsider its Order using the same standard as for class certification and taking into consideration the significant evidence presented by D.R. Horton on these issues.

B. Continued Certification Implicates D.R. Horton's Due Process Rights

D.R. Horton has due process rights to (1) present every available defense to the numerous defective construction conditions alleged to exist at each individual Rose Hill Home; (2) present evidence on statute of limitations for each applicable homeowner, which requires individual testimony; (3) gather and present testimony on mitigation of damages; and (4) only pay such damages to those Rose Hill Homes that fully satisfy all of the required elements of proof, in particular causation and damages. In maintaining this as a class action and preventing individual discovery for each Rose Hill Home and homeowner, D.R. Horton is prevented from identifying and raising otherwise viable defenses and from challenging each element of proof for each individual home. As such, this leaves D.R. Horton susceptible to paying damages greater than its actual liability, which violates due process. McLaughlin v. Am. Tobacco Co., 522 F.3d 215, 231 (2d Cir. 2008) ("Roughly estimating the gross damages to the class as a whole and only

subsequently allowing for the processing of individual claims would inevitably alter defendants' substantive right to pay damages reflective of their actual liability.")

It is well established that "[d]ue process requires that there be an opportunity to present every available defense." Lindsey v. Normet, 405 U.S. 56, 66 (1972) (quoting American Surety Co. v. Baldwin, 287 U.S. 156, 168 (1932)). "[D]ue process requires that class actions not be used to diminish the substantive rights of any party to the litigation." Stonebridge Life Ins. Co. v. Pitts, 236 S.W.3d 201, 205 (Tex. 2007). "The opportunity to adequately and vigorously present material defenses lies at the very core of the adversarial process and the right to a fair trial, and may not be disregarded for reasons of convenience or economy." Id.

D.R. Horton's statute of limitations defense is fact-intensive and homeowner-specific. D.R. Horton will be able to raise this defense to Zitek's drainage complaints (Zitek noticed issue in 2013), but the class action trial structure will preclude D.R. Horton from fully raising this defense against the 220 absent homeowners. D.R. Horton presented the Court with testimony from numerous homeowners who noticed certain alleged conditions more than three years before Zitek filed suit, meaning that not every homeowner's claims are timely. Other homeowners testified that they purchased their home in Rose Hill knowing about certain alleged defects, such as drainage concerns. The only way for D.R. Horton to fairly develop its defenses is to question each individual homeowner about whether they have a defect on their particular house, when they first noticed the claimed defects, and what actions they took to preserve their claim. The Order does not address D.R. Horton's argument that class certification will preclude its ability to raise viable statute of limitation defenses.

The Order acknowledges "many variances between the homes" and "individual differences in the homes" but does not address how D.R. Horton's due process rights will be

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preserved when depositions were limited to twelve homeowners and those homeowners testified to extensive variations as to the alleged defects. D.R. Horton will lose its ability to test the veracity of the other 210 homeowners' claims without individualized discovery and the ability to explore whether in fact each home is defective as alleged, and whether claims were brought in a timely manner. Accordingly, D.R. Horton requests that the Court reconsider its Order to address D.R. Horton's due process rights.

C. The Court Did Not Address Zitek Home's Unique Structural Issue

The Zitek Home is different from every other Rose Hill Home because the brick veneer on the garage-side of the Home cracked due to a structural issue with the garage entrance. This type of structural issue presented soon after construction. D.R. Horton is aware of no other Rose Hill Home with a similar structural issue, and Plaintiff has not identified any. Additionally, the Zitek Home does not have brick-stone corner connection, it does not have stone adhered directly to brick over the garage, it has no issues where the stone adhered to sheathing, it has no flooring issue, there are no foundation cracks outside of normal tolerance, and the grading has been significantly modified since purchase in 2013.

The Order does not explain how the Zitek Home continues to satisfy commonality and typicality requirements for class certification when it suffered brick cracking related to a unique structural issue.

D. The Court Did Not Address Variations in Alleged Construction Defects

D.R. Horton presented testimony and photos showing that each alleged construction defect varied widely among the Homes. The Order does not address the issues raised by D.R. Horton in its motion.

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Brick Plaintiff alleges that all brick lintels were defectively installed and that all brick on every Rose Hill Home must be completely replaced. D.R. Horton presented testimony that (1) construction of the garage entrances varied between lintels and shelf angels and these two installation methods do not require the same installation method; (2) the scope of repair is individualized house-to-house; (3) testimony by Steve Moore and photos of ABS's destructive testing showing Homes with no brick lintel cracking or installation problems; and (4) testimony from ten homeowners, half of whom had never observed any cracking brick and the other half who identified potential cracking but in various locations. The Order does not address the testimony and photos presented by D.R. Horton and does not analyze how this issue remains appropriate for class certification in light of such disparate evidence.

Stone Plaintiff alleges that manufactured stone veneer was improperly installed on the Rose Hill Homes resulting in loose embedment, cracking, separation, and water intrusion and resulting damage. D.R. Horton presented testimony of Steve Moore and photos of ABS's destructive testing showing Homes with properly embedded stone that was not cracking, not separating, and not permitting water intrusion. D.R. Horton also explained that the Zitek Home does not suffered from an alleged stone-brick corner condition as other Homes do, and that there are no issues with the Zitek Home's stone that is installed over the sheathing rather than brick. Homeowners offered widely varying testimony on stone. Of the nine homeowners with some stone, four had never observed any issues with stone, one had a small two-inch piece of stone fall off, another had one loose stone under the front door, and the remaining had varying issues with their stone. The Order does not address how the Zitek Home is representative of the class and how commonality/typicality remains satisfied given this evidence.

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Plaintiff's complaints about the stone on her house are a mixture of design and installation. Plaintiff complains about the stone being installed all the way down to grade (potential design issue), stone adhered directly to brick (potential design), but also inadequate flashing (installation), missing weep screeds (installation), missing sealant joints (installation), and lack of proper embedment (installation). Where Plaintiff's stone complaints raise issues of installation, it would be prejudicial to D.R. Horton and the masonry defendants to eliminate the Defendants' ability to inspect and evaluate the installation of each of the approximately 115 homes at issue. The Order does not address how D.R. Horton will be able to protect its due process rights to contest defective stone on Homes that will not be part of a trial in this matter.

Windows Plaintiff alleges that every window in every Rose Hill Home is leaking and must be replaced. There are approximately 2600 windows at issue in the class that vary in sizes and models; there are single windows, double windows, and triple windows; and the windows are placed in brick veneer, stone, vinyl siding and cementitious siding; the windows are located on different exposures; and the homes were built over a period of five years, and windows were installed by different installers. Various causes for the alleged window leakage have been advanced by various parties, *i.e.*, manufacturing defects involving the window gaskets, improperly installed building wrap, fractured window frames, or deteriorated caulking. There is no uniformity of installation, consistence among the Homes as to the presence of leaking windows, or as to potential causes.

D.R. Horton presented testimony that: (1) ABS's destructive testing results found the vast majority of windows to be properly installed and taped, moisture levels in the acceptable range, and no evidence of water intrusion or stains; (2) ABS's spray testing and sill dam testing were within appropriate ratings and did not result in leaks in the tested windows, contradicting

Plaintiff's claim of uniform problems in all windows of all Rose Hill Homes; and (3) ABS identified varied levels of homeowner maintenance that can contributed to window issues. Homeowner depositions align with ABS's findings. Homeowners variously testified to no known issues with leaky windows, or knowledge of a single window with evidence of possible water intrusion. No homeowner has testified that every window in their house leaks and must be replaced. Homeowners also testified to varying levels of regular or periodic maintenance on their windows. Maintenance, or a lack thereof, can impact whether a window has water intrusion issues.

The Order does not address how commonality/typicality remain satisfied in light of these variations home-to-home. The Order does not address how D.R. Horton will be able to protect its due process rights to contest defective windows on Homes that will not be part of a trial in this matter.

Doors Plaintiff alleges that the rear patio doors of all 221 Rose Hill Homes were defectively designed, manufactured, or installed resulting in water leaks and damage; yet limited discovery revealed that a variety of conditions at the home were not uniform among the Homes. Some Homes no longer have the original doors that were installed at construction, some Homes have doors that are covered, and some homeowners have painted and maintained the rear patio doors while others have not. Some doors have evidence of water intrusion and deterioration, and others did not. Where there was observed door deterioration, the primary cause appeared to be lack of homeowner maintenance, but deterioration was also found to be the result of defective vinyl siding installation, missing corner pads, lack of weather stripping, or other issues. Homeowner depositions raised commonality/typicality issues: 4 out of the 13 homeowners deposed never experienced any water intrusion which Plaintiff alleges as part of the class

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certification; 4 out of the 13 homeowners deposed replaced their doors; 4 out of 13 homeowners deposed performed some maintenance on their patio doors; and 5 out of the 13 homeowners deposed have covered patio doors.

The Order does not address how commonality/typicality remain satisfied in light of these variations home-to-home. The Order does not address how D.R. Horton will be able to protect its due process rights to contest defective doors on Homes that will not be part of a trial in this matter.

Grading/Drainage Plaintiff alleges that the Rose Hill lots were insufficiently or improperly graded causing drainage resulting in water damage, ponding, unevenness, and landscaping difficulties. The investigation and discovery to date has found no relevant similarities between yards. Instead, the investigation and discovery has revealed that all yards have significant differences which make it impossible to uniformly describe the construction error, its extent, and any damages. Further, the investigation and discovery reveals that most yards, including and especially the Zitek yard, have been significantly altered since the original sale of the home such that (1) it is impossible to tell the condition of the lot when it was sold; (2) the necessity of a repair; (3) the scope of the repair, if any; and (4) the cost of the repair.

The Ziteks noticed the alleged drainage issues when they purchased their home in 2013, raising potential statute of limitations defenses. Additionally, the Ziteks significantly modified the Home's original drainage design in 2020, during the pendency of this litigation, when they regraded the majority of their backyard to install a large pool, deck, and significant landscaping. Other homeowners similarly modified their original drainage. Nearly every homeowner who was deposed had made modifications to their yards which may have impacted the grade of their properties and the ability to drain water. As demonstrated by D.R. Horton's summary of

homeowner testimony, there was no consistency in alleged water drainage complaints among the homeowners.

The Order does not analyze how, given the significant changes to Plaintiff's home, and the wide variations in improvements and alleged defects in drainage among the absent class members, Zitek can continue to establish commonality and typicality with the absent class members as to the alleged grading and drainage defects. Moreover, the Order does not address how D.R. Horton will be able to protect its due process rights to contest defective grading/drainage on Homes that will not be part of a trial in this matter.

Framing/Foundation Plaintiff alleges that the second-story floors have squeaks due to improper installation of framing. Plaintiff also alleges that the slabs are incorrect due to improper installation resulting in damage to the interior first-floor flooring. Plaintiff has labeled these alleged framing and foundation defects as "flooring defects" in an attempt to establish commonality. As D.R. Horton explained in its memorandum in support of decertification, these alleged construction defects were not part of class certification because Zitek was not aware of any "flooring issues" when she filed this class action and only became aware of potential issues when she read the November 9, 2022, flooring report by Dr. Whitlock. Therefore, the "flooring issues" could not have been certified by the Court in its Conditional Class Action Certification Order. The Zitek Home is also not representative of the absent class member because D.R. Horton replaced Zitek's wood floors twice, once related to a water leak, and a second time due to improper staining of the replacement wood-laminate board.

D.R. Horton challenged the numerosity of this alleged defect. Plaintiff's expert Whitlock only observed 15 residences to evaluate the alleged flooring defect. These inspections took place without the attendance or knowledge of opposing parties and in Homes chosen by Plaintiff's

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counsel that did not include the Zitek Home. Whitlock could not testify that the Zitek Home has flooring issues.

D.R. Horton's expert ABS investigated the framing issue and did not identify any common issues in the carpet, vinyl, linoleum, or hardwood floors in the Homes inspected. Steve Moore testified that truss lift, while it can cause squeaking, would result in cracked walls or cracks in the gypsum drywall, which has not been present in any Rose Hill Home observed by ABS. Additionally, this problem would only effect individuals who have a second-story floor and therefore could not even be applicable to all Homes within the Rose Hill Subdivision. Many of the homeowners testified that their floors do not squeaks. Where a homeowner identified squeaking, the locations varied widely.

Plaintiff alleges that the slabs were improperly installed such that the concrete slab is not completely level and continuous which has resulted in dips and rises in the first-floor flooring applied to the concrete for Rose Hill Homes. However, Whitlock's conclusions regarding any humps, dips, or cracking is based solely on the exterior or interior observations, Whitlock did not remove any of the flooring to observe if there was a crack in the foundation or slab and he did not perform any soil testing at Rose Hill.

Of the more than one hundred slabs that were visually inspected by ABS, ABS only found potentially one concrete slab with cracking or displacement in excess of performance standards. Otherwise, all other slabs or foundations were within the performance standard and there is no evidence provided of such deviations. Homeowner testimony was not uniform on this issue. Some testified to no cracks, and others to varying locations of potential cracks. The same is true of noticeable "squeaky" on the second floor. Homeowner testimony varied widely regarding the existence of squeaking floors, when, and where it was identified.

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The Order does not address how commonality/typicality and numerosity remain satisfied in light of Zitek's lack of flooring issues, the variations home-to-home, and the minimal evidence of flooring and foundation issues. The Order also does not address how D.R. Horton will be able to protect its due process rights to contest defective flooring/foundation on Homes that will not be part of a trial in this matter.

E. Plaintiff's Sampling Methodology and Sample Selection Bias Do Not Support Class Certification

D.R. Horton argued that Whitlock's sample selection process was biased and therefore his conclusions could not be relied on to support class certification. Courts have found that extrapolating liability and damages from a sample set to an entire class can be problematic where the sample size is too small, the sample is not randomly selected, and where the margin of error is too high. These errors all occurred in Whitlock's analysis, as highlighted by D.R. Horton's motion for decertification and supporting submissions.

In Duran v. U.S. Bank National Association, the California Supreme Court reviewed a class action asserting damages for employee misclassification and uncompensated overtime pay. Duran v. U.S. Bank National Assn., 325 P.3d 916 (Cal. 2014). One question before the court was whether the trial court properly admitted trial testimony that based on a sample set of 21 plaintiffs' work habits the entire class of 260 people had been misclassified. The defendant was not permitted to introduce the work habits of any plaintiff outside of the sample. This sample set was then also used to extrapolate damages to the entire class. Duran, 325 P.3d at 920. The court recognized that whether statistical sampling can even be used to prove a defendant's liability to absent class members is widely contested. Id. at 938. If such sampling is used, the court observed that the statistical method must accommodate individualized defenses:

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> If a defense depends upon questions individual to each class member, the statistical model must be designed to accommodate these case-specific deviations. If statistical methods are ultimately incompatible with the nature of the plaintiffs' claims or the defendant's defenses, resort to statistical proof may not be appropriate. Procedural innovation must conform to the substantive rights of the parties.

Id. at 939. Ultimately, the California Supreme Court determined that the sample size was too small, the sample was not random, and the margin of error was unacceptably high. Id. at 940-945. The court made the following observations about sampling and sampling bias:

> A sample must be randomly selected for its results to be fairly extrapolated to the entire class. . . . . 'A 'random sample' is one in which each member of the population has an equal probability of being selected for inclusion in the sample.'" (Saks & Blanck, *supra*, 44 Stan. L.Rev. at p. 821, fn. 48.).
> . . .
> Selection bias occurs when members of the population are chosen based on a nonrandom criterion or are selectively included or excluded from the sample group.
> . . .
> A sample that includes even a small number of interested parties can produce biased results. The impact of this error is magnified when the biased results are extrapolated to the entire population. *Selection bias cannot be cured simply by increasing the size of the sample. "When a selection procedure is biased, taking a large sample does not help.* This just repeats the basic mistake on a larger scale." (Freedman et al., Statistics (4th ed. 2007) p. 335 (hereafter Freedman).)

Id. at 941 (emphasis added). The Duran court concluded that the sample was biased and not random because it included those chosen by class counsel and the named plaintiffs. Id. at 942. ("[T]the court decided to base its extrapolation not just on those drawn randomly, but also on testimony from the two named plaintiffs, Duran and Fitzsimmons. These plaintiffs were selected, not randomly, but by class counsel . . . The trial court, too, acknowledged that data derived from the named plaintiffs' testimony would not normally be included in a statistical analysis of a random sample[.]").

The Duran court also concluded that the margin of error was unacceptably high. "'Margin of error' is a statistical measurement of the reliability of an estimate produced by sampling. It

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reflects the amount by which the estimate may be wrong given a certain confidence interval." Id. at 943. The margin of error was 43.3 percent, meaning "that a judgment based on the estimate could reflect an amount nearly double the true extent of USB's liability." Id. The court cited another California case for the proposition that a margin of error of 32 percent was so large that the damages award violated due process. Id.

Ultimately, Duran concluded that:

> While class certification can be a useful tool for deciding common questions, we have repeatedly explained that remaining individual issues must be fairly managed. In some cases, statistical methods may offer a reasonable and appropriate way to do so. However, *reliance on statistical proof cannot be used to bar the presentation of valid defenses to either liability or damages, even if the alternative would require adjudication of a defense on an individual level*.

Id. at 945 (emphasis added).

D.R. Horton argued that Whitlock's analysis is flawed because Plaintiff provided Whitlock with a list of homes to inspect, and these homes had known issues or complaints. Whitlock's sample was not randomly selected; therefore, Whitlock's inferences and conclusions about the population of Rose Hill Homes lack statistical confidence and are invalid. D.R. Horton also presented information that Whitlock's damages calculation is flawed because the margin of error was extremely high, and it does not reliably account for the variations among the Rose Hill Homes as to the existence of a defect, the cause of the defect, the scope of repair, or damages. Whitlock's damages model is highly speculative and arbitrary and should not be the basis for class certification.

Plaintiff overstates the extent and depth of testing and inspections that have been completed. Whitlock performed destructive testing on approximately 34 Homes handpicked by Plaintiff, and contrary to typical protocol, he did not invite D.R. Horton to observe. Whitlock has no notes from these inspections, only performed a handful of water tests on the windows, and

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can only testify to the results from photographs and memory. D.R. Horton's expert ABS performed destructive testing on approximately 30 Homes, which Plaintiff attended. ABS's results varied widely from Whitlock's reported findings. The rest of inspections have been visual only, which does not provide the information necessary to fully evaluate alleged defects and causation. Combined, these results are insufficient to make statistically significant inferences on liability and damages on a class-wide basis. Given such variability, the class action approach is inappropriate.

The Order does not address D.R .Horton's arguments on these statistical issues.

IV. CONCLUSION

For the reasons set forth above, D.R. Horton requests the Court reconsider its Order denying decertification.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/Jason M. Imhoff

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July 28, 2023
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

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

Plaintiff,

v.

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

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

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

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

JLS MASONRY, INC.'S NOTICE OF MOTION AND RULE 59(e) MOTION TO RECONSIDER AND/OR TO ALTER OR AMEND THE ORDER DENYING JLS MASONRY'S MOTION FOR SUMMARY JUDGMENT

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

Third-Party Defendants.

PLEASE TAKE NOTICE that JLS Masonry, Inc. ("JLS"), by and through its undersigned counsel, moves pursuant to Rule 59(e), SCRCP, for this Court to reconsider and/or Alter or Amend its Order denying JLS' motion for summary judgment filed July 28, 2023.

STANDARD

Rule 59(e), SCRCP, provides that "[a] motion to alter or amend the judgment shall be served no later than 10 days after receipt of written notice of the entry of the order." A Rule 59(e), SCRCP, motion is appropriate where a party believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party desires for the court to

reconsider its ruling or rule on the issue. See *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004).

ARGUMENT

I. DR Horton failed to provide evidence for its damages related to breach of contract, negligence, express warranty, and implied warranty causes of action, and JLS is entitled to partial summary judgment as to these causes of action.

In *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp., LLC*, 413 S.C. 615, 639, 776 S.E.2d 426, 439 (Ct. App. 2015), the Court of Appeals held a contractor cannot sue its subcontractor for a cause of action that is merely a disguised indemnification claim. This Court must examine whether DR Horton's claims hinged on its liability to Plaintiff *and* whether DR Horton could demonstrate damages other than its potential liability to Plaintiff or costs associated with defending itself in the litigation. *Id.* at 635–36, 776 S.E.2d at 437–38; *see also Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Constr., LLC*, 413 S.C. 615, 624, 776 S.E.2d 426, 431 (Ct. App. 2015) (dismissing a negligence claim as a disguised indemnity claim).

DR Horton failed to show that its claims hinged on anything other than its liability to Plaintiff, and also failed to provide any evidence that it has suffered damages outside of its liability to Plaintiff or costs associated with defending itself in this litigation. For example, DR Horton failed to provide any evidence of the "reputational damage" it claims it suffered. JLS believes it is entitled to reconsideration of its motion for summary judgment as to DR Horton's claims for breach of contract, negligence, and breach of express or implied warranties, leaving only equitable and contractual indemnity claims.[1]

[1] Furthermore, this Court has issued at least one Order finding that there was no evidence to support the negligence, express warranty, and implied warranty causes of action, collapsing DR Horton's claims into Indemnity. *See* July 26, 2023, Order Granting Installed Building Products' motion for summary judgment.

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II. JLS is entitled to partial summary judgment as to DR Horton's claim for contractual indemnity.

Pursuant to *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018), indemnity provisions in contracts purporting to indemnify the indemnitee for its sole or concurrent negligence *must be clear and unequivocal*. The language contained in DR Horton's contract with JLS ("the Contract") is not clear and unequivocal.[2] *See id.* The indemnity provision takes two completely incompatible positions: JLS must indemnify DR Horton against *any and all claims of every kind or character in any way occurring, arising out of, or in connection with* any negligent or intentional act of DR Horton related to the work at Rose Hill; and the second is that JLS shall not indemnify DR Horton relating to its sole negligence. Furthermore, the extent that concurrent negligence must be indemnified is totally unclear. *See id.* Therefore, JLS believes it is entitled to reconsideration of its motion for summary judgment as to DR Horton's claims for breach of contract, negligence, and breach of express or implied warranties, leaving only equitable and contractual indemnity claims.[3]

III. JLS is entitled to partial summary judgment as to DR Horton's claim for equitable indemnity.

The doctrine of unclean hands bars a party from recovering in equity if they acted unfairly in the matter that is the subject of litigation. *Inglese v. Beal*, 403 S.C. 290, 742 S.E.2d 687 (Ct. App. 2013). DR Horton does not have clean hands and is at least partially at fault for causing the damage. *See Fountain v. Fred's, Inc.,* 436 S.C. 40, 47–48, 871 S.E.2d 166, 170 (2022) (setting forth the requirements to recover under equitable indemnity).

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[2] The full contractual indemnity language at issue is set forth in the Contract, attached as an exhibit to JLS' memorandum in support of its motion for summary judgment, at ¶¶ 10.1-10.2 and ¶ 6.4.

[3] Furthermore, this Court has issued at least one Order finding that the contractual indemnity language was not clear and unequivocal. *See* July 26, 2023, Order Granting Installed Building Products' motion for summary judgment.

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CONCLUSION

Therefore, JLS respectfully requests this Honorable Court issue an Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Altering or Amending its prior decision and enter an Order granting JLS's motion for summary judgment, dismissing D.R. Horton's claims against JLS as a matter of law. In support of this Motion, JLS intends to rely upon prior and current pleadings, its Motion for Summary Judgment filed with the Court on May 1, 2023, its Memorandum in Support of Summary Judgment, all exhibits filed with the Court, any additional memorandum of law, and all other materials before the Court for consideration in accordance with the South Carolina Rules of Civil Procedure. JLS joins in the arguments and Motions of others that may be forthcoming and are not inconsistent with JLS' arguments and Motion.

Respectfully submitted,

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August 7, 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., 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 SUPPLEMENTAL MEMORANDUM SUPPORTING BIFURCATION AND OPPOSING HORTON'S TRIAL PLAN**
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 Plaintiff, v. Toribio Islas and Alejandro Soto, Fifth-Party Defendants.	)	

Plaintiff submits this Supplemental Memorandum Supporting partial or full Bifurcation and Opposing Defendants' D.R. Horton, Inc. ("Horton") Motion for Entry of a Trial Plan Order.

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DISCUSSION

This Court heard **many** parties asking the Court to bifurcate this case into either phases or separate trials during the July Motion hearings. The only party opposing some form of bifurcation was and is D.R. Horton. An extract of the July hearing transcript containing these comments, and statements by the undersigned in response to the Court's inquiry, is attached as Exhibit "A". [1] Plaintiff continues to support full or partial bifurcation pursuant to Plaintiff's original 2021 Motion, but alternatively, Plaintiff supports her proposed, "phased" trial plan (as amended in the attached)[2], which is more workable, efficient, and practical than Horton's non-phased trial plan for the reasons previously explained in Plaintiff's Supplemental Memorandum Supporting Trial Plan and at the July Motion hearings.[3]

These reasons include the ever-growing complications in Horton's case against its subcontractors since many of these have now settled. In addition to the settled parties listed in the mediator's report, Plaintiff is informed that Horton has settled with all flooring defendants. Having settled with more than half of their subcontractors, Horton will have to piecemeal Plaintiff's verdict into separate allocations for the parties left in the case in its effort to prove its claims against the remaining Third-Party Defendants. Additionally, Horton must try a different case against its subcontractors on its indemnity claims which will require an entirely separate proof of damages

[1] Since this time, three Defendants submitted proposed trial plans: Horton, Peris and Harrelson Painting. Peris and Harrelson Painting also request a "phased" trial, leaving only Horton who is asking for the opposite. Except for the phased modification, the Peris and Harrelson are verbatim copies of the Horton plan.

[2] Plaintiff's amended trial plan, tweaked slightly to address minor criticisms is attached as Exhibit "B" (redlined) and Exhibit "C" (clean version). Plaintiff's original trial plan is attached as Exhibit "D".

[3] Plaintiff incorporates her Supplemental Memorandum herein by reference.

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and allocation. The Court can streamline the process by phasing and/or bifurcating this trial as recommended by most parties.

Plaintiff also opposes specific requests made by Horton in its Trial Plan including:[4]

Jury Strikes. It will be impossible to strike a jury if all parties remain in this case and each gets four jury strikes as Horton proposes. This would be 400 jury strikes! Plaintiff's proposed plan avoids this dilemma while also balancing the parties' position, by allocating defense strikes, as is the practice in this jurisdiction. Note, it is Horton's opposition to bifurcation which causes this to even be an issue.

Subclasses. There is no need for two subclasses. The reason there were two subclasses at the time of certification was in case Horton appealed this Court's arbitration denial as to original owners, so that the downstream owners could continue to prosecute their case during the appeal. Horton did not appeal this ruling and the subsequent purchaser subclass became moot as a result. The Class definition remains the same – all owners who own a home built by Horton in Rose Hill– and it should be tried as such.[5] This is a tactic by Horton to try to force Plaintiff to parse damages and defects immediately prior to trial that this Court should reject.

Class Definition and Procedures. Plaintiff does not object to the Court offering the jury a general explanation of what a class action is and what this action entails during *Voir Dire*. Plaintiff does object to providing any detailed "procedure" descriptions about certification or commonality, typicality, adequacy, or the like as monitoring the procedure is a Court function – not a jury function.

[4] Plaintiff's proposed trial plan was the first submitted, and for a long time, was the only one submitted. The Court should take these late knockoff submittals with a grain of salt.
[5] This Court also has the inherent power to realign or eliminate subclasses as it sees fits should it believe there is a need to do so prior to trial. Rule 23, S.C.R.C.P.

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Plaintiff's Claims. Horton's trial plan misstates Plaintiff's claims, which also include breach of the implied warranty of habitability. This was affirmed by the Court's denial of Horton's Summary Judgment Motion in its entirety.

Horton's Dates v. Plaintiff's Dates.[6] Several of Horton's dates are clearly intended to benefit Horton to the disadvantage of Plaintiff and the Class. For example, Horton wants Plaintiff to submit her Exhibit List to Horton on Friday, August 18, 2023; yet, Horton does not have to reciprocate until Friday, August 25, 2023 – two days before Horton's proposed Exhibit Conference deadline of Monday, August 28, 2023. It is highly doubtful the parties will be able to discuss and attempt to work out any conflicts over a two-day weekend, especially if Plaintiff does not get Horton's Exhibit List until COB on Friday. It makes more sense for all parties to exchange their initial exhibits on the same date as Plaintiff proposes.

Horton also wants Plaintiff to submit all her deposition publication designations by August 18, 2023; yet, Horton does not have to reciprocate until Friday September 1, 2023, forcing Plaintiff again to work on yet another item over the Holiday weekend immediately preceding trial. Horton should have its counter-designations to Plaintiff within seventy-two hours for pretrial publications or within twenty-four hours for designations which occur during trial, so that Plaintiff can timely redesignate, consolidate, or consult.

Horton also wants to wait to elect whether it will bifurcate punitive damages until September 1, 2023. Horton's election will influence what evidence can or cannot be entered. Horton should not be allowed to elect bifurcation on the eve of trial such that Plaintiff will have to

[6] Plaintiff agrees to a Motion and Pre-Trial deadline of August 29, 2023, as well as the Pre-Trial hearing date of September 1, 2023 which this Court already set.

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adjust witnesses, exhibits, etc. last minute. Horton should be required to make its bifurcation election by August 22, 2023 as proposed by Plaintiff. or, alternatively, August 29, 2023.

Next, Horton proposes an August 28, 2023 Witness List Exchange. This is not optimal or necessary, as the parties have been working off of disclosed witness lists for three years. The parties should exchange Witness Lists on August 18, 2023 as proposed by Plaintiff, or a compromise date in between.

Horton proposes that Plaintiff have six days to present their witnesses while Horton and the remainder will have thirteen. While its progress that Horton consents to an allocated time approach, Horton's proposal is unworkable. Neither party's allocated time should be affected be by a lengthy cross-examination by others; therefore, each party's witness time should be tracked by hours, not days, and the time allocation must be a total witness time allocation which includes the direct examination of that party's witnesses and the cross-examination of the opposing party's witnesses.[7]

Lastly, Horton's plan does not address verdict forms which Plaintiff proposes be submitted by August 23, 2023.

Jury View. This Court has already stated that it was holding its jury view decision in abeyance pending progress of trial, time constraints, and the complexity/difficulty that a jury view presents in this case involving latent defects and absent class members. There is no need for a jury view format to be submitted by August 28, 2023. Plus, there are many considerations that make

[7] If, for example, Horton's Counsel were to spend the same five days crossing Plaintiff's expert that Counsel spent taking his deposition then Plaintiff could not call another witness under Horton's plan. Plaintiff's proposed plan, on the other hand, provides both parties with hours of testimony that they can elicit, either on direct or cross, regardless of the "day" that testimony may occur on. This is a much more manageable and judicious method for planning witness presentations.

the jury view ruling premature at this juncture. For example, should there be a directed verdict in Plaintiff's favor, the need for a jury view might dissipate? Considerations such as this further support the Court's pre-existing decision to rule on jury view later in the trial. And regardless, Horton's proposal that a jury view take place after closing arguments is simply ludicrous and a violation of procedural and evidentiary rules.

CONCLUSION

This Court should bifurcate in whole or in part; and in the later event, enter Plaintiff's proposed, phased trial plan (as amended, redlined and clean version attached hereto) and continue to hold its jury site visit decision in abeyance pending the developments at trial.

Respectfully submitted,

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s/ Dabny Lynn

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Attorneys for Plaintiff and the Class

August 11, 2023
Mount Pleasant, South Carolina

ELECTRONICALLY FILED - 2023 Aug 11 1:35 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

ELECTRONICALLY FILED - 2023 Sep 14 8:44 AM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

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

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

Plaintiffs,

v.

D.R. Horton, Inc.,

Defendant.

D.R. Horton, Inc.,

Third Party Plaintiff,

v.

JLS Masonry, Inc.; MJ Cowboys; M&L Reyna Construction, LLC; et. al.

Third Party Defendants.

JLS Masonry, Inc..

Fourth Party Plaintiff,

v.

Jesus Jimenez; and Jesus Robles Montes a/k/a Robles Construction,

Fourth Party Defendants.

JLS MASONRY INC.'S MOTION FOR DIRECTED VERDICT

ELECTRONICALLY FILED - 2023 Sep 14 8:44 AM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

MJ Cowboys, LLC, Fourth Party Plaintiff, v. Jesus Jimenez; and Jesus Robles Montes a/k/a Robles Construction, Fourth Party Defendants.
M&L Reyna Construction, LLC, Fourth Party Plaintiff, v. Jesus Jimenez; and Jesus Robles Montes a/k/a Robles Construction, Fourth Party Defendants.

NOW COMES JLS Masonry, Inc (hereinafter "JLS"), by and through its undersigned counsel, pursuant to Rule 50, SCRCP, and moves this Court for a Directed Verdict in its favor on the basis the Statute of Limitations, the Statute of Repose, and the issue of Indemnification.

This Motion is based on the testimony at trial, the arguments of counsel, and is supported by a Memorandum of Law, filed contemporaneously with this Motion.

This the 14th of September, 2023.

MARTINEAU KING PLLC

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

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

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

Plaintiffs,

v.

D.R. Horton, Inc.,

Defendant.

D.R. Horton, Inc.,

Third Party Plaintiff,

v.

JLS Masonry, Inc.; MJ Cowboys; M&L Reyna Construction, LLC; et. al.

Third Party Defendants.

JLS Masonry, Inc..

Fourth Party Plaintiff,

v.

Jesus Jimenez; and Jesus Robles Montes a/k/a Robles Construction,

Fourth Party Defendants.

MJ COWBOYS, LLC'S
MOTION FOR DIRECTED VERDICT

ELECTRONICALLY FILED - 2023 Sep 14 8:48 AM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

MJ Cowboys, LLC, Fourth Party Plaintiff, v. Jesus Jimenez; and Jesus Robles Montes a/k/a Robles Construction, Fourth Party Defendants.
M&L Reyna Construction, LLC, Fourth Party Plaintiff, v. Jesus Jimenez; and Jesus Robles Montes a/k/a Robles Construction, Fourth Party Defendants.

NOW COMES MJ COWBOYS, LLC (hereinafter "MJ"), by and through its undersigned counsel, pursuant to Rule 50, SCRCP, and moves this Court for a Directed Verdict in its favor on the basis the Statute of Limitations, the Statute of Repose, and the issue of Indemnification.

This Motion is based on the testimony at trial, the arguments of counsel, and is supported by a Memorandum of Law, filed contemporaneously with this Motion.

This the 14th of September, 2023.

MARTINEAU KING PLLC

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

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

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

Plaintiffs,

v.

D.R. Horton, Inc.,

Defendant.

D.R. Horton, Inc.,

Third Party Plaintiff,

v.

JLS Masonry, Inc.; MJ Cowboys; M&L Reyna Construction, LLC; et. al.

Third Party Defendants.

JLS Masonry, Inc..

Fourth Party Plaintiff,

v.

Jesus Jimenez; and Jesus Robles Montes a/k/a Robles Construction,

Fourth Party Defendants.

JLS MASONRY INC.'S AND MJ COWBOYS, LLC'S MEMORANDUM IN SUPPORT OF THEIR MOTIONS FOR DIRECTED VERDICT

ELECTRONICALLY FILED - 2023 Sep 14 8:53 AM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

MJ Cowboys, LLC, Fourth Party Plaintiff, v. Jesus Jimenez; and Jesus Robles Montes a/k/a Robles Construction, Fourth Party Defendants.
M&L Reyna Construction, LLC, Fourth Party Plaintiff, v. Jesus Jimenez; and Jesus Robles Montes a/k/a Robles Construction, Fourth Party Defendants.

NOW COMES JLS Masonry, Inc (hereinafter "JLS"), and MJ Cowboys, LLC (hereinafter "MJ") pursuant to Rule 50, SCRCP, and submit this Memorandum in Support of their respective Motions for Directed Verdict, and states:

I. INTRODUCTION

JLS performed masonry construction services for D.R. Horton, in the construction of residential buildings in the Rose Hill subdivision, from 2011 until 2014. MJ performed identical masonry work from 2014 until early 2016 D.R. Horton was aware of potential alleged issues with the brick veneer masonry construction in January 2018. D.R. Horton was aware of potential alleged issues with the stone veneer masonry construction as early as March 11, 2016.

The lawsuit against D.R. Horton in this action was filed on September 25, 2019. D.R. Horton filed its third party complaint against JLS on March 11, 2021, but did not serve JLS within

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120 days as is required by S.C. R. Civ. P. 3(a)(2). As such, the statutes of limitation and repose do not relate back to the date of filing, but to the date of service, or in the absence of service, on the date that JLS answered. JLS was never properly served, but did file and serve an answer to D.R. Horton's third party complaint on March 9, 2022. Therefore, JLS moves for directed verdict against Defendant/Third-Party Plaintiff D.R. Horton, Inc. ("DRH") on two bases:

1. That DRH's claims against JLS for issues on any house, related to manufactured stone veneer installation are barred by the Statute of Limitation, and that DRH's claims against JLS for issues relating to the installation of brick veneer are barred by the Statute of Limitations; and

2. That DRH's claims against JLS for any houses that were substantially completed before March 9, 2014 are barred by the Statute of Repose;

MJ moves for directed verdict against Defendant/Third-Party Plaintiff D.R. Horton, Inc. ("DRH") on the basis of the Statute of Limitations alone.

II. RELEVANT FACTS

JLS and MJ are masonry contractors. JLS and MJ were hired by DRH to perform the following construction tasks at the Rose Hill subdivision:

1. Brick Installation Labor;

2. Manufactured Stone Veneer (hereinafter "MSV") Installation Labor and Supply of Materials;
3. Concrete Monolithic Slab Foundation Installation; and

4. Concrete Flatwork Installation.

JLS performed its work from 2011 to 2014 and performed one or more of the above tasks on roughly 114 houses. The first house that JLS worked on at Rose Hill, specifically 101 Sturbridge Court, was substantially completed on November 18, 2011. The date of substantial completion for the most recently completed JLS house at Rose Hill, specifically 6 Duxbury Lane

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was July 31, 2014. Every single one of the remaining 112 homes upon which JLS performed work were substantially completed between November 18, 2011 and July 31, 2014.

MJ worked on roughly 81 houses. The first MJ house was substantially completed on April 2, 2014 (5 Kettering Court) and the last was substantially completed on April 21, 2016 (111 Dartford Court).

As mentioned above, Plaintiffs complaint was filed on September 25, 2019. DRH's third party complaint against JLS was filed on March 11, 2021. However, DRH did not serve JLS within one hundred twenty days of the filing of the third party complaint, and in fact, did not serve JLS at all. JLS voluntarily filed an answer on March 9, 2022. Because D.R. Horton did not serve its third party complaint within the statute of limitations or within one hundred twenty days of the filing of the third party complaint, the filing of the third party complaint did not toll the statute of limitations as of the filing date of March 11, 2021. The effective date of service of DRH's third party complaint was March 9, 2022.

III. LEGAL STANDARD

Upon a motion for directed verdict, a trial court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 28, 602 S.E.2d 772, 782 (2004). Motions for directed verdict or JNOV should be denied if the evidence yields more than one reasonable inference or its inference is in doubt. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994).

IV. ARGUMENT

1. THE EVIDENCE IN THIS CASE LEADS TO ONLY ONE INFERENCE: THAT D.R. HORTON'S CLAIMS AGAINST JLS AND MJ WERE FILED AND SERVED OUTSIDE OF THE THREE YEAR STATUTE OF LIMITATIONS, AND ARE THEREFORE BARRED.

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DRH effectively served JLS with its third party complaint in this matter on March 9, 2022. DRH knew, or should have known that problems may have existed with the brick veneer installed by JLS and MJ in January 2018, when DRH performed repairs on class representative Natalie Zitek's house located at 104 Sturbridge Court, Easley, SC. When DRH performed those repairs, it removed all of the brick veneer on the left side of the house, and it evaluated the condition of the brick veneer cladding, and all of its components. Similarly, DRH knew or should have known that problems may have existed with the manufactured stone veneer installation on houses in Rose Hill after Mauricio Reyna wrote and sent a letter to the homeowner of 14 Harwick Court, Connor Shivers, on March 11, 2016. This letter informed Mr. Shivers that no weeps were installed in his house's manufactured stone veneer cladding, and that this was reflective of the construction practices at every house in Rose Hill.

Pursuant to S.C. Code § 15-3-20(A), civil actions may only be commenced within the periods prescribed [in Title 15 of the S.C. Code] after the cause of action has accrued . . . S.C. Code § 15-3-20(B) states that a civil actions is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing. S.C. Code § 15-3-530 establishes the limitations period applicable to all of DRH's claims against JLS. Specifically, it states that an action upon a contract, or liability, express or implied, must be brought within three (3) years. *S.C. Code § 15-3-530(1).*

"Generally, a cause of action accrues under South Carolina law 'the moment the defendant breaches a duty owed to the plaintiff.'" *Barr v. City of Rock Hill*, 330 S.C. 640, 644, 500 S.E.2d 157, 159-60 (Ct. App. 1998) (quoting *Grooms v. Medical Soc'y of S.C.*, 298 S.C. 399, 402, 380 S.E.2d 855, 857 (Ct. App. 1989)). However, the "discovery rule," as discussed in *Stokes-Craven*

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Holding Corp. v. Robinson, 416 S.C. 517, 787 S.E.2d 485 (2016), may toll the accrual of the statute of limitations:

> Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. This standard as to when the limitations period begins to run is objective rather than subjective. Therefore, the statutory period of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.

Id. at 525-26, 787 S.E.2d at 489-90 (citations and quotations omitted); see also S.C. Code Ann. § 15-3-535 (2005) ("[A]ll actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action."). The South Carolina Supreme Court has "interpreted the 'exercise of reasonable diligence' to mean that the injured party must act with some promptness" when on notice of a potential claim. *Dean v. Ruscon Corp.*, 321 S.C. 360, 363-64, 468 S.E.2d 645, 647 (1996).

In this case, DRH was made aware that possible issues existed with the brick in 2018 when it attempted repairs to the class representative's house. As such, pursuant to the case law cited above, DRH knew or by the exercise of reasonable diligence should have know that it had a cause of action against JLS and MJ in early 2018, more than three years before JLS answered (in the absence of actual service) and more than three years before MJ was served.

2. DRH'S CLAIMS AGAINST JLS FOR ANY HOUSES THAT JLS HAD SUBSTANTIALLY COMPLETED PRIOR TO MARCH 9, 2014 ARE BARRED BY THE STATUTE OF REPOSE.

The statute of repose bars any of DRH's claims against JLS, to the extent that the basis for the claim is the condition of any house whose JLS performed masonry work was substantially completed prior to March 9, 2014.

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S.C. Code § 15-3-640 states, among other things, that:

No actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than eight years after substantial completion of the improvement. For purposes of this section, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:

> (1) an action to recover damages for breach of a contract to construct or repair an improvement to real property;
> (2) an action to recover damages for the negligent construction or repair of an improvement to real property;
> (3) an action to recover damages for personal injury, death, or damage to property;
> (4) an action to recover damages for economic or monetary loss;
> (5) an action in contract or in tort or otherwise;
> (6) an action for contribution or indemnification for damages sustained on account of an action described in this section; . . .

S.C. Code § 15-3-640(1)-(6). The South Carolina Supreme Court has held that "the legislature defines "substantial completion" as "that degree of completion of a project, improvement, or *a specified area or portion thereof* . . . upon attainment of which *the owner can use the same for the purpose for which it was intended* . . . ." *Ocean Winds Corp. v. Lane*, 347 S.C. 416, 419 (2001).

In this case, S.C. Code § 15-3-640 governs DRH's claims against JLS. Pursuant to *Ocean Winds*, JLS's work was substantially completed at each house when it finished its masonry work at each house. Because DRH did not serve JLS, and JLS came within the jurisdiction of this Court on March 9, 2022, all claims associated with houses that were substantially completed prior to eight years before March 9, 2022 are barred by the statute of repose established in S.C. Code § 15-3-640.

V. CONCLUSION

Based on the arguments set forth herein, JLS and MJ are entitled to a directed verdict that DRH's claims against JLS and MJ are completely barred by the statute of limitations as set forth in S.C. Code § 15-3-530, and partially barred, for JLS, by the statute of repose as set forth in S.C. Code § 15-3-640.

Respectfully submitted,

This the 14th of September, 2023.

MARTINEAU KING PLLC

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

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

Plaintiff,

v.

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

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

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

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

JLS MASONRY INC'S NOTICE OF MOTION, MOTION, AND MEMORANDUM IN SUPPORT THEREOF FOR JUDGMENT NOT WITHSTANDING THE VERDICT AND/OR NEW TRIAL AS TO ALL CLAIMS ASSERTED BY THIRD-PARTY PLAINTIFF D.R. HOTON, INC.

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

Third-Party Defendants.

PLEASE TAKE NOTICE that JLS Masonry, Inc. (hereinafter referred to as "JLS"), by and through counsel, hereby moves before this Court, as soon as Counsel may be heard, at such place and time and in such manner as the Court may appoint, for an Order granting JLS's above reference motions as to all claims asserted by Third-Party Plaintiff D.R. Horton, Inc. (hereinafter referred to as "DRH").

PROCEDURAL HISTORY

The case was tried to verdict beginning on Tuesday, September 5, 2023, at the Anderson County courthouse. The Court set four weeks for this trial to complete. On or about Thursday, September 14th, Plaintiff rested its case and immediately following DRH settled Plaintiffs' claims against it in exchange for a confidential settlement amount and a full assignment of DRH's third-

party claims to Plaintiffs. Following settlements by other subcontractor third-party defendants, JLS became the sole remaining third-party defendant. JLS put up its case on Friday, September 15th, and so did Plaintiff, standing in the shoes of DRH. The trial concluded the same day. The jury awarded a verdict against DRH in favor of Plaintiff for $15,000,000.00. The jury then found against JLS in favor of DRH for $4,000,000.00 for DRH's Breach of Implied Warranty claim only. The verdict form contained two other claims, contractual indemnity, and equitable indemnity. During deliberations, the jury asked the court to define indemnification, which the Court did without objection. The jury did not find liability against JLS for either indemnity claim. The Court gave the parties ten (10) days for post-trial motions. JLS timely filed its post-trial motions.

The grounds for this Motion are:

1. DRH's claim for Implied Warranty against JLS is solely conditioned on its potential liability for damages to Plaintiff, Natalie Zitek et al., making its claims disguised claims for indemnity, which should have been dismissed pursuant to *Stoneledge at Lake Keowee Owners' Ass'n. Inc. v. Clear View Construction, Inc.*, 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015) and *Stoneledge at Lake Keowee Owners' Ass'n. Inc. v. Builders First Source-Se. Grp.*, 413 S.C. 630, 776 S.E.2d 434 (Ct. App. 2015). Therefore, JLS asks for judgment notwithstanding the verdict and/or a new trial based on the same.

2. DRH's contractual indemnity provision fails to clearly and unequivocally show the parties intended JLS to indemnify DRH for its concurrent negligence. There are at least five competing clauses in the indemnification paragraphs. The contract requires that JLS indemnify DRH for:

    a. "**all** actions, claims, investigations or other acts to enforce such laws or regulations," ¶ 6.4 JLS Contract attached as exhibit A.

    b. "any and all demands, claims, actions, causes of action … 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]." ¶ 10.1 JLS Contract attached as exhibit A.

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c. "any negligent, grossly negligent, and/or **intentional act** and/or omission of [DRH] related in any way to the work." ¶ 10.1 JLS Contract attached as exhibit A.

d. "Notwithstanding the foregoing, nothing herein shall require indemnity for the losses caused **solely** by the fault or negligence of [DRH]." ¶ 10.1 JLS Contract attached as exhibit A.

e. "[DRH] shall have the right, at its discretion and choosing, to defend **any and all claims** which may be asserted against, and contractor agrees to reimburse [DRH] for any and all expenditures which indemnitee may make or incur on account of **any** such claim." ¶ 10.2 JLS Contract attached as exhibit A.

It is difficult, if not impossible, for even those trained in the legal field to reconcile the above five provisions. They are anything but clear and unequivocal: two of the provisions appear to be unlimited in breadth and scope; the other three are narrower in scope and are in direct conflict with the first two. The confusion created by these provisions is what the Court addressed *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018), reh'g denied (Oct. 19, 2018). The indemnity provision is anything but clear and unequivocal under the *Concord and Cumberland* standard, and such claims should not be enforced by this Court. Therefore, JLS asks for judgment notwithstanding the verdict and/or a new trial based on the same

3. In addition, the two provisions above that are unlimited in breadth and scope are against public policy and unenforceable pursuant to the Anti-Indemnity Statute, S.C. Code Ann. § 32-2-10 (2007). Therefore, JLS asks for judgment notwithstanding the verdict and/or a new trial based on the same.

4. The contractual indemnity language in the JLS Contract is word for word identical to the contractual indemnity provision in the Galloway-Bell contractual indemnity provision. See JLS contract attached as exhibit A, and Galloway-Bell contract attached as exhibit B. Both provisions demand indemnity for DRH's attorney's fees. Galloway-Bell was dismissed completely from the case at summary judgment because, after years of litigation, it was determined that Galloway-Bell did not have liability. This Court threw out all claims against Galloway-Bell, not just the liability claims, but any claims DRH may have had against Galloway-Bell, including those for attorney's fees. DRH argued that it incurred attorney's fees from the time the claims were pending against Galloway-Bell until the time Galloway-Bell was dismissed. By dismissing Galloway-Bell from the case entirely, and not preserving the claims for attorney's fees, the Court necessarily invalidated the contractual indemnity provision, the exact same indemnity provision in the JLS contract. Therefore, JLS asks for judgment notwithstanding the verdict and/or a new trial based on the same.

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5. DRH's claims are barred by the statute of limitations. The statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. *Dean v. Ruscon*, 321 S.C. 360, 366, 468 S.E.2d 645, 648 (1996); *see also* S.C. Code Ann. § 15-3-530. Natalie Zitek, the class representative, testified she has had multiple and repeated repairs performed at her house, including stripping large portions of brick off the house and re-applying it. These multiple and repeated repairs to crushing and cracking bricks starting as early as 2014, more than three years before DRH brought suit against JLS. Accordingly, claims resulting from work at the Zitek home are barred by the statute of limitations. Therefore, JLS asks for judgment notwithstanding the verdict and/or a new trial based on the same

6. DRH's claims are barred by the statute of repose. *See* S.C. Code Ann. § 15-3-640; *Lawrence v. General Panel Corp*., 425 S.C. 398, 405, 822 S.E.2d 800, 803; *see also Ocean Winds Corp. v. Lane Drywall and Plastering*, 347 S.C. 416, 419, 556 S.E.2d 377, (2001). The statute of repose period for substantial completion dates after July 1, 2005, is eight years. Therefore, any claims against JLS for work completed more than eight years before they were served with DRH's complaint are barred. There is no affidavit of service on file. JLS filed its answer on March 9, 2022. Therefore, any claims against JLS for houses they completed their work on before March 9, 2014, are barred by the statute of repose. *See* S.C. Code Ann. § 15-3-640; *Lawrence*, 425 S.C. at 405, 822 S.E.2d at 803. The DRH vendor spend sheet (see Exhibit C) was stipulated into evidence by Plaintiff, DRH, and JLS (all parties in the case). The parties also stipulated that the information contained therein was true and accurate. According to this sheet, JLS' completion of work (based on the final payment date) on 86 homes was completed before March 9, 2014, and is therefore barred under the statute of repose. See exhibit D, our summary chart. Therefore, JLS asks for judgment notwithstanding the verdict and/or a new trial based on the same or in the alternative that the verdict against JLS be reduced by 85% thereby reducing the verdict from $4,000,000 to $594,059.41[1].

7. DRH's claims fail as a matter of law because JLS is not responsible for the consequences of defects in the plans and specifications. *United States v. Spearin*, 248 U.S. 132 (1918). Testimony elicited at trial shows only that JLS followed the plans and specifications as set forth by DRH. DRH, as the general contractor, provided all plans, specifications, oversight, and ultimately approved the work performed by JLS. DRH supplemented the plans to the subcontractors with verbal instructions via their superintendents, and DRH has the ultimate responsibility and say so for the project. Testimony showed that the subcontractors were only paid if their work complied with the requests of DRH. JLS performed its work according

[1] The parties stipulated at Trial that JLS performed the brick and stone work on 46% of the homes. There are 220 homes in the class action. 46% of 220 is 101 homes. If 86 homes are removed from 101, that is equivalent to removing 85% of the homes.

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to the plans and specifications provided by DRH. Therefore, JLS asks for judgment notwithstanding the verdict and/or a new trial based on the same

8. The evidence presented at trial does not support the verdict. Neither Plaintiffs' expert nor any other experts, could identify the homes JLS worked on and/or any deficiencies thereon. Dr. Whitlock, the Plaintiffs' primary forensic engineer, could not identify how many homes were all brick, partial brick, or no brick. He could not identify which homes were one story or two or which had basements or not.

   Dr. Whitlock broke the class into three categories of homes: basic, moderate, and complex. These homes have different configurations, different scopes of repairs, and different costs of repairs. Dr. Whitlock testified that he did not know which of the JLS homes were in which category. Significantly, JLS worked on more basic homes than the other two combined. A pro-rata split of all brick damages is inappropriate, inaccurate, and not supported by the evidence. Of the roughly 100 homes that JLS worked on, Dr. Whitlock could not allocate damages to the individual homes because he did not know how much it cost to repair each of the homes. Dr. Whitlock only testified that JLS owed 46% of the brick and stone damages. This failed to meet DRH's burden of proof against JLS. DRH's burden of proof required it to prove each home that JLS worked at, the damages sustained at each home, and the amount paid by DRH for the specific home to recover against JLS—For example, DRH does not meet its burden of proof by saying, "I saw it on 104 Sturbridge therefore, the same defects must exist at 1 Chatham Court." The issue of damages was not sufficiently defined as it relates to JLS and therefore, JLS's motion for a directed verdict should have been granted. JLS is entitled to judgment notwithstanding the verdict. Therefore, JLS asks for judgment notwithstanding the verdict and/or a new trial based on the same

9. JLS should be granted a judgment notwithstanding the verdict on the concrete claims because there is no testimony that any cracks exceed the industry standards or that any of the cracks were caused by any defect in the installation of the concrete itself. Further, Plaintiffs' criticism of the concrete cracks is that they are allowing radon into the homes. The only testimony on this issue is that the radon was supposed to be handled by a sheet of vinyl installed under the concrete, but not by the concrete installer. The concrete was not intended to stop the radon from flowing into the homes. Accordingly, no genuine issue of material fact existed as to the concrete claims and the concrete claims should have been dismissed. Therefore, JLS is entitled to a judgment notwithstanding the verdict and/or a new trial based on the same

10. DRH lacks standing to bring a breach of an implied warranty claim against JLS. DRH, as the non-homeowner general contractor, can only maintain a derivative indemnity claim against JLS. As a general rule, for a party to have standing to bring suit, they must allege (and ultimately prove) that he/she has a genuine stake in the outcome of the case because he/she has personally suffered (or will imminently suffer): (1) a concrete and particularized injury; (2) that is traceable to

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the allegedly unlawful actions of the opposing party; and (3) that **is redressable by a favorable judicial decision.** In this case, even if DRH proved JLS had some liability to DRH, and even if DRH obtains a verdict against JLS, and collects the money, DRH cannot fix the issues complained about. DRH does not own the homes and cannot force the homeowners to make the fix. DRH does not have standing to bring a claim against JLS for Breach of Warranty. Its claims is for indemnity and the jury specifically contemplated that claim and refused to find agains JLS on the indemenity claims. Notwithstanding, DRH's claim for Breach of Implied Warranty must fail as a matter of law.

Therefore, JLS is entitled to a judgment notwithstanding the verdict and/or a new trial based on the same.

11. JLS hereby renews its motion to de-certify the class. This court treated the claims of DRH against JLS as a de-facto class action lawsuit against the subcontractors. JLS was not a member of the class. The certification of the class was specifically ruled to be only against DRH. Further, JLS was not even in the lawsuit when the class was certified against DRH. Therefore, JLS renews its motion to de-certify the class and asks for judgment notwithstanding the verdict and/or a new trial based on the same.

    In addition, any class against JLS, should one exist, should be decertified because the class representative and numerous other homes have different SOR/SOL defenses that cannot be adequately raised against a class. Accordingly, JLS is entitled to a new trial absolute and/or new trial nisi remittitur because the class was not certified as to JLS but the trial proceeded as if JLS was subject to class certification and Plaintiff was not required to, and did not, prove their damages on an individual homeowner basis against JLS.

12. The settlement amount between Plaintiff and DRH should have been disclosed to the jury. *See Poston v. Barnes*, 294 S.C. 261, 265, 363 S.E.2d 888, (1987). The full agreement, including the amounts paid by DRH to Plaintiff, as well as the specific terms of the agreement, including the covenant not to execute, should have been disclosed to the jury and entered into evidence. *Id.*. Without the disclosure of the same, DRH was a sham defendant and the jury did not have the information it needed to render an equitable verdict. *See Id.* Therefore, JLS asks for judgment notwithstanding the verdict and/or a new trial based on the same.

13. Plaintiffs' expert, Dr. Whitlock, directly contradicted this Court's order to not base his concrete criticisms on plans that were not in effect at the time of construction. Therefore, JLS asks for judgment notwithstanding the verdict and/or a new trial based on the same

Therefore, JLS respectfully requests this Honorable Court issue an Order pursuant to Rule 50 of the South Carolina Rules of Civil Procedure granting judgment notwithstanding the verdict

and/or a new trial as to DRH's claims against JLS. This motion is to be supported by a memorandum of law, appendices, exhibits, all testimony and trial exhibits, discovery responses, deposition transcripts, and all applicable law.

Respectfully submitted,

ROSS & CRISTALDI, LLC

s/ Jeff Ross
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Mt. Pleasant, South Carolina

September 22, 2023

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D·R HORTON
America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR JCS MASONRY, INC ("Contractor")

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

Social Security No. or Tax ID No. 56-2131549

Name of Owner(s)/Officer(s): JOSE LUIS SANCHEZ

Division Name _____ Area Name _____ Assigned Vendor No. 1195192

Address for All Notices PO Box 78410

City CHARLOTTE State NC Zip Code: 28271

Telephone 704 634-7471 Fax 704 248-7469 E-Mail Address: jlsmasonryinc@hotmail.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 FEB, 2010, between D R HORTON INC. JCS MASONRY, 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: D.R. HORTON, INC
By _____
Name: EDMOND G. JEANFREAU, JR.
Title: PURCHASE Division President

Contractor
By _____
Name: CHRISTOPHER DE LA TORRE
Title: GENERAL MANAGER

INITIALS OWNER _____ CONTRACTOR TDLT

SF = 1392311 MF = 1392312 MACON = 1392313
Greenville = 1392314

PLAINTIFF'S EXHIBIT 1.8

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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, conveators 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

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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: MASONRY

PERFORMANCE REQUIREMENTS
All masonry shall be installed in a uniform manner. All walls will be plumb and level. Mortar joints shall not be larger than 1/2". Mortar cracks are not to exceed 1/8". Weep holes are to be properly installed per Masonry Institute specifications. All necessary flashing will be properly installed to prevent leaks. An unobstructed gap of 1" shall separate the masonry from the framed wall. All areas of workmanship will remain defect free and maintain their structural integrity for a minimum of ten (10) years.

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 subcontractor will repair and/or replace any defects resulting from work not meeting the performance requirements. All repairs include labor and material. D.R. Horton, Inc. will make the final determination on any remedial action

SPECIFICATIONS AND SCOPE OF WORK

1. The Subcontractor shall furnish all necessary labor, tools, equipment, scaffolding, and incidentals to install masonry per plans and specifications.
2. Leave one (1) inch air space between brick and sheathing.
3. Laid in running bond, anchored with ties minimum 22 gauge, 7/8" wide, corrugated, corrosion resistant, imbedded at least two (2) inches in mortar and nailed with #8 nails.
4. Install ties two (2) feet O.C. horizontally and every fifth course vertically.
5. Mortar joints tooled and brushed, not to exceed 1/2". Type of joint to be concave or rodded (or from written specification change by Builder).
6. Mortar mix to be uniform in color and selected by D.R. Horton, Inc (Buff is standard).
7. Brick sills below windows and doors on brick elevations per drawings with pitch of 1/4" for run off.
8. Brick mason is responsible to replace any faulty brickwork, and will properly blend random mixtures to achieve uniformity per manufacturer's specs.
9. Mortar mixture shall adhere to Portland Cement Association specifications per applicable job.
10. All brick walls are to be plumb and level and mortar joints over 1/2" will not be accepted.
11. Provide protection so that mortar does not get any other building products. Damage to any other products caused by mortar spillage will be the responsibility of the mason contractor.
12. No brick wall will be laid when the temperature is thirty-two (32) degrees Fahrenheit or lower.
13. Brick mason will install all lintels and flashing per CABO specifications. See Builder for specifications (Bolted with carriage bolts)
14. Mason to hard rake excess mortar @ base of brick.
15. Subcontractor is to place all debris caused by his operation in designated areas.

Contractor agrees to comply with all applicable building codes, ordinances and OSHA regulations

ACKNOWLEDGMENT

These specifications are a part of the subcontract 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 subcontractor as soon as any change is initiated.

Contractor: JLS MASONRY, INC
By: C.L.O. Li
Date: 02/17/10

Builder:
D.R. Horton, Inc
By: EDMOND G. JEANFREAU JR
Date: 2/23/10

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PERFORMANCE REQUIREMENTS AND SPECIFICATIONS
Exhibit "A"

DESCRIPTION FRAMING LABOR

PERFORMANCE REQUIREMENTS
The framing structure and components shall be assembled according to plans, specifications, and details provided with the plans and are plumb, level, and square. Bearing connections shall be tight and bearing members (posts) continuous from the top of its bearing point to the bottom of the foundation. Frame assembly must meet the applicable codes for the area and use approved fasteners and connectors. Equipment used to transport framing members shall not adversely affect the design characteristics of the framing members. Floors shall not squeak nor have noticeable crowns, ridges, or dips. Exterior trim member shall be tight, free of gaps, uniform in appearance, and be properly flashed or sealed. Structural elements are warranted for ten (10) years. Non-structural elements are warranted for one (1) year. All subcontractors must wear hard hats on the job site at all times

Hard hats and appropriate safety equipment are to be worn at all times while on D.R. Horton property. Each crew leader must have scaffolding, fall protection and PPE "Competent Person" training.

NON-PERFORMANCE REMEDY
The Contractor shall repair any defective workmanship, shrinkage gaps greater than 3/8", or areas not plumb or square (1/4" in 32") prior to the home being occupied. Stress caused by normal settlement or movement in the structure is not the responsibility of the Contractor. *Exterior trim* that is loose, shows gaps, or deteriorates because of inappropriate sealing or flashing, shall be repaired or replaced during the one year(1) of occupancy. Final determination for remedial action shall be made by D R. Horton, Inc.

SPECIFICATIONS AND SCOPE OF WORK

1. All walls, openings, and floors to be framed level, square, and plumb.
2. Contractor is to check all foundations prior to framing for correct measurements, square, and level [all basement studs will be cut if necessary to level the *first* floor]. This includes slab and poured walls.
3. All exterior plates on slab or poured walls to be caulked, glued, or sill sealer used.
4. Furr-downs, fire blocking, barge rafters, and punch-out to be done before beginning another unit.
5. Stairs to be set as per D.R. Horton specifications, nailing every stud with 2" shims with even margins nailed at underside of stairs through carriage. Provide OSHA approved fall protection devices at all appropriate areas.
6. All windows installed square and level with even margins, to be shimmed and caulked as required by manufacturer's specifications.
7. All fire stops, water heater platforms and blocking for sheetrock, closet shelves, ext. soffit blocking for flood lights, and cabinets are contractor's responsibility and must be completed before starting another unit.
8. All overhangs for soffits to be of uniform distance.
9. All jobsites are to be broom swept daily to remove all construction debris caused by his operation with usable material stacked in garage and trash placed in the designated areas.
10. All insulated sheathing to be nailed properly with 1 1/4" button cap nails All blown off or weather damaged sheathing will be the responsibility of the contractor to replace.
11. Framing punch out must be completed within 24 hours.
12. All load bearing walls to be 16" o.c. and non-load bearing 24" o.c. (See Builder)
13. All door jacks to be cut out of lineal (not studs) - 14' stock.
14. All joist hangers installed same time as floor system
15. Contractor is responsible for damage or misused material.
16. Stairs damaged by weather are the responsibility of the contractor.
17. H-spacer ply clips will be used on all roofs decking (when trusses are 24" center to center).
18. All sub-flooring is to be glued using an appropriate caulk gun and nailed, per code.
19. All framing to be in accordance with the attached D.R. Horton, Inc. framing checklist.
20. Final payment is to be made upon completion of the signed-off framing inspection
21. Permit boards, driveway barricades and walk boards (adequate to reach street) to be built by framing contractor.
22. Framer to follow engineered truss plan.

23. All gable ends to have horizontal cat walk bracing installed per truss manufacturers specs

SPECIFICATIONS AND SCOPE OF WORK

24 All floor and roof trusses to be braced in accordance to manufacturers specs.
25 All ext. doors, normally front and rear French or sliding to be installed, square, and level with even margin shimmed and sealed with silicone sealant or its equivalent, on top, two sides, and bottom.
26. All framing to pass County Inspection prior to final labor payment to contractor. All county required changes remain the responsibility of the contractor at no additional cost to builder.
27. All framing to be done using "ladder" type framing.
28. All fall protection to be secured to floor independent of wall framing.

Contractor agrees to comply with all applicable building codes, ordinances and OSHA regulations.

ACKNOWLEDGMENT

These specifications are a part of contract identified above. D R. Horton, Inc. reserves the right to amend or modify any of the above general specifications at any time, and will notify the contractor as soon as any change is initiated.

Contractor: C L O. L. T

By: GENERAL MANAGER

Date: 02/17/10

Builder:

D R Horton, Inc.

By: EDMOND G. JEANFREAU, JR

Date: 2/23/10

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D.R. HORTON
America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR: Galloway Golf Inc. ("Contractor")

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

Social Security No. or Tax ID No.: XX-XXX5425

Name of Owner (Officers): Rob Galloway, Colby Galloway, Rob Hall

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

Address For All Notices: 3354 Hwy 123

City: Seneca State: SC Zip Code: 29673

Telephone: 864 269 6212 Fax: 864 269 7853 Email Address: Shutters@gallowaygolf.com

Insurance Carrier ATTACH INSURANCE CERTIFICATES, OR THESE WILL AUTOMATICALLY BE WITHHELD PENDING RECEIPT

This agreement (the "Agreement") is entered into on this 17 day of Dec 2018 between D.R. Horton Inc ("Owner") and Contractor.

1. SCOPE OF WORK. This Agreement is entered on a Project 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 (the "Work") shall include all work performed and materials supplied by Contractor to Owner including but not limited to the labor, services and/or 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 mutually accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing will be subject to all of the terms of this Agreement unless excepted in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific projects 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 assigned Work on a bid by bid 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 job 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 supervise 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 be considered employees 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 and exclusive fee 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/lump sum price for materials and installation (all-in), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE OWING UPON OWNER UNLESS CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained in the new Pricing Schedule, the superseded Pricing Schedule shall remain in effect for Purchase Orders issued after the date of the 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) thirty (30) days after completion of the Work or (ii) thirty (30) days from the date of closing of the home incorporating the Work from Owner to a purchaser. Contractor hereby agrees that timely invoicing is an important and material term of 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 accordance with 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 in a Purchase Order shall be considered separate and distinct from Work described in any other Purchase Order.

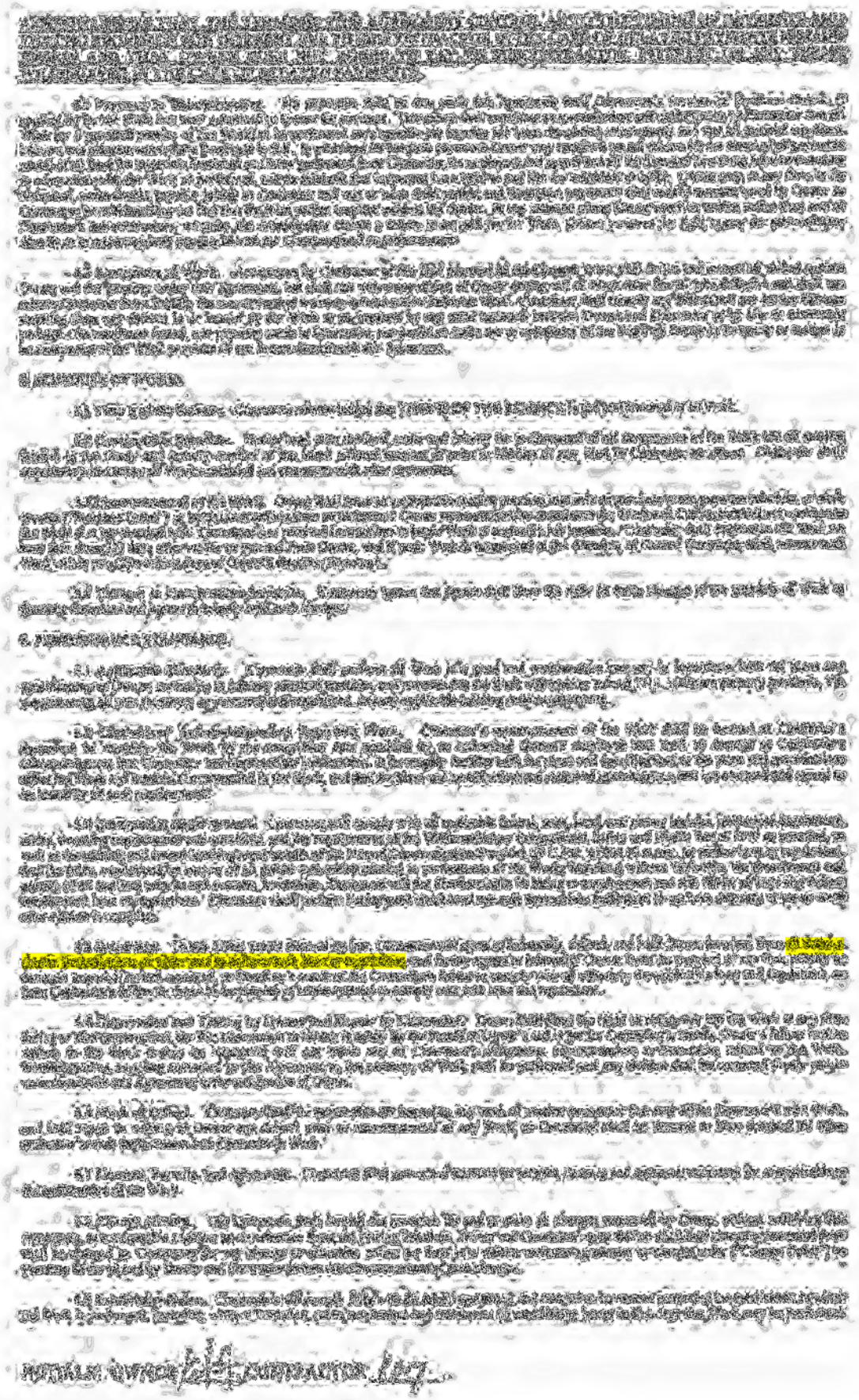
CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-10 AND 29-6-30 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR

Executed this 29 day of March 2019

Owner
By: D R Horton Homes Inc
Name: Edward C Hartsfield Jr
Title: Presidents
Division President

Contractor
By: [signature]
Name: Colby Galloway
Title: [signature]

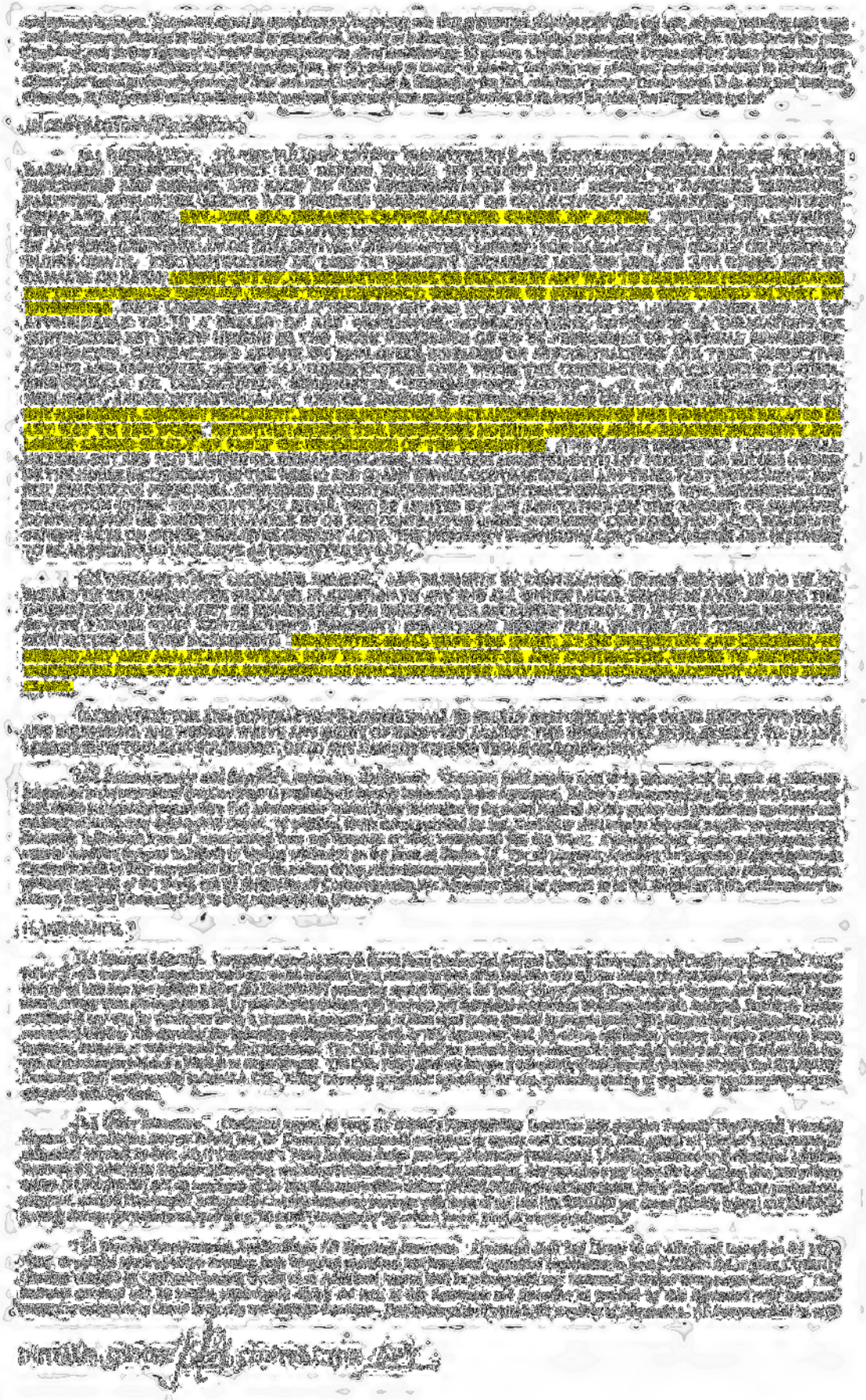
INITIALS: OWNER [initials] CONTRACTOR [initials]



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Exhibit A

Scope of Work

Insulation

Owner _____ Contractor _____

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Vendor Spend

EXHIBIT C

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Supplier Name	Document Type	Document No	Company Id	Invoice No	Pay Item	GLDate	Payment Type	Payment Number	Payment Date	Gross Amount	Payment Amount	Business Unit	Plan	
709 - Greenville														
1129163 - MOSS, ANGELA														
	PV	223825	70951	EX102012	001	12/03/12	PK	468426	12/07/12	350.25	-350.25	70951 -		
	PV	231974	70951	EX040413	001	04/16/13	PT	52718	04/18/13	245.14	-245.14	70951 -		
1129163 - MOSS, ANGELA -									**2 Invoices**	**595.39**	**-595.39**			
1131969 - STAR BUILDERS INC (GRNVL)														
	PV	211516	70952	GL28511C	001	06/14/12	PT	29441	06/28/12	176.96	-176.96	70952 -		
	OV	211486	70952	201163 7	001	06/08/12	PT	28511	06/14/12	-16.25	16.25	70952 - JFNC00GT		C
	OV	211485	70952	201149 41	001	06/08/12	PT	28511	06/14/12	-349.38	349.38	70952 - JFNC006P		C
	OV	211485	70952	201149 41	003	06/08/12	PT	28511	06/14/12	349.38	-349.38	70952 - JFNC006P		C
	OV	211485	70952	201149 41	005	06/08/12	PT	28511	06/14/12	-160.71	160.71	70952 - JFNC006P		C
	OV	222460	70952	3717013 LOT 24	000	10/25/12	PT	37793	11/01/12	115	-115	70952 - 0024		C
	OV	215065	70959	70959-00215065	004	07/01/14	PT	108146	07/02/14	22.75	-22.75	709590047 - 505 CARDIFF CT	FIEL	C
1392135 - S C DHEC -PERMITS														
	PV	226589	70951	CR122712	001	01/08/13	PK	479998	01/15/13	125	-125	70951 -		
	PV	226590	70951	CR122712A	001	01/08/13	PK	479999	01/15/13	2000	-2000	70951 -		
1392135 - S C DHEC -PERMITS -									**2 Invoices**	**2125**	**-2125**			
1392314 - JLS MASONRY INC														
	PV	218875	70951	WC31935H	001	09/14/12	PT	35766	10/04/12	954.31	-954.31	70951 -		
	PV	218874	70951	WC31210G	001	09/14/12	PT	35766	10/04/12	33.98	-33.98	70951 -		
	PV	218873	70951	WC30229G	001	09/14/12	PT	35766	10/04/12	2235.19	-2235.19	70951 -		
	PV	218872	70951	WC29431G	001	09/14/12	PT	35766	10/04/12	33.98	-33.98	70951 -		
	OV	215516	70951	70951-	002	08/06/12	PT	31935	08/09/12	-61.75	61.75	70951 -		C
	OV	215518	70951	70951-00215518	002	08/06/12	PT	31935	08/09/12	-29.69	29.69	70951 - JSERS002		C
	OV	215518	70951	70951-00215518	004	08/06/12	PT	31935	08/09/12	-1.78	1.78	70951 - JSERS002		C
	OV	215520	70951	70951-00215520	002	08/06/12	PT	31935	08/09/12	-29.69	29.69	70951 - JSERS002		C
	OV	215520	70951	70951-00215520	004	08/06/12	PT	31935	08/09/12	-1.78	1.78	70951 - JSERS002		C

	OV	212866	70951	200564 LOT 142	001	07/06/12	PT	30229	07/12/12	-90.76	90.76	70951 -	
	OV	215517	70951	70951-00215517	002	08/06/12	PT	31935	08/09/12	-307.02	307.02	70951 - JSERS002	
	OV	215519	70951	70951-	002	08/06/12	PT	31935	08/09/12	-61.75	61.75	70951 -	
	OV	212839	70951	200538 142	001	07/06/12	PT	30229	07/12/12	-164.73	164.73	70951 -	
	OV	213702	70951	70951-00213702	002	07/19/12	PT	31210	07/26/12	-32.06	32.06	70951 - JSERS002	
	OV	213702	70951	70951-00213702	004	07/19/12	PT	31210	07/26/12	-1.92	1.92	70951 - JSERS002	
	OV	212840	70951	200792 141	001	07/06/12	PT	30229	07/12/12	-164.73	164.73	70951 -	
	OV	212867	70951	200817 LOT 141	001	07/06/12	PT	30229	07/12/12	-90.76	90.76	70951 -	
	OV	213155	70951	70951-00213155	002	07/09/12	PT	30229	07/12/12	-493.18	493.18	70951 - JSERS002	
	OV	212864	70951	200922 LOT 154	001	07/06/12	PT	30229	07/12/12	-493.18	493.18	70951 - JSERS002	
	OV	215163	70951	200929 LOT 162	001	08/01/12	PT	31935	08/09/12	-61.75	61.75	70951 -	
	OV	214919	70951	70951-00214919	002	07/30/12	PT	31935	08/09/12	-338.05	338.05	70951 - JSERS002	
	OV	212179	70951	70951-00212179	002	06/27/12	PT	29431	06/28/12	-32.06	32.06	70951 - JSERS002	
	OV	212179	70951	70951-00212179	004	06/27/12	PT	29431	06/28/12	-1.92	1.92	70951 - JSERS002	
	OV	212829	70951	201099 152	001	07/06/12	PT	30229	07/12/12	-61.75	61.75	70951 -	
	OV	213153	70951	70951-00213153	002	07/09/12	PT	30229	07/12/12	-338.05	338.05	70951 - JSERS002	
	OV	212865	70951	201178 LOT 152	001	07/06/12	PT	30229	07/12/12	-338.05	338.05	70951 - JSERS002	
	OV	214529	70951	3710680 LOT 143	001	07/27/12	PT	31935	08/09/12	-54.91	54.91	70951 - JSERS002	
	OV	214530	70951	3710690 LOT 146	001	07/27/12	PT	31935	08/09/12	-1.52	1.52	70951 -	
	OV	214531	70951	3710695 LOT 141	001	07/27/12	PT	31935	08/09/12	-4.62	4.62	70951 -	
	PV	219212	70952	WC30229H	001	09/14/12	PT	35766	10/04/12	272.28	-272.28	70952 -	
	PV	219213	70952	WC31210H	001	09/14/12	PT	35766	10/04/12	114	-114	70952 -	
	PV	219214	70952	WC31935I	001	09/14/12	PT	35766	10/04/12	1922.92	-1922.92	70952 -	
	OV	213261	70952	201316 LOT 21	001	07/06/12	PT	30229	07/12/12	-90.76	90.76	70952 -	

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	OV	213263	70952	201445 LOT 28	001	07/06/12	PT	30229	07/12/12	-90.76	90.76	70952 -	
	OV	213262	70952	201533 LOT 14	001	07/06/12	PT	30229	07/12/12	-90.76	90.76	70952 -	
	OV	215011	70952	201595 LOT 11	001	08/01/12	PT	31935	08/09/12	-268.42	268.42	70952 -	
	OV	215013	70952	201700 LOT 38	001	08/01/12	PT	31935	08/09/12	-500.65	500.65	70952 -	
	OV	215012	70952	201742 LOT 38	001	08/01/12	PT	31935	08/09/12	-76	76	70952 - JHEA00WM	
	OV	213999	70952	201896 9	001	07/19/12	PT	31210	07/26/12	-114	114	70952 -	
	OV	215009	70952	201919 LOT 1	001	08/01/12	PT	31935	08/09/12	-53.44	53.44	70952 - JSERS002	
	OV	215009	70952	201919 LOT 1	003	08/01/12	PT	31935	08/09/12	-3.21	3.21	70952 - JSERS002	
	OV	215008	70952	201916 LOT 1	001	08/01/12	PT	31935	08/09/12	-61.75	61.75	70952 -	
	OV	215523	70952	201996 LOT 1	001	08/07/12	PT	31935	08/09/12	-3.71	3.71	70952 - JCURS002	
	OV	215523	70952	201996 LOT 1	003	08/07/12	PT	31935	08/09/12	-454.61	454.61	70952 - JSERS002	
	OV	214516	70952	3710663 LOT 7	001	07/27/12	PT	31935	08/09/12	-13.19	13.19	70952 -	
	OV	215007	70952	3710682 LOT 25	001	08/01/12	PT	31935	08/09/12	-39.88	39.88	70952 -	
	OV	214512	70952	3710683 LOT 25	001	07/27/12	PT	31935	08/09/12	-10.68	10.68	70952 -	
	OV	214513	70952	3710684 LOT 24	001	07/27/12	PT	31935	08/09/12	-81.07	81.07	70952 -	
	OV	214514	70952	3710685 LOT 23	001	07/27/12	PT	31935	08/09/12	-71.44	71.44	70952 -	
	OV	214515	70952	3710686 LOT 28	001	07/27/12	PT	31935	08/09/12	-4.62	4.62	70952 -	
	OV	215006	70952	3710693 LOT 27	001	08/01/12	PT	31935	08/09/12	-38	38	70952 - JSERS002	
	OV	214511	70952	3710694 LOT 38	001	07/27/12	PT	31935	08/09/12	-1.52	1.52	70952 -	
	OV	215004	70952	3710696 LOT 25	001	08/01/12	PT	31935	08/09/12	-54.91	54.91	70952 -	
	OV	215005	70952	3710697 LOT 24	001	08/01/12	PT	31935	08/09/12	-161.5	161.5	70952 -	
	OV	214509	70952	3710702 LOT 23	001	07/27/12	PT	31935	08/09/12	-22.8	22.8	70952 -	
	OV	214510	70952	3710765 LOT 37	001	07/27/12	PT	31935	08/09/12	-1.52	1.52	70952 -	
	PV	211415	70953	WC31935J	001	09/14/12	PT	35766	10/04/12	579.5	-579.5	70953 -	
	OV	210955	70953	3710691 LOT 264	001	08/01/12	PT	31935	08/09/12	-375.07	375.07	70953 -	

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	OV	210879	70953	3710700 LOT 264	001	07/27/12	PT	31935	08/09/12	-154.65	154.65	70953 -	
	OV	210954	70953	3710703 LOT 264	001	08/01/12	PT	31935	08/09/12	-47.5	47.5	70953 -	
	OV	210878	70953	3710764 LOT 261	001	07/27/12	PT	31935	08/09/12	-2.28	2.28	70953 -	
	OV	210404	70951	200363 143	000	02/17/12	PT	21742	02/23/12	325	-325	709510143 - 32 Duxbury Lane	MILL
	OV	210401	70951	200441 LOT 143	000	02/16/12	PT	21742	02/23/12	1779.2	-1779.2	709510143 - 32 Duxbury Lane	MILL
	OV	210403	70951	200366 143	000	02/17/12	PT	21742	02/23/12	168.75	-168.75	709510143 - 32 Duxbury Lane	MILL
	OV	210403	70951	200366 143	001	02/17/12	PT	21742	02/23/12	10.13	-10.13	709510143 - 32 Duxbury Lane	MILL
	OV	210471	70951	200400 143	000	03/15/12	PT	23226	03/22/12	532.62	-532.62	709510143 - 32 Duxbury Lane	MILL
	OV	210675	70951	200428 LOT 143	000	05/11/12	PT	26807	05/17/12	477.7	-477.7	709510143 - 32 Duxbury Lane	MILL
	OV	214529	70951	3710680 LOT 143	000	07/27/12	PT	31935	08/09/12	289	-289	709510143 - 32 Duxbury Lane	MILL
	OV	215519	70951	70951-	001	08/06/12	PT	31935	08/09/12	325	-325	709510144 - 30 Duxbury Lane	EVER
	OV	221109	70951	3717180 LOT 144	000	10/25/12	PT	37782	11/01/12	8	-8	709510144 - 30 Duxbury Lane	EVER
	OV	221110	70951	3717181 LOT 144	000	10/25/12	PT	37782	11/01/12	149.3	-149.3	709510144 - 30 Duxbury Lane	EVER
	OV	220037	70951	3716566 LOT 144	000	10/12/12	PT	36633	10/18/12	322.95	-322.95	709510144 - 30 Duxbury Lane	EVER
	OV	211147	70951	70951-00211147	001	06/18/12	PT	29431	06/28/12	1615.9	-1615.9	709510144 - 30 Duxbury Lane	EVER
	OV	215520	70951	70951-00215520	001	08/06/12	PT	31935	08/09/12	156.25	-156.25	709510144 - 30 Duxbury Lane	EVER
	OV	215520	70951	70951-00215520	003	08/06/12	PT	31935	08/09/12	9.38	-9.38	709510144 - 30 Duxbury Lane	EVER
	OV	215777	70951	200623 LOT 144	000	08/16/12	PT	32837	08/23/12	1504.5	-1504.5	709510144 - 30 Duxbury Lane	EVER
	OV	218864	70951	200649 LOT 144	000	09/14/12	PT	34648	09/20/12	477.7	-477.7	709510144 - 30 Duxbury Lane	EVER
	OV	210638	70951	200671 146	000	05/10/12	PT	26807	05/17/12	325	-325	709510146 - 26 Duxbury Lane	SHER
	OV	210677	70951	200747 LOT 146	000	05/11/12	PT	26807	05/17/12	1931	-1931	709510146 - 26 Duxbury Lane	SHER
	OV	214530	70951	3710690 LOT 146	000	07/27/12	PT	31935	08/09/12	8	-8	709510146 - 26 Duxbury Lane	SHER
	OV	210676	70951	200674 LOT 146	001	05/11/12	PT	26807	05/17/12	13.13	-13.13	709510146 - 26 Duxbury Lane	SHER

	OV	210676	70951	200674 LOT 146	000	05/11/12	PT	26807	05/17/12	218.75	-218.75	709510146 - 26 Duxbury Lane	SHER	C
	OV	211669	70951	70951-	001	06/21/12	PT	29431	06/28/12	472.23	-472.23	709510146 - 26 Duxbury Lane	SHER	C
	OV	215780	70951	200735 LOT 146	000	08/16/12	PT	32837	08/23/12	477.7	-477.7	709510146 - 26 Duxbury Lane	SHER	C
	OV	210060	70951	200090 147	000	11/14/11	PK	369787	11/18/11	325	-325	709510147 - 24 Duxbury Lane	MILL	C
	OV	210072	70951	200163 LOT 147	000	11/16/11	PK	369787	11/18/11	1779.2	-1779.2	709510147 - 24 Duxbury Lane	MILL	C
	OV	210150	70951	3701464 147	000	12/13/11	PK	376084	12/16/11	8	-8	709510147 - 24 Duxbury Lane	MILL	C
	OV	210059	70951	200093 147	000	11/14/11	PK	369787	11/18/11	168.75	-168.75	709510147 - 24 Duxbury Lane	MILL	C
	OV	210059	70951	200093 147	001	11/14/11	PK	369787	11/18/11	10.13	-10.13	709510147 - 24 Duxbury Lane	MILL	C
	OV	210064	70951	200173 148	000	11/14/11	PK	369787	11/18/11	325	-325	709510148 - 22 Duxbury Lane	EVER	C
	OV	210071	70951	200252 LOT 148	000	11/16/11	PK	369787	11/18/11	1615.9	-1615.9	709510148 - 22 Duxbury Lane	EVER	C
	OV	210149	70951	3701464 148	000	12/13/11	PK	376084	12/16/11	8	-8	709510148 - 22 Duxbury Lane	EVER	C
	OV	210711	70951	3703292 LOT 148	000	05/23/12	PT	27534	05/31/12	94.2	-94.2	709510148 - 22 Duxbury Lane	EVER	C
	OV	210061	70951	200176 148	001	11/14/11	PK	369787	11/18/11	9.38	-9.38	709510148 - 22 Duxbury Lane	EVER	C
	OV	210061	70951	200176 148	000	11/14/11	PK	369787	11/18/11	156.25	-156.25	709510148 - 22 Duxbury Lane	EVER	C
	OV	210197	70951	200210 LOT 148	000	12/30/11	PT	19368	01/05/12	653.9	-653.9	709510148 - 22 Duxbury Lane	EVER	C
	OV	210304	70951	200238 148	000	01/19/12	PT	20352	01/26/12	477.7	-477.7	709510148 - 22 Duxbury Lane	EVER	C
	OV	210704	70951	3704293 LOT 148	000	05/23/12	PT	27534	05/31/12	250	-250	709510148 - 22 Duxbury Lane	EVER	C
	OV	210057	70951	200009 149	000	11/14/11	PK	369787	11/18/11	325	-325	709510149 - 20 Duxbury Lane	ABIN	C
	OV	210069	70951	200083 LOT 149	000	11/16/11	PK	369787	11/18/11	2614.1	-2614.1	709510149 - 20 Duxbury Lane	ABIN	C
	OV	210712	70951	3703292 LOT 149	000	05/23/12	PT	27534	05/31/12	173.05	-173.05	709510149 - 20 Duxbury Lane	ABIN	C

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	OV	210708	70951	3703293 LOT 149	000	05/23/12	PT	27534	05/31/12	150	-150	709510149 - 20 Duxbury Lane	ABIN	C
	OV	210148	70951	3701464 149	000	12/13/11	PK	376084	12/16/11	8	-8	709510149 - 20 Duxbury Lane	ABIN	C
	OV	210058	70951	200012 149	001	11/14/11	PK	369787	11/18/11	11.63	-11.63	709510149 - 20 Duxbury Lane	ABIN	C
	OV	210058	70951	200012 149	000	11/14/11	PK	369787	11/18/11	193.75	-193.75	709510149 - 20 Duxbury Lane	ABIN	C
	OV	210200	70951	200045 LOT 149	000	12/30/11	PT	19368	01/05/12	1011.5	-1011.5	709510149 - 20 Duxbury Lane	ABIN	C
	OV	210306	70951	200070 149	000	01/19/12	PT	20352	01/26/12	477.7	-477.7	709510149 - 20 Duxbury Lane	ABIN	C
	OV	210706	70951	3704292 LOT 149	000	05/23/12	PT	27534	05/31/12	250	-250	709510149 - 20 Duxbury Lane	ABIN	C
	OV	210063	70951	200259 150	000	11/14/11	PK	369787	11/18/11	325	-325	709510150 - 18 Duxbury Lane	BYRO	C
	OV	210707	70951	3703292 LOT 150	000	05/23/12	PT	27534	05/31/12	173.05	-173.05	709510150 - 18 Duxbury Lane	BYRO	C
	OV	210709	70951	3703293 LOT 150	000	05/23/12	PT	27534	05/31/12	150	-150	709510150 - 18 Duxbury Lane	BYRO	C
	OV	210147	70951	3701464 150	000	12/13/11	PK	376084	12/16/11	8	-8	709510150 - 18 Duxbury Lane	BYRO	C
	OV	210070	70951	200332 LOT 150	000	11/16/11	PK	369787	11/18/11	2595.7	-2595.7	709510150 - 18 Duxbury Lane	BYRO	C
	OV	210062	70951	200262 150	000	11/14/11	PK	369787	11/18/11	200	-200	709510150 - 18 Duxbury Lane	BYRO	C
	OV	210062	70951	200262 150	001	11/14/11	PK	369787	11/18/11	12	-12	709510150 - 18 Duxbury Lane	BYRO	C
	OV	210198	70951	200295 LOT 150	000	12/30/11	PT	19368	01/05/12	960.5	-960.5	709510150 - 18 Duxbury Lane	BYRO	C
	OV	210305	70951	200320 150	000	01/19/12	PT	20352	01/26/12	477.7	-477.7	709510150 - 18 Duxbury Lane	BYRO	C
	OV	210705	70951	3704291 LOT 150	000	05/23/12	PT	27534	05/31/12	250	-250	709510150 - 18 Duxbury Lane	BYRO	C
	OV	212829	70951	201099 152	000	07/06/12	PT	30229	07/12/12	325	-325	709510152 - 103 Yount Court	MILL	C

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	OV	220036	70951	3714943 LOT 152	000	10/12/12	PT	36633	10/18/12	200	-200	709510152 - 103 Yount Court	MILL	C
	PD	213337	70951	201178 152	000	07/10/12	PT	30229	07/12/12	-1779.2	1779.2	709510152 - 103 Yount Court	MILL	C
	OV	213153	70951	70951-00213153	001	07/09/12	PT	30229	07/12/12	1779.2	-1779.2	709510152 - 103 Yount Court	MILL	C
	OV	212865	70951	201178 LOT 152	000	07/06/12	PT	30229	07/12/12	1779.2	-1779.2	709510152 - 103 Yount Court	MILL	C
	OV	212179	70951	70951-00212179	003	06/27/12	PT	29431	06/28/12	10.13	-10.13	709510152 - 103 Yount Court	MILL	C
	OV	212179	70951	70951-00212179	001	06/27/12	PT	29431	06/28/12	168.75	-168.75	709510152 - 103 Yount Court	MILL	C
	OV	216107	70951	70951-	001	08/16/12	PT	32837	08/23/12	812.3	-812.3	709510152 - 103 Yount Court	MILL	C
	OV	217752	70951	201163 LOT 152	000	08/30/12	PT	33730	09/06/12	477.7	-477.7	709510152 - 103 Yount Court	MILL	C
	OV	218000	70951	70951-	001	09/04/12	PT	33730	09/06/12	325	-325	709510153 - 105 Yount Court	SHER	C
	OV	218866	70951	201452 LOT 153	000	09/14/12	PT	34648	09/20/12	1858.55	-1858.55	709510153 - 105 Yount Court	SHER	C
	OV	221111	70951	3717181 LOT 153	000	10/25/12	PT	37782	11/01/12	8	-8	709510153 - 105 Yount Court	SHER	C
	OV	218002	70951	70951-00218002	002	09/04/12	PT	33730	09/06/12	12.75	-12.75	709510153 - 105 Yount Court	SHER	C
	OV	218002	70951	70951-00218002	001	09/04/12	PT	33730	09/06/12	212.5	-212.5	709510153 - 105 Yount Court	SHER	C
	OV	224868	70951	201412 LOT 153	000	12/17/12	PT	41370	12/20/12	2558.5	-2558.5	709510153 - 105 Yount Court	SHER	C
	OV	224870	70951	201437 LOT 153	000	12/17/12	PT	41370	12/20/12	477.7	-477.7	709510153 - 105 Yount Court	SHER	C
	OV	211869	70951	200873 154	000	06/22/12	PT	29431	06/28/12	325	-325	709510154 - 107 Yount Court	BYRO	C
	OV	213155	70951	70951-00213155	001	07/09/12	PT	30229	07/12/12	2595.7	-2595.7	709510154 - 107 Yount Court	BYRO	C
	OV	212864	70951	200922 LOT 154	000	07/06/12	PT	30229	07/12/12	2595.7	-2595.7	709510154 - 107 Yount Court	BYRO	C
	OV	213338	70951	200922 154	000	07/10/12	PT	30229	07/12/12	-2595.7	2595.7	709510154 - 107 Yount Court	BYRO	C
	OV	211676	70951	70951-00211676	001	06/21/12	PT	29431	06/28/12	200	-200	709510154 - 107 Yount Court	BYRO	C
	OV	211676	70951	70951-00211676	002	06/21/12	PT	29431	06/28/12	12	-12	709510154 - 107 Yount Court	BYRO	C
	OV	217754	70951	200906 LOT 154	000	08/30/12	PT	33730	09/06/12	960.5	-960.5	709510154 - 107 Yount Court	BYRO	C
	OV	217753	70951	200917 LOT 154	000	08/30/12	PT	33730	09/06/12	477.7	-477.7	709510154 - 107 Yount Court	BYRO	C

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	OV	217753	70951	200917 LOT 154	001	08/30/12	PT	33730	09/06/12	47.6	-47.6	709510154 - 107 Yount Court	BYRO	C
	OV	224117	70951	70951-	001	12/11/12	PT	41370	12/20/12	325	-325	709510155 - 109 Yount Court	MILL	C
	OV	224118	70951	70951-00224118	001	12/11/12	PT	41370	12/20/12	1779.2	-1779.2	709510155 - 109 Yount Court	MILL	C
	OV	224119	70951	70951-00224119	001	12/11/12	PT	41370	12/20/12	168.75	-168.75	709510155 - 109 Yount Court	MILL	C
	OV	224119	70951	70951-00224119	002	12/11/12	PT	41370	12/20/12	10.13	-10.13	709510155 - 109 Yount Court	MILL	C
	OV	228543	70951	201882 LOT 155	000	02/18/13	PT	46719	02/21/13	477.7	-477.7	709510155 - 109 Yount Court	MILL	C
	OV	228869	70951	3721925 LOT 155	000	02/28/13	PT	48162	03/07/13	365.75	-365.75	709510155 - 109 Yount Court	MILL	C
	OV	228868	70951	3721926 LOT 155	000	02/28/13	PT	48162	03/07/13	56.2	-56.2	709510155 - 109 Yount Court	MILL	C
	OV	227642	70951	201857 LOT 155	000	01/31/13	PT	45137	02/07/13	1581	-1581	709510155 - 109 Yount Court	MILL	C
	OV	234535	70951	70951-00234535	002	05/28/13	PT	57782	06/06/13	9.38	-9.38	709510156 - 111 Yount Court	EVER	C
	OV	234535	70951	70951-00234535	001	05/28/13	PT	57782	06/06/13	156.25	-156.25	709510156 - 111 Yount Court	EVER	C
	OV	234534	70951	70951-00234534	001	05/28/13	PT	57782	06/06/13	1615.9	-1615.9	709510156 - 111 Yount Court	EVER	C
	OV	238097	70951	70951-	001	07/08/13	PT	61954	07/11/13	653.9	-653.9	709510156 - 111 Yount Court	EVER	C
	OV	240504	70951	3730762 LOT 156	000	08/02/13	PT	65246	08/08/13	346	-346	709510156 - 111 Yount Court	EVER	C
	OV	249161	70951	37395800156	000	02/10/14	PT	87786	02/13/14	100	-100	709510156 - 111 Yount Court	EVER	C
	OV	242360	70951	3732039 LOT 156	000	08/23/13	PT	67554	08/29/13	139.8	-139.8	709510156 - 111 Yount Court	EVER	C
	OV	240503	70951	202356 LOT 156	000	08/02/13	PT	65246	08/08/13	477.7	-477.7	709510156 - 111 Yount Court	EVER	C
	OV	240147	70951	70951-00240147	001	07/31/13	PT	65246	08/08/13	38	-38	709510157 - 110 Yount Court	BYRO	C
	OV	240147	70951	70951-00240147	002	07/31/13	PT	65246	08/08/13	2889.44	-2889.44	709510157 - 110 Yount Court	BYRO	C
	OV	238760	70951	70951-00238760	001	07/15/13	PT	63577	07/25/13	240	-240	709510157 - 110 Yount Court	BYRO	C

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	OV	238760	70951	70951-00238760	002	07/15/13	PT	63577	07/25/13	14.4	-14.4	709510157 - 110 Yount Court	BYRO	C
	OV	244118	70951	202795 LOT 157	000	09/13/13	PT	70154	09/19/13	533.9	-533.9	709510157 - 110 Yount Court	BYRO	C
	OV	215779	70951	201213 LOT 158	000	08/16/12	PT	32837	08/23/12	325	-325	709510158 - 108 Yount Court	MILL	C
	OV	218004	70951	70951-00218004	001	09/04/12	PT	33730	09/06/12	1779.2	-1779.2	709510158 - 108 Yount Court	MILL	C
	OV	215778	70951	201216 LOT 158	000	08/16/12	PT	32837	08/23/12	168.75	-168.75	709510158 - 108 Yount Court	MILL	C
	OV	215778	70951	201216 LOT 158	001	08/16/12	PT	32837	08/23/12	10.13	-10.13	709510158 - 108 Yount Court	MILL	C
	OV	219370	70951	70951-	001	09/27/12	PT	35766	10/04/12	532.62	-532.62	709510158 - 108 Yount Court	MILL	C
	OV	220038	70951	201275 LOT 158	000	10/12/12	PT	36633	10/18/12	477.7	-477.7	709510158 - 108 Yount Court	MILL	C
	OV	216671	70951	70951-	001	08/20/12	PT	32837	08/23/12	325	-325	709510159 - 106 Yount Court	MILL	C
	OV	218867	70951	201367 LOT 159	000	09/14/12	PT	34648	09/20/12	1779.2	-1779.2	709510159 - 106 Yount Court	MILL	C
	OV	221113	70951	3717181 LOT 159	000	10/25/12	PT	37782	11/01/12	8	-8	709510159 - 106 Yount Court	MILL	C
	OV	218007	70951	70951-00218007	001	09/04/12	PT	33730	09/06/12	168.75	-168.75	709510159 - 106 Yount Court	MILL	C
	OV	218007	70951	70951-00218007	002	09/04/12	PT	33730	09/06/12	10.13	-10.13	709510159 - 106 Yount Court	MILL	C
	OV	224872	70951	201331 LOT 159	000	12/17/12	PT	41370	12/20/12	1581	-1581	709510159 - 106 Yount Court	MILL	C
	OV	235937	70951	3727879 LOT 159	000	06/14/13	PT	59519	06/20/13	600	-600	709510159 - 106 Yount Court	MILL	C
	OV	224869	70951	201356 LOT 159	000	12/17/12	PT	41370	12/20/12	477.7	-477.7	709510159 - 106 Yount Court	MILL	C
	OV	224122	70951	70951-	001	12/11/12	PT	41370	12/20/12	325	-325	709510161 - 102 Yount Court	ABIN	C
	OV	232185	70951	70951-00232185	001	04/22/13	PT	54950	05/09/13	34	-34	709510161 - 102 Yount Court	ABIN	C
	OV	224123	70951	70951-00224123	001	12/11/12	PT	41370	12/20/12	2614.1	-2614.1	709510161 - 102 Yount Court	ABIN	C
	OV	224124	70951	70951-00224124	001	12/11/12	PT	41370	12/20/12	193.75	-193.75	709510161 - 102 Yount Court	ABIN	C
	OV	224124	70951	70951-00224124	002	12/11/12	PT	41370	12/20/12	11.63	-11.63	709510161 - 102 Yount Court	ABIN	C
	OV	227643	70951	201939 LOT 161	000	01/31/13	PT	45137	02/07/13	1011.5	-1011.5	709510161 - 102 Yount Court	ABIN	C
	OV	228866	70951	3721925 LOT 161	000	02/28/13	PT	48162	03/07/13	191.9	-191.9	709510161 - 102 Yount Court	ABIN	C

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	OV	228867	70951	3721926 LOT 161	000	02/28/13	PT	48162	03/07/13	56.2	-56.2	709510161 - 102 Yount Court	ABIN	C
	OV	228542	70951	201963 LOT 161	000	02/18/13	PT	46719	02/21/13	477.7	-477.7	709510161 - 102 Yount Court	ABIN	C
	OV	215163	70951	200929 LOT 162	000	08/01/12	PT	31935	08/09/12	325	-325	709510162 - 100 Yount Court	MILL	C
	OV	221114	70951	3717181 LOT 162	000	10/25/12	PT	37782	11/01/12	8	-8	709510162 - 100 Yount Court	MILL	C
	OV	221114	70951	3717181 LOT 162	001	10/25/12	PT	37782	11/01/12	266.15	-266.15	709510162 - 100 Yount Court	MILL	C
	OV	221114	70951	3717181 LOT 162	002	10/25/12	PT	37782	11/01/12	150	-150	709510162 - 100 Yount Court	MILL	C
	OV	220035	70951	3714942 LOT 162	000	10/12/12	PT	36633	10/18/12	200	-200	709510162 - 100 Yount Court	MILL	C
	OV	214919	70951	70951-00214919	001	07/30/12	PT	31935	08/09/12	1779.2	-1779.2	709510162 - 100 Yount Court	MILL	C
	OV	213702	70951	70951-00213702	001	07/19/12	PT	31210	07/26/12	168.75	-168.75	709510162 - 100 Yount Court	MILL	C
	OV	213702	70951	70951-00213702	003	07/19/12	PT	31210	07/26/12	10.13	-10.13	709510162 - 100 Yount Court	MILL	C
	OV	218009	70951	70951-	001	09/04/12	PT	33730	09/06/12	532.62	-532.62	709510162 - 100 Yount Court	MILL	C
	OV	220039	70951	200993 LOT 162	000	10/12/12	PT	36633	10/18/12	477.7	-477.7	709510162 - 100 Yount Court	MILL	C
	OV	222577	70951	70951-	001	11/13/12	PT	38599	11/15/12	325	-325	709510163 - 1 Harwick Court	MILL	C
	OV	222578	70951	70951-00222578	001	11/13/12	PT	38599	11/15/12	1779.2	-1779.2	709510163 - 1 Harwick Court	MILL	C
	OV	222579	70951	70951-00222579	001	11/13/12	PT	38599	11/15/12	168.75	-168.75	709510163 - 1 Harwick Court	MILL	C
	OV	222579	70951	70951-00222579	002	11/13/12	PT	38599	11/15/12	10.13	-10.13	709510163 - 1 Harwick Court	MILL	C
	OV	224126	70951	70951-	001	12/11/12	PT	41370	12/20/12	532.62	-532.62	709510163 - 1 Harwick Court	MILL	C
	OV	225833	70951	201633 LOT 163	000	01/04/13	PT	43005	01/10/13	477.7	-477.7	709510163 - 1 Harwick Court	MILL	C
	OV	225833	70951	201633 LOT 163	001	01/04/13	PT	43005	01/10/13	34	-34	709510163 - 1 Harwick Court	MILL	C
	OV	226973	70951	201998 LOT 164	000	01/18/13	PT	44169	01/24/13	325	-325	709510164 - 3 Harwick Court	SHER	C
	OV	228545	70951	3721487 LOT 164	000	02/18/13	PT	46719	02/21/13	450	-450	709510164 - 3 Harwick Court	SHER	C
	OV	227808	70951	70951-00227808	001	02/05/13	PT	45137	02/07/13	2064.4	-2064.4	709510164 - 3 Harwick Court	SHER	C

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	OV	226974	70951	202001 LOT 164	000	01/18/13	PT	44169	01/24/13	218.75	-218.75	709510164 - 3 Harwick Court	SHER	C
	OV	226974	70951	202001 LOT 164	001	01/18/13	PT	44169	01/24/13	13.13	-13.13	709510164 - 3 Harwick Court	SHER	C
	OV	229093	70951	70951-	001	03/04/13	PT	48162	03/07/13	472.23	-472.23	709510164 - 3 Harwick Court	SHER	C
	OV	231148	70951	3723440 LOT 164	000	04/02/13	PT	51390	04/04/13	171.27	-171.27	709510164 - 3 Harwick Court	SHER	C
	OV	231150	70951	3724570 LOT 164	000	04/02/13	PT	51390	04/04/13	167.2	-167.2	709510164 - 3 Harwick Court	SHER	C
	OV	231149	70951	3724571 LOT 164	000	04/02/13	PT	51390	04/04/13	56.2	-56.2	709510164 - 3 Harwick Court	SHER	C
	OV	231151	70951	202062 LOT 164	000	04/02/13	PT	51390	04/04/13	477.7	-477.7	709510164 - 3 Harwick Court	SHER	C
	OV	232845	70951	202464 LOT 165	000	04/29/13	PT	54950	05/09/13	1779.2	-1779.2	709510165 - 5 Harwick Court	MILL	C
	OV	235941	70951	3727873 LOT 165	000	06/14/13	PT	59519	06/20/13	8	-8	709510165 - 5 Harwick Court	MILL	C
	OV	239795	70951	3730507 LOT 165	000	07/23/13	PT	63577	07/25/13	253.8	-253.8	709510165 - 5 Harwick Court	MILL	C
	OV	232605	70951	70951-00232605	001	04/29/13	PT	54950	05/09/13	168.75	-168.75	709510165 - 5 Harwick Court	MILL	C
	OV	232605	70951	70951-00232605	002	04/29/13	PT	54950	05/09/13	10.13	-10.13	709510165 - 5 Harwick Court	MILL	C
	OV	239793	70951	3730505 LOT 165	000	07/23/13	PT	63577	07/25/13	600	-600	709510165 - 5 Harwick Court	MILL	C
	OV	239794	70951	3730506 LOT 165	000	07/23/13	PT	63577	07/25/13	910.8	-910.8	709510165 - 5 Harwick Court	MILL	C
	OV	242947	70951	202425 LOT 165	000	08/27/13	PT	67554	08/29/13	1581	-1581	709510165 - 5 Harwick Court	MILL	C
	OV	239791	70951	202450 LOT 165	000	07/23/13	PT	63577	07/25/13	477.7	-477.7	709510165 - 5 Harwick Court	MILL	C
	OV	235668	70951	70951-00235668	001	06/10/13	PT	59519	06/20/13	38	-38	709510166 - 7 Harwick Court	ABIN	C
	OV	235668	70951	70951-00235668	002	06/10/13	PT	59519	06/20/13	2909.92	-2909.92	709510166 - 7 Harwick Court	ABIN	C
	OV	234542	70951	70951-00234542	001	05/28/13	PT	57782	06/06/13	232.5	-232.5	709510166 - 7 Harwick Court	ABIN	C
	OV	234542	70951	70951-00234542	002	05/28/13	PT	57782	06/06/13	13.95	-13.95	709510166 - 7 Harwick Court	ABIN	C
	OV	238102	70951	70951-	001	07/08/13	PT	61954	07/11/13	319.28	-319.28	709510166 - 7 Harwick Court	ABIN	C
	OV	240502	70951	202576 LOT 166	000	08/02/13	PT	65246	08/08/13	533.9	-533.9	709510166 - 7 Harwick Court	ABIN	C

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	OV	235670	70951	70951-00235670	001	06/10/13	PT	59519	06/20/13	2298.08	-2298.08	709510167 - 9 Harwick Court	SHER	C
	OV	235095	70951	70951-00235095	001	06/03/13	PT	57782	06/06/13	262.5	-262.5	709510167 - 9 Harwick Court	SHER	C
	OV	235095	70951	70951-00235095	002	06/03/13	PT	57782	06/06/13	15.75	-15.75	709510167 - 9 Harwick Court	SHER	C
	OV	227168	70951	70951-00227168	001	01/22/13	PT	44169	01/24/13	1779.2	-1779.2	709510168 - 11 Harwick Court	MILL	C
	OV	235940	70951	3727873 LOT 168	000	06/14/13	PT	59519	06/20/13	259.45	-259.45	709510168 - 11 Harwick Court	MILL	C
	OV	230958	70951	70951-	001	04/01/13	PT	51390	04/04/13	812.3	-812.3	709510168 - 11 Harwick Court	MILL	C
	OV	224871	70951	201651 LOT 168	000	12/17/12	PT	41370	12/20/12	325	-325	709510168 - 11 Harwick Court	MILL	C
	OV	243528	70951	202668 LOT 167	000	09/03/13	PT	68428	09/05/13	533.9	-533.9	709510167 - 9 Harwick Court	SHER	C
	OV	244120	70951	3733596 LOT 167	000	09/13/13	PT	70154	09/19/13	150.1	-150.1	709510167 - 9 Harwick Court	SHER	C
	OV	220898	70951	70951-00220898	002	10/24/12	PT	37782	11/01/12	10.13	-10.13	709510168 - 11 Harwick Court	MILL	C
	OV	220898	70951	70951-00220898	001	10/24/12	PT	37782	11/01/12	168.75	-168.75	709510168 - 11 Harwick Court	MILL	C
	OV	232844	70951	201715 LOT 168	000	04/29/13	PT	54950	05/09/13	477.7	-477.7	709510168 - 11 Harwick Court	MILL	C
	OV	234253	70951	3726080 LOT 168	000	05/21/13	PT	56168	05/23/13	56.2	-56.2	709510168 - 11 Harwick Court	MILL	C
	OV	244344	70951	70951-00244344	001	09/16/13	PT	70154	09/19/13	1980.64	-1980.64	709510169 - 15 Harwick Court	MILL	C
	OV	243234	70951	70951-00243234	002	09/03/13	PT	68428	09/05/13	12.15	-12.15	709510169 - 15 Harwick Court	MILL	C
	OV	243234	70951	70951-00243234	001	09/03/13	PT	68428	09/05/13	202.5	-202.5	709510169 - 15 Harwick Court	MILL	C
	OV	247611	70951	203518 LOT 169	000	12/03/13	PT	79436	12/05/13	1581	-1581	709510169 - 15 Harwick Court	MILL	C
	OV	247149	70951	203543 0169	000	11/19/13	PT	77788	11/21/13	533.9	-533.9	709510169 - 15 Harwick Court	MILL	C
	OV	247593	70951	3737831 LOT 169	000	12/03/13	PT	79436	12/05/13	583.3	-583.3	709510169 - 15 Harwick Court	MILL	C
	OV	239792	70951	3729525 LOT 172	000	07/23/13	PT	63577	07/25/13	500.8	-500.8	709510172 - 12 Harwick Court	MILL	C
	OV	234789	70951	202263 LOT 172	000	05/28/13	PT	57782	06/06/13	477.7	-477.7	709510172 - 12 Harwick Court	MILL	C

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	OV	245981	70951	202855 LOT 173	000	10/18/13	PT	74499	10/24/13	867	-867	709510173 - 10 Harwick Court	BYRO	C
	OV	235938	70951	3727878 LOT 172	000	06/14/13	PT	59519	06/20/13	113.35	-113.35	709510172 - 12 Harwick Court	MILL	C
	OV	234257	70951	202236 LOT 172	000	05/21/13	PT	56168	05/23/13	812.3	-812.3	709510172 - 12 Harwick Court	MILL	C
	OV	239435	70951	70951-00239435	001	07/22/13	PT	63577	07/25/13	240	-240	709510173 - 10 Harwick Court	BYRO	C
	OV	239435	70951	70951-00239435	002	07/22/13	PT	63577	07/25/13	14.4	-14.4	709510173 - 10 Harwick Court	BYRO	C
	OV	239434	70951	70951-00239434	001	07/22/13	PT	63577	07/25/13	2889.44	-2889.44	709510173 - 10 Harwick Court	BYRO	C
	OV	245031	70951	202879 LOT 173	000	09/27/13	PT	72677	10/10/13	533.9	-533.9	709510173 - 10 Harwick Court	BYRO	C
	OV	245973	70951	3735123 LOT 173	000	10/18/13	PT	74499	10/24/13	249.85	-249.85	709510173 - 10 Harwick Court	BYRO	C
	OV	246688	70951	3736639 LOT 173	000	11/04/13	PT	76020	11/07/13	75	-75	709510173 - 10 Harwick Court	BYRO	C
	OV	239443	70951	70951-00239443	001	07/22/13	PT	63577	07/25/13	2889.44	-2889.44	709510176 - 4 Harwick Court	BYRO	C
	OV	239444	70951	70951-00239444	001	07/22/13	PT	63577	07/25/13	240	-240	709510176 - 4 Harwick Court	BYRO	C
	OV	239444	70951	70951-00239444	002	07/22/13	PT	63577	07/25/13	14.4	-14.4	709510176 - 4 Harwick Court	BYRO	C
	OV	245977	70951	203136 LOT 176	000	10/18/13	PT	74499	10/24/13	867	-867	709510176 - 4 Harwick Court	BYRO	C
	OV	245976	70951	203169 LOT 176	000	10/18/13	PT	74499	10/24/13	400	-400	709510176 - 4 Harwick Court	BYRO	C
	OV	244116	70951	203160 LOT 176	000	09/13/13	PT	70154	09/19/13	533.9	-533.9	709510176 - 4 Harwick Court	BYRO	C
	OV	245970	70951	3735126 LOT 176	000	10/18/13	PT	74499	10/24/13	142.5	-142.5	709510176 - 4 Harwick Court	BYRO	C
	OV	245969	70951	3735127 LOT 177	000	10/18/13	PT	74499	10/24/13	300	-300	709510177 - 2 Harwick Court	BNV2	C
	OV	243824	70951	70951-00243824	001	09/09/13	PT	70154	09/19/13	51.2	-51.2	709510177 - 2 Harwick Court	BNV2	C
	OV	243824	70951	70951-00243824	002	09/09/13	PT	70154	09/19/13	3024.16	-3024.16	709510177 - 2 Harwick Court	BNV2	C
	OV	243244	70951	70951-00243244	001	09/03/13	PT	68428	09/05/13	337.5	-337.5	709510177 - 2 Harwick Court	BNV2	C
	OV	243244	70951	70951-00243244	002	09/03/13	PT	68428	09/05/13	20.25	-20.25	709510177 - 2 Harwick Court	BNV2	C
	OV	246566	70951	70951-	001	11/04/13	PT	76020	11/07/13	754.88	-754.88	709510177 - 2 Harwick Court	BNV2	C
	OV	249485	70951	37422730177	000	02/19/14	PT	89669	02/27/14	75	-75	709510177 - 2 Harwick Court	BNV2	C

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	OV	245974	70951	3736064 LOT 177	000	10/18/13	PT	74499	10/24/13	581.62	-581.62	709510177 - 2 Harwick Court	BNV2	C
	OV	246684	70951	203434 LOT 177	000	11/04/13	PT	76020	11/07/13	533.9	-533.9	709510177 - 2 Harwick Court	BNV2	C
	OV	246685	70951	3736648 LOT 177	000	11/04/13	PT	76020	11/07/13	108.3	-108.3	709510177 - 2 Harwick Court	BNV2	C
	OV	246687	70951	3736639 LOT 177	000	11/04/13	PT	76020	11/07/13	100	-100	709510177 - 2 Harwick Court	BNV2	C
	OV	251904	70951	70951-00251904	001	04/22/14	PT	98029	04/24/14	2643.68	-2643.68	709510181 - 107 Amherst Way	BROO	C
	OV	251358	70951	70951-00251358	001	04/15/14	PT	96655	04/17/14	217.5	-217.5	709510181 - 107 Amherst Way	BROO	C
	OV	251358	70951	70951-00251358	002	04/15/14	PT	96655	04/17/14	13.05	-13.05	709510181 - 107 Amherst Way	BROO	C
	OV	257667	70951	37500050181	000	07/02/14	PT	109061	07/10/14	249.85	-249.85	709510181 - 107 Amherst Way	BROO	C
	OV	255299	70951	70951-00255299	001	06/03/14	PK	647009	06/04/14	533.9	-533.9	709510181 - 107 Amherst Way	BROO	C
	OV	251907	70951	70951-00251907	001	04/22/14	PT	98029	04/24/14	51.2	-51.2	709510182 - 109 Amherst Way	BNV2	C
	OV	251907	70951	70951-00251907	002	04/22/14	PT	98029	04/24/14	3024.16	-3024.16	709510182 - 109 Amherst Way	BNV2	C
	OV	251908	70951	70951-00251908	001	04/22/14	PT	98029	04/24/14	337.5	-337.5	709510182 - 109 Amherst Way	BNV2	C
	OV	251908	70951	70951-00251908	002	04/22/14	PT	98029	04/24/14	20.25	-20.25	709510182 - 109 Amherst Way	BNV2	C
	OV	253467	70951	37469920182	000	05/07/14	PT	100839	05/15/14	300	-300	709510182 - 109 Amherst Way	BNV2	C
	OV	253747	70951	70951-	001	05/13/14	PT	100839	05/15/14	754.88	-754.88	709510182 - 109 Amherst Way	BNV2	C
	OV	255068	70951	37484720182	000	05/29/14	PK	647009	06/04/14	141.07	-141.07	709510182 - 109 Amherst Way	BNV2	C
	OV	256061	70951	37490350182	000	06/12/14	PT	105886	06/19/14	190	-190	709510182 - 109 Amherst Way	BNV2	C
	OV	255300	70951	70951-00255300	001	06/03/14	PK	647009	06/04/14	533.9	-533.9	709510182 - 109 Amherst Way	BNV2	C
	OV	249486	70951	37422740183	000	02/19/14	PT	89669	02/27/14	250	-250	709510183 - 111 Amherst Way	BROO	C
	OV	249050	70951	70951-00249050	001	02/04/14	PT	86695	02/06/14	2643.68	-2643.68	709510183 - 111 Amherst Way	BROO	C
	OV	248617	70951	70951-00248617	001	01/13/14	PT	84470	01/16/14	217.5	-217.5	709510183 - 111 Amherst Way	BROO	C
	OV	248617	70951	70951-00248617	002	01/13/14	PT	84470	01/16/14	13.05	-13.05	709510183 - 111 Amherst Way	BROO	C

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	OV	249840	70951	70951-	001	03/10/14	PT	91763	03/13/14	903.87	-903.87	709510183 - 111 Amherst Way	BROO
	OV	250427	70951	37447450183	000	03/27/14	PT	94630	04/03/14	105.93	-105.93	709510183 - 111 Amherst Way	BROO
	OV	250586	70951	70951-00250586	001	04/01/14	PT	94630	04/03/14	533.9	-533.9	709510183 - 111 Amherst Way	BROO
	OV	253468	70951	37469930183	000	05/07/14	PT	100839	05/15/14	205.2	-205.2	709510183 - 111 Amherst Way	BROO
	OV	251911	70951	70951-00251911	001	04/22/14	PT	98029	04/24/14	1980.64	-1980.64	709510184 - 116 Amherst Way	MILL
	OV	251366	70951	70951-00251366	001	04/15/14	PT	96655	04/17/14	202.5	-202.5	709510184 - 116 Amherst Way	MILL
	OV	251366	70951	70951-00251366	002	04/15/14	PT	96655	04/17/14	12.15	-12.15	709510184 - 116 Amherst Way	MILL
	OV	255064	70951	2040540184	000	05/28/14	PK	647009	06/04/14	1581	-1581	709510184 - 116 Amherst Way	MILL
	OV	254804	70951	70951-00254804	001	05/27/14	PT	102779	05/29/14	533.9	-533.9	709510184 - 116 Amherst Way	MILL
	OV	256062	70951	37490350184	000	06/12/14	PT	105886	06/19/14	235.6	-235.6	709510184 - 116 Amherst Way	MILL
	OV	257669	70951	37500070185	000	07/02/14	PT	109061	07/10/14	250	-250	709510185 - 114 Amherst Way	HERI
	OV	256893	70951	70951-00256893	001	06/24/14	PT	107076	06/26/14	2166.24	-2166.24	709510185 - 114 Amherst Way	HERI
	OV	255799	70951	70951-00255799	001	06/10/14	PT	104887	06/12/14	210	-210	709510185 - 114 Amherst Way	HERI
	OV	255799	70951	70951-00255799	002	06/10/14	PT	104887	06/12/14	12.6	-12.6	709510185 - 114 Amherst Way	HERI
	OV	257668	70951	37500060185	000	07/02/14	PT	109061	07/10/14	300	-300	709510185 - 114 Amherst Way	HERI
	OV	259998	70951	70951-00259998	001	08/19/14	PT	115679	08/21/14	2298.08	-2298.08	709510189 - 106 Amherst Way	SHER
	OV	259999	70951	70951-00259999	001	08/19/14	PT	115679	08/21/14	262.5	-262.5	709510189 - 106 Amherst Way	SHER
	OV	259999	70951	70951-00259999	002	08/19/14	PT	115679	08/21/14	15.75	-15.75	709510189 - 106 Amherst Way	SHER
	OV	259999	70951	70951-00259999	003	08/19/14	PT	115679	08/21/14	45	-45	709510189 - 106 Amherst Way	SHER
	OV	259999	70951	70951-00259999	004	08/19/14	PT	115679	08/21/14	2.7	-2.7	709510189 - 106 Amherst Way	SHER
	OV	257409	70951	70951-00257409	001	07/01/14	PT	108137	07/02/14	51.2	-51.2	709510190 - 104 Amherst Way	BNV2
	OV	257409	70951	70951-00257409	002	07/01/14	PT	108137	07/02/14	3024.16	-3024.16	709510190 - 104 Amherst Way	BNV2

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	OV	256901	70951	70951-00256901	001	06/24/14	PT	107076	06/26/14	337.5	-337.5	709510190 - 104 Amherst Way	BNV2
	OV	256901	70951	70951-00256901	002	06/24/14	PT	107076	06/26/14	20.25	-20.25	709510190 - 104 Amherst Way	BNV2
	OV	257413	70951	70951-00257413	001	07/01/14	PT	108137	07/02/14	1980.64	-1980.64	709510191 - 102 Amherst Way	MILL
	OV	256906	70951	70951-00256906	001	06/24/14	PT	107076	06/26/14	202.5	-202.5	709510191 - 102 Amherst Way	MILL
	OV	256906	70951	70951-00256906	002	06/24/14	PT	107076	06/26/14	12.15	-12.15	709510191 - 102 Amherst Way	MILL
	OV	256064	70951	37490340192	000	06/12/14	PT	105886	06/19/14	250	-250	709510192 - 100 Amherst Way	ABIN
	OV	256909	70951	70951-	001	06/24/14	PT	107076	06/26/14	178.2	-178.2	709510192 - 100 Amherst Way	ABIN
	OV	256910	70951	70951-00256910	001	06/24/14	PT	107076	06/26/14	533.9	-533.9	709510192 - 100 Amherst Way	ABIN
	OV	258868	70951	37520200192	000	07/23/14	PT	112733	07/31/14	368.5	-368.5	709510192 - 100 Amherst Way	ABIN
	OV	215008	70952	201916 LOT 1	000	08/01/12	PT	31935	08/09/12	325	-325	709520001 - 101 Berwick Court	FIEL
	OV	215523	70952	201996 LOT 1	000	08/07/12	PT	31935	08/09/12	19.55	-19.55	709520001 - 101 Berwick Court	FIEL
	OV	215523	70952	201996 LOT 1	002	08/07/12	PT	31935	08/09/12	2392.7	-2392.7	709520001 - 101 Berwick Court	FIEL
	OV	215009	70952	201919 LOT 1	000	08/01/12	PT	31935	08/09/12	281.25	-281.25	709520001 - 101 Berwick Court	FIEL
	OV	215009	70952	201919 LOT 1	002	08/01/12	PT	31935	08/09/12	16.88	-16.88	709520001 - 101 Berwick Court	FIEL
	OV	222441	70952	3717344 LOT 1	000	10/25/12	PT	37782	11/01/12	22	-22	709520001 - 101 Berwick Court	FIEL
	OV	222445	70952	3717195 LOT 1	000	10/25/12	PT	37782	11/01/12	750	-750	709520001 - 101 Berwick Court	FIEL
	OV	218991	70952	70952-	001	09/13/12	PT	34648	09/20/12	579.15	-579.15	709520001 - 101 Berwick Court	FIEL
	OV	221014	70952	201956 1	000	10/16/12	PT	36633	10/18/12	637.5	-637.5	709520001 - 101 Berwick Court	FIEL
	OV	221013	70952	201999 1	000	10/16/12	PT	36633	10/18/12	400	-400	709520001 - 101 Berwick Court	FIEL
	OV	225615	70952	201982 LOT 1	000	12/17/12	PT	41370	12/20/12	477.7	-477.7	709520001 - 101 Berwick Court	FIEL
	OV	225615	70952	201982 LOT 1	001	12/17/12	PT	41370	12/20/12	112.2	-112.2	709520001 - 101 Berwick Court	FIEL
	OV	225627	70952	3719535 LOT 1	000	12/17/12	PT	41370	12/20/12	150	-150	709520001 - 101 Berwick Court	FIEL
	OV	222439	70952	3717349 LOT 1	000	10/25/12	PT	37782	11/01/12	200	-200	709520001 - 101 Berwick Court	FIEL

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	OV	211201	70952	3701467 LOT 2	000	05/23/12	PT	27534	05/31/12	75	-75	709520002 - 103 Berwick Court	CYTH	C
	OV	211211	70952	3701462 LOT 2	000	05/23/12	PT	27534	05/31/12	24.3	-24.3	709520002 - 103 Berwick Court	CYTH	C
	OV	211208	70952	3703291 LOT 2	000	05/23/12	PT	27534	05/31/12	69.4	-69.4	709520002 - 103 Berwick Court	CYTH	C
	OV	211329	70952	3702762 2	000	05/24/12	PT	27534	05/31/12	229.5	-229.5	709520002 - 103 Berwick Court	CYTH	C
	OV	211207	70952	3704294 LOT 2	000	05/23/12	PT	27534	05/31/12	450	-450	709520002 - 103 Berwick Court	CYTH	C
	OV	210043	70952	200183 3	000	11/14/11	PK	369787	11/18/11	325	-325	709520003 - 105 Berwick Court	BROO	C
	OV	210049	70952	200264 LOT 3	000	11/16/11	PK	369787	11/18/11	2374.9	-2374.9	709520003 - 105 Berwick Court	BROO	C
	OV	211202	70952	3703291 LOT 3	000	05/23/12	PT	27534	05/31/12	69.4	-69.4	709520003 - 105 Berwick Court	BROO	C
	OV	211212	70952	3701462 LOT 3	000	05/23/12	PT	27534	05/31/12	8	-8	709520003 - 105 Berwick Court	BROO	C
	OV	210042	70952	200186 3	000	11/14/11	PK	369787	11/18/11	181.25	-181.25	709520003 - 105 Berwick Court	BROO	C
	OV	210042	70952	200186 3	001	11/14/11	PK	369787	11/18/11	10.88	-10.88	709520003 - 105 Berwick Court	BROO	C
	OV	211330	70952	3702762 3	000	05/24/12	PT	27534	05/31/12	86.13	-86.13	709520003 - 105 Berwick Court	BROO	C
	OV	231850	70952	203158 LOT 4	000	05/21/13	PT	56168	05/23/13	2635	-2635	709520004 - 107 Berwick Court	FIEL	C
	OV	231854	70952	203184 LOT 4	000	05/21/13	PT	56168	05/23/13	477.7	-477.7	709520004 - 107 Berwick Court	FIEL	C
	OV	232168	70952	3727872 LOT 4	000	06/14/13	PT	59519	06/20/13	171.05	-171.05	709520004 - 107 Berwick Court	FIEL	C
	OV	231853	70952	203185 LOT 4	000	05/21/13	PT	56168	05/23/13	112.2	-112.2	709520004 - 107 Berwick Court	FIEL	C
	OV	227174	70952	70952-	001	01/14/13	PT	44169	01/24/13	325	-325	709520006 - 1 Chatham Ct	FIEL	C
	OV	227612	70952	3720947 LOT 6	000	01/28/13	PT	45137	02/07/13	350	-350	709520006 - 1 Chatham Ct	FIEL	C
	OV	227785	70952	70952-00227785	001	01/29/13	PT	45137	02/07/13	19.55	-19.55	709520006 - 1 Chatham Ct	FIEL	C
	OV	227785	70952	70952-00227785	002	01/29/13	PT	45137	02/07/13	2434.7	-2434.7	709520006 - 1 Chatham Ct	FIEL	C
	OV	227176	70952	70952-00227176	001	01/14/13	PT	44169	01/24/13	281.25	-281.25	709520006 - 1 Chatham Ct	FIEL	C
	OV	227176	70952	70952-00227176	002	01/14/13	PT	44169	01/24/13	16.88	-16.88	709520006 - 1 Chatham Ct	FIEL	C

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	OV	230905	70952	202951 LOT 6	000	04/02/13	PT	51390	04/04/13	2635	-2635	709520006 - 1 Chatham Ct	FIEL	C
	OV	231098	70952	202989 LOT 6	000	04/12/13	PT	52710	04/18/13	400	-400	709520006 - 1 Chatham Ct	FIEL	C
	OV	230906	70952	202977 LOT 6	000	04/02/13	PT	51390	04/04/13	477.7	-477.7	709520006 - 1 Chatham Ct	FIEL	C
	OV	230907	70952	202978 LOT 6	000	04/02/13	PT	51390	04/04/13	112.2	-112.2	709520006 - 1 Chatham Ct	FIEL	C
	OV	210572	70952	200779 7	000	03/15/12	PT	23226	03/22/12	325	-325	709520007 - 3 Chatham Court	BROO	C
	OV	210648	70952	200859 LOT 7	000	03/16/12	PT	23226	03/22/12	2374.9	-2374.9	709520007 - 3 Chatham Court	BROO	C
	OV	214516	70952	3710663 LOT 7	000	07/27/12	PT	31935	08/09/12	69.4	-69.4	709520007 - 3 Chatham Court	BROO	C
	OV	210570	70952	200782 7	000	03/15/12	PT	23226	03/22/12	181.25	-181.25	709520007 - 3 Chatham Court	BROO	C
	OV	210570	70952	200782 7	001	03/15/12	PT	23226	03/22/12	10.88	-10.88	709520007 - 3 Chatham Court	BROO	C
	OV	211093	70952	200816 7	000	05/10/12	PT	26807	05/17/12	903.87	-903.87	709520007 - 3 Chatham Court	BROO	C
	OV	211160	70952	200843 LOT 7	000	05/11/12	PT	26807	05/17/12	477.7	-477.7	709520007 - 3 Chatham Court	BROO	C
	OV	211168	70952	200844 LOT 7	000	05/11/12	PT	26807	05/17/12	112.2	-112.2	709520007 - 3 Chatham Court	BROO	C
	OV	210283	70952	200603 8	000	01/19/12	PT	20352	01/26/12	325	-325	709520008 - 5 Chatham Court	CYTH	C
	OV	210285	70952	200685 8	000	01/19/12	PT	20352	01/26/12	3311.55	-3311.55	709520008 - 5 Chatham Court	CYTH	C
	OV	211203	70952	3703291 LOT 8	000	05/23/12	PT	27534	05/31/12	24.3	-24.3	709520008 - 5 Chatham Court	CYTH	C
	OV	211203	70952	3703291 LOT 8	001	05/23/12	PT	27534	05/31/12	8	-8	709520008 - 5 Chatham Court	CYTH	C
	OV	210284	70952	200606 8	000	01/19/12	PT	20352	01/26/12	281.25	-281.25	709520008 - 5 Chatham Court	CYTH	C
	OV	210284	70952	200606 8	001	01/19/12	PT	20352	01/26/12	16.88	-16.88	709520008 - 5 Chatham Court	CYTH	C
	OV	210581	70952	200641 8	000	03/15/12	PT	23226	03/22/12	2380	-2380	709520008 - 5 Chatham Court	CYTH	C
	OV	225617	70952	200667 LOT 8	000	12/17/12	PT	41370	12/20/12	477.7	-477.7	709520008 - 5 Chatham Court	CYTH	C
	OV	225616	70952	200668 LOT 8	000	12/17/12	PT	41370	12/20/12	112.2	-112.2	709520008 - 5 Chatham Court	CYTH	C
	OV	210277	70952	200483 9	000	01/19/12	PT	20352	01/26/12	325	-325	709520009 - 7 Chatham Court	BROO	C

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	OV	210279	70952	200536 9	000	01/19/12	PT	20352	01/26/12	2374.9	-2374.9	709520009 - 7 Chatham Court	BROO	C
	OV	211204	70952	3703291 LOT 9	000	05/23/12	PT	27534	05/31/12	8	-8	709520009 - 7 Chatham Court	BROO	C
	OV	210278	70952	200486 9	000	01/19/12	PT	20352	01/26/12	181.25	-181.25	709520009 - 7 Chatham Court	BROO	C
	OV	210278	70952	200486 9	001	01/19/12	PT	20352	01/26/12	10.88	-10.88	709520009 - 7 Chatham Court	BROO	C
	OV	210580	70952	200517 9	000	03/15/12	PT	23226	03/22/12	903.87	-903.87	709520009 - 7 Chatham Court	BROO	C
	OV	213999	70952	201896 9	000	07/19/12	PT	31210	07/26/12	600	-600	709520009 - 7 Chatham Court	BROO	C
	OV	210655	70952	200531 LOT 9	000	03/16/12	PT	23226	03/22/12	477.7	-477.7	709520009 - 7 Chatham Court	BROO	C
	OV	225618	70952	200532 LOT 9	000	12/17/12	PT	41370	12/20/12	112.2	-112.2	709520009 - 7 Chatham Court	BROO	C
	OV	225406	70952	70952-	001	12/13/12	PT	41370	12/20/12	325	-325	709520010 - 9 Chatham Court	FIEL	C
	OV	226240	70952	70952-00226240	001	01/03/13	PT	43005	01/10/13	2392.7	-2392.7	709520010 - 9 Chatham Court	FIEL	C
	OV	228184	70952	70952-00228184	001	02/05/13	PT	45137	02/07/13	107.1	-107.1	709520010 - 9 Chatham Court	FIEL	C
	OV	224977	70952	70952-00224977	002	12/11/12	PT	41370	12/20/12	16.88	-16.88	709520010 - 9 Chatham Court	FIEL	C
	OV	224977	70952	70952-00224977	001	12/11/12	PT	41370	12/20/12	281.25	-281.25	709520010 - 9 Chatham Court	FIEL	C
	OV	227334	70952	202849 LOT 10	000	01/18/13	PT	44169	01/24/13	579.15	-579.15	709520010 - 9 Chatham Court	FIEL	C
	OV	227335	70952	202852 LOT 10	000	01/18/13	PT	44169	01/24/13	637.5	-637.5	709520010 - 9 Chatham Court	FIEL	C
	OV	230900	70952	3724568 LOT 10	000	04/02/13	PT	51390	04/04/13	418	-418	709520010 - 9 Chatham Court	FIEL	C
	OV	230898	70952	202878 LOT 10	000	04/02/13	PT	51390	04/04/13	477.7	-477.7	709520010 - 9 Chatham Court	FIEL	C
	OV	230899	70952	202879 LOT 10	000	04/02/13	PT	51390	04/04/13	112.2	-112.2	709520010 - 9 Chatham Court	FIEL	C
	OV	230901	70952	3724569 LOT 10	000	04/02/13	PT	51390	04/04/13	69.4	-69.4	709520010 - 9 Chatham Court	FIEL	C
	OV	215904	70952	70952-	001	08/16/12	PT	32837	08/23/12	325	-325	709520011 - 11 Chatham Court	BROO	C
	OV	215905	70952	70952-00215905	001	08/16/12	PT	32837	08/23/12	2374.9	-2374.9	709520011 - 11 Chatham Court	BROO	C
	OV	215906	70952	70952-00215906	001	08/16/12	PT	32837	08/23/12	181.25	-181.25	709520011 - 11 Chatham Court	BROO	C

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	OV	215906	70952	70952-00215906	002	08/16/12	PT	32837	08/23/12	10.88	-10.88	709520011 - 11 Chatham Court	BROO	C
	OV	222446	70952	3717196 LOT 11	000	10/25/12	PT	37782	11/01/12	8	-8	709520011 - 11 Chatham Court	BROO	C
	OV	222446	70952	3717196 LOT 11	001	10/25/12	PT	37782	11/01/12	69.4	-69.4	709520011 - 11 Chatham Court	BROO	C
	OV	215011	70952	201595 LOT 11	000	08/01/12	PT	31935	08/09/12	1412.73	-1412.73	709520011 - 11 Chatham Court	BROO	C
	OV	215539	70952	201623 LOT 11	000	08/16/12	PT	32837	08/23/12	477.7	-477.7	709520011 - 11 Chatham Court	BROO	C
	OV	215538	70952	201624 LOT 11	000	08/16/12	PT	32837	08/23/12	112.2	-112.2	709520011 - 11 Chatham Court	BROO	C
	OV	215907	70952	70952-	001	08/16/12	PT	32837	08/23/12	325	-325	709520013 - 8 Chatham Court	CYTH	C
	OV	218498	70952	70952-00218498	001	09/11/12	PT	34648	09/20/12	87.4	-87.4	709520013 - 8 Chatham Court	CYTH	C
	OV	218498	70952	70952-00218498	002	09/11/12	PT	34648	09/20/12	3311.55	-3311.55	709520013 - 8 Chatham Court	CYTH	C
	OV	218012	70952	70952-00218012	001	09/04/12	PT	33730	09/06/12	281.25	-281.25	709520013 - 8 Chatham Court	CYTH	C
	OV	218012	70952	70952-00218012	002	09/04/12	PT	33730	09/06/12	16.88	-16.88	709520013 - 8 Chatham Court	CYTH	C
	OV	222447	70952	3717196 LOT 13	000	10/25/12	PT	37782	11/01/12	24.3	-24.3	709520013 - 8 Chatham Court	CYTH	C
	OV	220781	70952	70952-	001	10/10/12	PT	36633	10/18/12	1389.96	-1389.96	709520013 - 8 Chatham Court	CYTH	C
	OV	225624	70952	3719536 LOT 13	000	12/17/12	PT	41370	12/20/12	227.7	-227.7	709520013 - 8 Chatham Court	CYTH	C
	OV	222457	70952	3717348 LOT 13	000	10/25/12	PT	37782	11/01/12	266	-266	709520013 - 8 Chatham Court	CYTH	C
	OV	226042	70952	3719754 LOT 13	000	12/28/12	PT	43005	01/10/13	534.85	-534.85	709520013 - 8 Chatham Court	CYTH	C
	OV	225611	70952	202075 LOT 13	000	12/17/12	PT	41370	12/20/12	477.7	-477.7	709520013 - 8 Chatham Court	CYTH	C
	OV	230904	70952	3722804 LOT 13	000	04/02/13	PT	51390	04/04/13	75	-75	709520013 - 8 Chatham Court	CYTH	C
	OV	225620	70952	201466 LOT 14	000	12/17/12	PT	41370	12/20/12	325	-325	709520014 - 6 Chatham Court	FIEL	C
	OV	220988	70952	201546 LOT 14	000	10/12/12	PT	36633	10/18/12	2392.7	-2392.7	709520014 - 6 Chatham Court	FIEL	C
	OV	225619	70952	201469 LOT 14	000	12/17/12	PT	41370	12/20/12	281.25	-281.25	709520014 - 6 Chatham Court	FIEL	C
	OV	225619	70952	201469 LOT 14	001	12/17/12	PT	41370	12/20/12	16.88	-16.88	709520014 - 6 Chatham Court	FIEL	C
	OV	211796	70952	70952-	001	06/18/12	PT	29431	06/28/12	579.15	-579.15	709520014 - 6 Chatham Court	FIEL	C
	OV	212422	70952	201506 14	000	06/22/12	PT	29431	06/28/12	637.5	-637.5	709520014 - 6 Chatham Court	FIEL	C

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	OV	213262	70952	201533 LOT 14	000	07/06/12	PT	30229	07/12/12	477.7	-477.7	709520014 - 6 Chatham Court	FIEL	C
	OV	225621	70952	201534 LOT 14	000	12/17/12	PT	41370	12/20/12	112.2	-112.2	709520014 - 6 Chatham Court	FIEL	C
	OV	210044	70952	200273 19	000	11/14/11	PK	369787	11/18/11	325	-325	709520019 - 121 Berwick Court	GLNH	C
	OV	210048	70952	200354 LOT 19	000	11/16/11	PK	369787	11/18/11	3191.3	-3191.3	709520019 - 121 Berwick Court	GLNH	C
	OV	211210	70952	3701462 LOT 19	000	05/23/12	PT	27534	05/31/12	20.3	-20.3	709520019 - 121 Berwick Court	GLNH	C
	OV	211206	70952	3703291 LOT 19	000	05/23/12	PT	27534	05/31/12	265.1	-265.1	709520019 - 121 Berwick Court	GLNH	C
	OV	210045	70952	200276 19	000	11/14/11	PK	369787	11/18/11	262.5	-262.5	709520019 - 121 Berwick Court	GLNH	C
	OV	210045	70952	200276 19	001	11/14/11	PK	369787	11/18/11	15.75	-15.75	709520019 - 121 Berwick Court	GLNH	C
	OV	210163	70952	200310 LOT 19	000	12/30/11	PT	19368	01/05/12	884.57	-884.57	709520019 - 121 Berwick Court	GLNH	C
	OV	210163	70952	200310 LOT 19	001	12/30/11	PT	19368	01/05/12	155.93	-155.93	709520019 - 121 Berwick Court	GLNH	C
	OV	211331	70952	3702762 19	000	05/24/12	PT	27534	05/31/12	197.01	-197.01	709520019 - 121 Berwick Court	GLNH	C
	OV	210286	70952	200338 19	000	01/19/12	PT	20352	01/26/12	477.7	-477.7	709520019 - 121 Berwick Court	GLNH	C
	OV	210289	70952	200339 19	000	01/19/12	PT	20352	01/26/12	112.2	-112.2	709520019 - 121 Berwick Court	GLNH	C
	OV	210008	70952	200096 20	000	10/17/11	PK	362193	10/20/11	325	-325	709520020 - 123 Berwick Court	FIEL	C
	OV	210007	70952	200175 20	000	10/17/11	PK	362193	10/20/11	2434.7	-2434.7	709520020 - 123 Berwick Court	FIEL	C
	OV	211209	70952	3701462 LOT 20	000	05/23/12	PT	27534	05/31/12	8	-8	709520020 - 123 Berwick Court	FIEL	C
	OV	210009	70952	200099 20	000	10/17/11	PK	362193	10/20/11	281.25	-281.25	709520020 - 123 Berwick Court	FIEL	C
	OV	210009	70952	200099 20	001	10/17/11	PK	362193	10/20/11	16.88	-16.88	709520020 - 123 Berwick Court	FIEL	C
	OV	210296	70952	200131 20	000	01/19/12	PT	20352	01/26/12	2635	-2635	709520020 - 123 Berwick Court	FIEL	C
	OV	210394	70952	200157 LOT 20	000	02/16/12	PT	21742	02/23/12	477.7	-477.7	709520020 - 123 Berwick Court	FIEL	C
	OV	210395	70952	200158 LOT 20	000	02/16/12	PT	21742	02/23/12	112.2	-112.2	709520020 - 123 Berwick Court	FIEL	C
	OV	211097	70952	201289 21	000	05/10/12	PT	26807	05/17/12	2635	-2635	709520021 - 125 Berwick Court	BROO	C
	OV	213261	70952	201316 LOT 21	000	07/06/12	PT	30229	07/12/12	477.7	-477.7	709520021 - 125 Berwick Court	BROO	C
	OV	225622	70952	201317 LOT 21	000	12/17/12	PT	41370	12/20/12	112.2	-112.2	709520021 - 125 Berwick Court	BROO	C

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	OV	230108	70952	70952-	001	03/11/13	PT	49582	03/21/13	325	-325	709520022 - 127 Berwick Court	HERR	C
	OV	230375	70952	70952-00230375	001	03/18/13	PT	49582	03/21/13	1896.5	-1896.5	709520022 - 127 Berwick Court	HERR	C
	OV	229562	70952	70952-00229562	001	03/04/13	PT	48162	03/07/13	187.5	-187.5	709520022 - 127 Berwick Court	HERR	C
	OV	229562	70952	70952-00229562	002	03/04/13	PT	48162	03/07/13	11.25	-11.25	709520022 - 127 Berwick Court	HERR	C
	OV	231097	70952	203059 LOT 22	000	04/12/13	PT	52710	04/18/13	605.39	-605.39	709520022 - 127 Berwick Court	HERR	C
	OV	231172	70952	70952-	001	04/15/13	PT	52710	04/18/13	605.39	-605.39	709520022 - 127 Berwick Court	HERR	C
	PD	231932	70952	203059 LOT 22	000	05/31/13	PT	57782	06/06/13	-605.39	605.39	709520022 - 127 Berwick Court	HERR	C
	OV	232167	70952	3727872 LOT 22	000	06/14/13	PT	59519	06/20/13	208.1	-208.1	709520022 - 127 Berwick Court	HERR	C
	OV	231851	70952	203084 LOT 22	000	05/21/13	PT	56168	05/23/13	477.7	-477.7	709520022 - 127 Berwick Court	HERR	C
	OV	231852	70952	203085 LOT 22	000	05/21/13	PT	56168	05/23/13	112.2	-112.2	709520022 - 127 Berwick Court	HERR	C
	OV	210569	70952	200893 23	000	03/15/12	PT	23226	03/22/12	325	-325	709520023 - 142 Berwick Court	FIEL	C
	OV	210649	70952	200972 LOT 23	000	03/16/12	PT	23226	03/22/12	19.55	-19.55	709520023 - 142 Berwick Court	FIEL	C
	OV	210649	70952	200972 LOT 23	001	03/16/12	PT	23226	03/22/12	2273.7	-2273.7	709520023 - 142 Berwick Court	FIEL	C
	OV	214514	70952	3710685 LOT 23	000	07/27/12	PT	31935	08/09/12	376	-376	709520023 - 142 Berwick Court	FIEL	C
	OV	210568	70952	200896 23	000	03/15/12	PT	23226	03/22/12	281.25	-281.25	709520023 - 142 Berwick Court	FIEL	C
	OV	210568	70952	200896 23	001	03/15/12	PT	23226	03/22/12	16.88	-16.88	709520023 - 142 Berwick Court	FIEL	C
	OV	211092	70952	200930 23	000	05/10/12	PT	26807	05/17/12	1336.01	-1336.01	709520023 - 142 Berwick Court	FIEL	C
	OV	211091	70952	200974 23	000	05/10/12	PT	26807	05/17/12	400	-400	709520023 - 142 Berwick Court	FIEL	C
	OV	211162	70952	200960 LOT 23	000	05/11/12	PT	26807	05/17/12	477.7	-477.7	709520023 - 142 Berwick Court	FIEL	C
	OV	211162	70952	200960 LOT 23	001	05/11/12	PT	26807	05/17/12	102	-102	709520023 - 142 Berwick Court	FIEL	C
	OV	214509	70952	3710702 LOT 23	000	07/27/12	PT	31935	08/09/12	120	-120	709520023 - 142 Berwick Court	FIEL	C
	OV	211161	70952	200961 LOT 23	000	05/11/12	PT	26807	05/17/12	112.2	-112.2	709520023 - 142 Berwick Court	FIEL	C
	OV	210567	70952	200984 24	000	03/15/12	PT	23226	03/22/12	325	-325	709520024 - 140 Berwick Court	CYTH	C
	OV	214513	70952	3710684 LOT 24	000	07/27/12	PT	31935	08/09/12	426.7	-426.7	709520024 - 140 Berwick Court	CYTH	C

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	OV	210650	70952	201056 LOT 24	000	03/16/12	PT	23226	03/22/12	87.4	-87.4	709520024 - 140 Berwick Court	CYTH	C
	OV	210650	70952	201056 LOT 24	001	03/16/12	PT	23226	03/22/12	3311.55	-3311.55	709520024 - 140 Berwick Court	CYTH	C
	OV	210566	70952	200987 24	000	03/15/12	PT	23226	03/22/12	281.25	-281.25	709520024 - 140 Berwick Court	CYTH	C
	OV	210566	70952	200987 24	001	03/15/12	PT	23226	03/22/12	16.88	-16.88	709520024 - 140 Berwick Court	CYTH	C
	OV	222448	70952	3717196 LOT 24	000	10/25/12	PT	37782	11/01/12	24.3	-24.3	709520024 - 140 Berwick Court	CYTH	C
	OV	211090	70952	201022 24	000	05/10/12	PT	26807	05/17/12	2380	-2380	709520024 - 140 Berwick Court	CYTH	C
	OV	215005	70952	3710697 LOT 24	000	08/01/12	PT	31935	08/09/12	850	-850	709520024 - 140 Berwick Court	CYTH	C
	OV	211163	70952	201049 LOT 24	000	05/11/12	PT	26807	05/17/12	477.7	-477.7	709520024 - 140 Berwick Court	CYTH	C
	OV	222449	70952	3717197 LOT 25	000	10/25/12	PT	37782	11/01/12	8	-8	709520025 - 138 Berwick Court	MCDA	C
	OV	211096	70952	201202 25	000	05/10/12	PT	26807	05/17/12	2067.12	-2067.12	709520025 - 138 Berwick Court	MCDA	C
	OV	215007	70952	3710682 LOT 25	000	08/01/12	PT	31935	08/09/12	209.88	-209.88	709520025 - 138 Berwick Court	MCDA	C
	OV	211098	70952	201205 25	000	05/10/12	PT	26807	05/17/12	1836	-1836	709520025 - 138 Berwick Court	MCDA	C
	OV	215004	70952	3710696 LOT 25	000	08/01/12	PT	31935	08/09/12	289	-289	709520025 - 138 Berwick Court	MCDA	C
	OV	211157	70952	201232 LOT 25	000	05/11/12	PT	26807	05/17/12	477.7	-477.7	709520025 - 138 Berwick Court	MCDA	C
	OV	214512	70952	3710683 LOT 25	000	07/27/12	PT	31935	08/09/12	56.2	-56.2	709520025 - 138 Berwick Court	MCDA	C
	OV	215914	70952	70952-	001	08/16/12	PT	32837	08/23/12	325	-325	709520026 - 136 Berwick Court	FIEL	C
	OV	218998	70952	70952-00218998	001	09/13/12	PT	34648	09/20/12	19.55	-19.55	709520026 - 136 Berwick Court	FIEL	C
	OV	218998	70952	70952-00218998	002	09/13/12	PT	34648	09/20/12	2300.9	-2300.9	709520026 - 136 Berwick Court	FIEL	C
	OV	222450	70952	3717197 LOT 26	000	10/25/12	PT	37782	11/01/12	11.2	-11.2	709520026 - 136 Berwick Court	FIEL	C
	OV	218018	70952	70952-00218018	001	09/04/12	PT	33730	09/06/12	281.25	-281.25	709520026 - 136 Berwick Court	FIEL	C
	OV	218018	70952	70952-00218018	002	09/04/12	PT	33730	09/06/12	16.88	-16.88	709520026 - 136 Berwick Court	FIEL	C
	OV	221671	70952	70952-	001	10/17/12	PT	36633	10/18/12	1848.83	-1848.83	709520026 - 136 Berwick Court	FIEL	C
	OV	222440	70952	3717348 LOT 26	000	10/25/12	PT	37782	11/01/12	455	-455	709520026 - 136 Berwick Court	FIEL	C
	OV	225625	70952	3719536 LOT 26	000	12/17/12	PT	41370	12/20/12	683.1	-683.1	709520026 - 136 Berwick Court	FIEL	C
	OV	222456	70952	202170 LOT 26	000	10/25/12	PT	37782	11/01/12	400	-400	709520026 - 136 Berwick Court	FIEL	C

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	OV	225610	70952	202159 LOT 26	000	12/17/12	PT	41370	12/20/12	477.7	-477.7	709520026 - 136 Berwick Court	FIEL	C
	OV	225610	70952	202159 LOT 26	001	12/17/12	PT	41370	12/20/12	102	-102	709520026 - 136 Berwick Court	FIEL	C
	OV	226041	70952	3719754 LOT 26	000	12/28/12	PT	43005	01/10/13	278.35	-278.35	709520026 - 136 Berwick Court	FIEL	C
	OV	210280	70952	200544 27	000	01/19/12	PT	20352	01/26/12	325	-325	709520027 - 134 Berwick Court	BROO	C
	OV	210282	70952	200596 27	000	01/19/12	PT	20352	01/26/12	2374.9	-2374.9	709520027 - 134 Berwick Court	BROO	C
	OV	210281	70952	200547 27	000	01/19/12	PT	20352	01/26/12	181.25	-181.25	709520027 - 134 Berwick Court	BROO	C
	OV	210281	70952	200547 27	001	01/19/12	PT	20352	01/26/12	10.88	-10.88	709520027 - 134 Berwick Court	BROO	C
	OV	215006	70952	3710693 LOT 27	000	08/01/12	PT	31935	08/09/12	200	-200	709520027 - 134 Berwick Court	BROO	C
	OV	210561	70952	200578 27	000	03/15/12	PT	23226	03/22/12	2635	-2635	709520027 - 134 Berwick Court	BROO	C
	OV	210653	70952	200591 LOT 27	000	03/16/12	PT	23226	03/22/12	477.7	-477.7	709520027 - 134 Berwick Court	BROO	C
	OV	210652	70952	200592 LOT 27	000	03/16/12	PT	23226	03/22/12	112.2	-112.2	709520027 - 134 Berwick Court	BROO	C
	OV	211094	70952	201380 28	000	05/10/12	PT	26807	05/17/12	325	-325	709520028 - 132 Berwick Court	CYTH	C
	OV	211167	70952	201453 LOT 28	001	05/11/12	PT	26807	05/17/12	3311.55	-3311.55	709520028 - 132 Berwick Court	CYTH	C
	OV	211167	70952	201453 LOT 28	000	05/11/12	PT	26807	05/17/12	87.4	-87.4	709520028 - 132 Berwick Court	CYTH	C
	OV	214515	70952	3710686 LOT 28	000	07/27/12	PT	31935	08/09/12	24.3	-24.3	709520028 - 132 Berwick Court	CYTH	C
	OV	211166	70952	201383 LOT 28	001	05/11/12	PT	26807	05/17/12	16.88	-16.88	709520028 - 132 Berwick Court	CYTH	C
	OV	211166	70952	201383 LOT 28	000	05/11/12	PT	26807	05/17/12	281.25	-281.25	709520028 - 132 Berwick Court	CYTH	C
	OV	212423	70952	201418 28	000	06/22/12	PT	29431	06/28/12	2380	-2380	709520028 - 132 Berwick Court	CYTH	C
	OV	213263	70952	201445 LOT 28	000	07/06/12	PT	30229	07/12/12	477.7	-477.7	709520028 - 132 Berwick Court	CYTH	C
	OV	225623	70952	201446 LOT 28	000	12/17/12	PT	41370	12/20/12	112.2	-112.2	709520028 - 132 Berwick Court	CYTH	C
	OV	218021	70952	70952-	001	09/04/12	PT	33730	09/06/12	325	-325	709520029 - 130 Berwick Court	HNTR	C
	OV	218506	70952	70952-00218506	001	09/11/12	PT	34648	09/20/12	2020.7	-2020.7	709520029 - 130 Berwick Court	HNTR	C
	OV	222451	70952	3717197 LOT 29	000	10/25/12	PT	37782	11/01/12	8	-8	709520029 - 130 Berwick Court	HNTR	C
	OV	218023	70952	70952-00218023	001	09/04/12	PT	33730	09/06/12	200	-200	709520029 - 130 Berwick Court	HNTR	C

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	OV	218023	70952	70952-00218023	002	09/04/12	PT	33730	09/06/12	12	-12	709520029 - 130 Berwick Court	HNTR	C
	OV	221673	70952	70952-	001	10/17/12	PT	36633	10/18/12	258.39	-258.39	709520029 - 130 Berwick Court	HNTR	C
	OV	222455	70952	202338 LOT 29	000	10/25/12	PT	37782	11/01/12	3119.5	-3119.5	709520029 - 130 Berwick Court	HNTR	C
	OV	224724	70952	202365 LOT 29	000	12/03/12	PT	40141	12/06/12	477.7	-477.7	709520029 - 130 Berwick Court	HNTR	C
	OV	226038	70952	3719754 LOT 29	000	12/28/12	PT	43005	01/10/13	63.65	-63.65	709520029 - 130 Berwick Court	HNTR	C
	OV	224104	70952	70952-	001	11/26/12	PT	40141	12/06/12	325	-325	709520030 - 128 Berwick Court	BROO	C
	OV	224982	70952	70952-00224982	001	12/11/12	PT	41370	12/20/12	2374.9	-2374.9	709520030 - 128 Berwick Court	BROO	C
	OV	222169	70952	70952-00222169	002	10/24/12	PT	37782	11/01/12	10.88	-10.88	709520030 - 128 Berwick Court	BROO	C
	OV	222169	70952	70952-00222169	001	10/24/12	PT	37782	11/01/12	181.25	-181.25	709520030 - 128 Berwick Court	BROO	C
	OV	227943	70952	202660 LOT 30	000	01/31/13	PT	45137	02/07/13	2635	-2635	709520030 - 128 Berwick Court	BROO	C
	OV	229063	70952	202686 LOT 30	000	02/18/13	PT	46719	02/21/13	477.7	-477.7	709520030 - 128 Berwick Court	BROO	C
	OV	229062	70952	202687 LOT 30	000	02/18/13	PT	46719	02/21/13	112.2	-112.2	709520030 - 128 Berwick Court	BROO	C
	OV	218026	70952	70952-	001	09/04/12	PT	33730	09/06/12	325	-325	709520031 - 126 Berwick Court	FIEL	C
	OV	218509	70952	70952-00218509	001	09/11/12	PT	34648	09/20/12	19.55	-19.55	709520031 - 126 Berwick Court	FIEL	C
	OV	218509	70952	70952-00218509	002	09/11/12	PT	34648	09/20/12	2434.7	-2434.7	709520031 - 126 Berwick Court	FIEL	C
	OV	223655	70952	70952-00223655	001	11/13/12	PT	38599	11/15/12	260.95	-260.95	709520031 - 126 Berwick Court	FIEL	C
	OV	222442	70952	3717197 LOT 31	000	10/25/12	PT	37782	11/01/12	8	-8	709520031 - 126 Berwick Court	FIEL	C
	OV	218028	70952	70952-00218028	001	09/04/12	PT	33730	09/06/12	281.25	-281.25	709520031 - 126 Berwick Court	FIEL	C
	OV	218028	70952	70952-00218028	002	09/04/12	PT	33730	09/06/12	16.88	-16.88	709520031 - 126 Berwick Court	FIEL	C
	OV	222454	70952	202239 LOT 31	000	10/25/12	PT	37782	11/01/12	2635	-2635	709520031 - 126 Berwick Court	FIEL	C
	OV	222453	70952	202280 LOT 31	000	10/25/12	PT	37782	11/01/12	400	-400	709520031 - 126 Berwick Court	FIEL	C
	OV	224725	70952	202265 LOT 31	000	12/03/12	PT	40141	12/06/12	477.7	-477.7	709520031 - 126 Berwick Court	FIEL	C
	OV	226040	70952	3719773 LOT 31	000	12/28/12	PT	43005	01/10/13	484.5	-484.5	709520031 - 126 Berwick Court	FIEL	C

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	OV	225626	70952	3719537 LOT 31	000	12/17/12	PT	41370	12/20/12	200	-200	709520031 - 126 Berwick Court	FIEL	C
	OV	222452	70952	3717350 LOT 31	000	10/25/12	PT	37782	11/01/12	200	-200	709520031 - 126 Berwick Court	FIEL	C
	OV	224107	70952	70952-	001	11/26/12	PT	40141	12/06/12	325	-325	709520032 - 124 Berwick Court	FIEL	C
	OV	228547	70952	70952-00228547	001	02/11/13	PT	46719	02/21/13	161.5	-161.5	709520032 - 124 Berwick Court	FIEL	C
	OV	224548	70952	70952-00224548	001	12/03/12	PT	40141	12/06/12	19.55	-19.55	709520032 - 124 Berwick Court	FIEL	C
	OV	224548	70952	70952-00224548	002	12/03/12	PT	40141	12/06/12	2273.7	-2273.7	709520032 - 124 Berwick Court	FIEL	C
	OV	224549	70952	70952-00224549	001	12/03/12	PT	40141	12/06/12	281.25	-281.25	709520032 - 124 Berwick Court	FIEL	C
	OV	224549	70952	70952-00224549	002	12/03/12	PT	40141	12/06/12	16.88	-16.88	709520032 - 124 Berwick Court	FIEL	C
	OV	226421	70952	202755 LOT 32	000	01/04/13	PT	43005	01/10/13	1336.01	-1336.01	709520032 - 124 Berwick Court	FIEL	C
	OV	229401	70952	202783 LOT 32	000	02/28/13	PT	48162	03/07/13	477.7	-477.7	709520032 - 124 Berwick Court	FIEL	C
	OV	230903	70952	3722805 LOT 32	000	04/02/13	PT	51390	04/04/13	295.45	-295.45	709520032 - 124 Berwick Court	FIEL	C
	OV	230902	70952	3722806 LOT 32	000	04/02/13	PT	51390	04/04/13	88.4	-88.4	709520032 - 124 Berwick Court	FIEL	C
	OV	229400	70952	202784 LOT 32	000	02/28/13	PT	48162	03/07/13	112.2	-112.2	709520032 - 124 Berwick Court	FIEL	C
	OV	219005	70952	70952-	001	09/13/12	PT	34648	09/20/12	325	-325	709520033 - 122 Berwick Court	CYTH	C
	OV	220990	70952	202462 LOT 33	000	10/12/12	PT	36633	10/18/12	87.4	-87.4	709520033 - 122 Berwick Court	CYTH	C
	OV	220990	70952	202462 LOT 33	001	10/12/12	PT	36633	10/18/12	3311.55	-3311.55	709520033 - 122 Berwick Court	CYTH	C
	OV	222443	70952	3717197 LOT 33	000	10/25/12	PT	37782	11/01/12	24.3	-24.3	709520033 - 122 Berwick Court	CYTH	C
	OV	220792	70952	70952-00220792	001	10/10/12	PT	36633	10/18/12	281.25	-281.25	709520033 - 122 Berwick Court	CYTH	C
	OV	220792	70952	70952-00220792	002	10/10/12	PT	36633	10/18/12	16.88	-16.88	709520033 - 122 Berwick Court	CYTH	C
	OV	220989	70952	3716567 LOT 33	000	10/12/12	PT	36633	10/18/12	390.05	-390.05	709520033 - 122 Berwick Court	CYTH	C
	OV	226420	70952	3719785 LOT 33	000	01/04/13	PT	43005	01/10/13	255	-255	709520033 - 122 Berwick Court	CYTH	C

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	OV	225613	70952	202426 LOT 33	000	12/17/12	PT	41370	12/20/12	2380	-2380	709520033 - 122 Berwick Court	CYTH	C
	OV	225612	70952	202467 LOT 33	000	12/17/12	PT	41370	12/20/12	400	-400	709520033 - 122 Berwick Court	CYTH	C
	OV	225614	70952	202452 LOT 33	000	12/17/12	PT	41370	12/20/12	477.7	-477.7	709520033 - 122 Berwick Court	CYTH	C
	OV	225614	70952	202452 LOT 33	001	12/17/12	PT	41370	12/20/12	119	-119	709520033 - 122 Berwick Court	CYTH	C
	OV	226039	70952	3719754 LOT 33	000	12/28/12	PT	43005	01/10/13	116.85	-116.85	709520033 - 122 Berwick Court	CYTH	C
	OV	233668	70952	3730761 LOT 34	000	08/02/13	PT	65246	08/08/13	750	-750	709520034 - 120 Berwick Court	BROO	C
	OV	233154	70952	70952-00233154	001	07/15/13	PT	63577	07/25/13	2643.68	-2643.68	709520034 - 120 Berwick Court	BROO	C
	OV	232711	70952	70952-00232711	001	07/01/13	PT	61954	07/11/13	217.5	-217.5	709520034 - 120 Berwick Court	BROO	C
	OV	232711	70952	70952-00232711	002	07/01/13	PT	61954	07/11/13	13.05	-13.05	709520034 - 120 Berwick Court	BROO	C
	OV	234708	70952	70952-	001	09/16/13	PT	70154	09/19/13	903.87	-903.87	709520034 - 120 Berwick Court	BROO	C
	OV	235141	70952	3735119 LOT 34	000	10/18/13	PT	74499	10/24/13	101.97	-101.97	709520034 - 120 Berwick Court	BROO	C
	OV	234644	70952	203306 LOT 34	000	09/13/13	PT	70154	09/19/13	533.9	-533.9	709520034 - 120 Berwick Court	BROO	C
	OV	235142	70952	3735118 LOT 34	000	10/18/13	PT	74499	10/24/13	178.6	-178.6	709520034 - 120 Berwick Court	BROO	C
	OV	235140	70952	3735120 LOT 34	000	10/18/13	PT	74499	10/24/13	41.8	-41.8	709520034 - 120 Berwick Court	BROO	C
	OV	233361	70952	70952-00233361	001	07/22/13	PT	63577	07/25/13	97.28	-97.28	709520035 - 118 Berwick Court	CYTH	C
	OV	233361	70952	70952-00233361	002	07/22/13	PT	63577	07/25/13	3686.85	-3686.85	709520035 - 118 Berwick Court	CYTH	C
	OV	233157	70952	70952-00233157	001	07/15/13	PT	63577	07/25/13	337.5	-337.5	709520035 - 118 Berwick Court	CYTH	C
	OV	233157	70952	70952-00233157	002	07/15/13	PT	63577	07/25/13	20.25	-20.25	709520035 - 118 Berwick Court	CYTH	C
	OV	235139	70952	3735128 LOT 35	000	10/18/13	PT	74499	10/24/13	255	-255	709520035 - 118 Berwick Court	CYTH	C
	OV	235143	70952	203374 LOT 35	000	10/18/13	PT	74499	10/24/13	2380.01	-2380.01	709520035 - 118 Berwick Court	CYTH	C
	OV	234645	70952	203400 LOT 35	000	09/13/13	PT	70154	09/19/13	533.9	-533.9	709520035 - 118 Berwick Court	CYTH	C
	OV	234646	70952	203401 LOT 35	000	09/13/13	PT	70154	09/19/13	125.4	-125.4	709520035 - 118 Berwick Court	CYTH	C
	OV	221683	70952	70952-	001	10/17/12	PT	36633	10/18/12	325	-325	709520036 - 116 Berwick Court	FIEL	C

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	OV	223662	70952	70952-00223662	001	11/13/12	PT	38599	11/15/12	2434.7	-2434.7	709520036 - 116 Berwick Court	FIEL	C
	OV	221685	70952	70952-00221685	001	10/17/12	PT	36633	10/18/12	281.25	-281.25	709520036 - 116 Berwick Court	FIEL	C
	OV	221685	70952	70952-00221685	002	10/17/12	PT	36633	10/18/12	16.88	-16.88	709520036 - 116 Berwick Court	FIEL	C
	OV	225628	70952	3719527 LOT 36	000	12/17/12	PT	41370	12/20/12	200	-200	709520036 - 116 Berwick Court	FIEL	C
	OV	227944	70952	3720994 LOT 36	000	01/31/13	PT	45137	02/07/13	74.25	-74.25	709520036 - 116 Berwick Court	FIEL	C
	OV	226422	70952	202572 LOT 36	000	01/04/13	PT	43005	01/10/13	2635	-2635	709520036 - 116 Berwick Court	FIEL	C
	OV	226425	70952	202609 LOT 36	000	01/04/13	PT	43005	01/10/13	400	-400	709520036 - 116 Berwick Court	FIEL	C
	OV	227333	70952	3720223 LOT 36	000	01/18/13	PT	44169	01/24/13	72.2	-72.2	709520036 - 116 Berwick Court	FIEL	C
	OV	227332	70952	3720224 LOT 36	000	01/18/13	PT	44169	01/24/13	83	-83	709520036 - 116 Berwick Court	FIEL	C
	OV	226423	70952	202598 LOT 36	000	01/04/13	PT	43005	01/10/13	477.7	-477.7	709520036 - 116 Berwick Court	FIEL	C
	OV	226423	70952	202598 LOT 36	001	01/04/13	PT	43005	01/10/13	115.6	-115.6	709520036 - 116 Berwick Court	FIEL	C
	OV	226424	70952	202599 LOT 36	000	01/04/13	PT	43005	01/10/13	112.2	-112.2	709520036 - 116 Berwick Court	FIEL	C
	OV	212420	70952	201764 37	000	06/22/12	PT	29431	06/28/12	325	-325	709520037 - 114 Berwick Court	BROO	C
	OV	214510	70952	3710765 LOT 37	000	07/27/12	PT	31935	08/09/12	8	-8	709520037 - 114 Berwick Court	BROO	C
	OV	211806	70952	70952-00211806	001	06/18/12	PT	29431	06/28/12	2374.9	-2374.9	709520037 - 114 Berwick Court	BROO	C
	OV	212421	70952	201767 37	000	06/22/12	PT	29431	06/28/12	181.25	-181.25	709520037 - 114 Berwick Court	BROO	C
	OV	212421	70952	201767 37	001	06/22/12	PT	29431	06/28/12	10.88	-10.88	709520037 - 114 Berwick Court	BROO	C
	OV	215929	70952	70952-	001	08/16/12	PT	32837	08/23/12	1412.73	-1412.73	709520037 - 114 Berwick Court	BROO	C
	OV	217710	70952	201829 LOT 37	000	08/30/12	PT	33730	09/06/12	477.7	-477.7	709520037 - 114 Berwick Court	BROO	C
	OV	217710	70952	201829 LOT 37	001	08/30/12	PT	33730	09/06/12	74.8	-74.8	709520037 - 114 Berwick Court	BROO	C
	OV	217709	70952	201830 LOT 37	000	08/30/12	PT	33730	09/06/12	112.2	-112.2	709520037 - 114 Berwick Court	BROO	C

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	OV	211095	70952	201663 38	000	05/10/12	PT	26807	05/17/12	325	-325	709520038 - 112 Berwick Court	BROO	C
	OV	211165	70952	201744 LOT 38	000	05/11/12	PT	26807	05/17/12	2374.9	-2374.9	709520038 - 112 Berwick Court	BROO	C
	OV	214511	70952	3710694 LOT 38	000	07/27/12	PT	31935	08/09/12	8	-8	709520038 - 112 Berwick Court	BROO	C
	OV	211164	70952	201666 LOT 38	000	05/11/12	PT	26807	05/17/12	181.25	-181.25	709520038 - 112 Berwick Court	BROO	C
	OV	211164	70952	201666 LOT 38	001	05/11/12	PT	26807	05/17/12	10.88	-10.88	709520038 - 112 Berwick Court	BROO	C
	OV	215013	70952	201700 LOT 38	000	08/01/12	PT	31935	08/09/12	2635	-2635	709520038 - 112 Berwick Court	BROO	C
	OV	215012	70952	201742 LOT 38	000	08/01/12	PT	31935	08/09/12	400	-400	709520038 - 112 Berwick Court	BROO	C
	OV	215541	70952	201727 LOT 38	000	08/16/12	PT	32837	08/23/12	477.7	-477.7	709520038 - 112 Berwick Court	BROO	C
	OV	215540	70952	201728 LOT 38	000	08/16/12	PT	32837	08/23/12	112.2	-112.2	709520038 - 112 Berwick Court	BROO	C
	OV	210565	70952	201072 41	000	03/15/12	PT	23226	03/22/12	325	-325	709520041 - 106 Berwick Court	BROO	C
	OV	210651	70952	201152 LOT 41	000	03/16/12	PT	23226	03/22/12	2374.9	-2374.9	709520041 - 106 Berwick Court	BROO	C
	OV	210564	70952	201075 41	000	03/15/12	PT	23226	03/22/12	181.25	-181.25	709520041 - 106 Berwick Court	BROO	C
	OV	210564	70952	201075 41	001	03/15/12	PT	23226	03/22/12	10.88	-10.88	709520041 - 106 Berwick Court	BROO	C
	OV	211089	70952	201109 41	000	05/10/12	PT	26807	05/17/12	2635	-2635	709520041 - 106 Berwick Court	BROO	C
	OV	211159	70952	201136 LOT 41	000	05/11/12	PT	26807	05/17/12	477.7	-477.7	709520041 - 106 Berwick Court	BROO	C
	OV	211158	70952	201137 LOT 41	000	05/11/12	PT	26807	05/17/12	112.2	-112.2	709520041 - 106 Berwick Court	BROO	C
	OV	220224	70953	70953-00220224	001	06/10/13	PT	59519	06/20/13	97.28	-97.28	709530196 - 10 Duxbury Lane	CYTH	C
	OV	220224	70953	70953-00220224	002	06/10/13	PT	59519	06/20/13	3686.85	-3686.85	709530196 - 10 Duxbury Lane	CYTH	C
	OV	219704	70953	70953-00219704	001	06/03/13	PT	57782	06/06/13	337.5	-337.5	709530196 - 10 Duxbury Lane	CYTH	C
	OV	219704	70953	70953-00219704	002	06/03/13	PT	57782	06/06/13	20.25	-20.25	709530196 - 10 Duxbury Lane	CYTH	C
	OV	223736	70953	70953-	001	07/22/13	PT	63577	07/25/13	5010.39	-5010.39	709530196 - 10 Duxbury Lane	CYTH	C
	OV	228727	70953	201524 LOT 196	000	10/18/13	PT	74499	10/24/13	1275.01	-1275.01	709530196 - 10 Duxbury Lane	CYTH	C
	OV	228729	70953	3735333 LOT 196	000	10/18/13	PT	74499	10/24/13	1275	-1275	709530196 - 10 Duxbury Lane	CYTH	C

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	OV	226886	70953	201550 LOT 196	000	09/03/13	PT	68428	09/05/13	533.9	-533.9	709530196 - 10 Duxbury Lane	CYTH	C
	OV	226885	70953	201551 LOT 196	000	09/03/13	PT	68428	09/05/13	201.4	-201.4	709530196 - 10 Duxbury Lane	CYTH	C
	OV	234845	70953	70953-00234845	001	07/28/14	PT	112733	07/31/14	38	-38	709530198 - 6 Duxbury Lane	FIEL	C
	OV	234845	70953	70953-00234845	002	07/28/14	PT	112733	07/31/14	2710.24	-2710.24	709530198 - 6 Duxbury Lane	FIEL	C
	OV	234846	70953	70953-00234846	001	07/28/14	PT	112733	07/31/14	337.5	-337.5	709530198 - 6 Duxbury Lane	FIEL	C
	OV	234846	70953	70953-00234846	002	07/28/14	PT	112733	07/31/14	20.25	-20.25	709530198 - 6 Duxbury Lane	FIEL	C
	OV	231881	70953	70953-00231881	001	04/15/14	PT	96655	04/17/14	98.8	-98.8	709530200 - 2 Duxbury Lane	BROO	C
	OV	231881	70953	70953-00231881	002	04/15/14	PT	96655	04/17/14	38	-38	709530200 - 2 Duxbury Lane	BROO	C
	OV	231881	70953	70953-00231881	003	04/15/14	PT	96655	04/17/14	2643.68	-2643.68	709530200 - 2 Duxbury Lane	BROO	C
	OV	233803	70953	70953-00233803	001	06/24/14	PT	107076	06/26/14	307.8	-307.8	709530200 - 2 Duxbury Lane	BROO	C
	OV	232807	70953	70953-	001	05/13/14	PT	100839	05/15/14	4472.82	-4472.82	709530200 - 2 Duxbury Lane	BROO	C
	OV	233290	70953	37484740200	000	05/29/14	PK	647009	06/04/14	536.58	-536.58	709530200 - 2 Duxbury Lane	BROO	C
	OV	233283	70953	2022740200	000	05/28/14	PK	647009	06/04/14	2635	-2635	709530200 - 2 Duxbury Lane	BROO	C
	OV	233289	70953	37484730200	000	05/29/14	PK	647009	06/04/14	977.5	-977.5	709530200 - 2 Duxbury Lane	BROO	C
	OV	233127	70953	2023170200	000	05/25/14	PK	647009	06/04/14	400	-400	709530200 - 2 Duxbury Lane	BROO	C
	OV	233015	70953	70953-00233015	001	05/20/14	PT	101888	05/22/14	533.9	-533.9	709530200 - 2 Duxbury Lane	BROO	C
	OV	233288	70953	37484750200	000	05/29/14	PK	647009	06/04/14	459.8	-459.8	709530200 - 2 Duxbury Lane	BROO	C
	OV	233016	70953	70953-00233016	001	05/20/14	PT	101888	05/22/14	201.4	-201.4	709530200 - 2 Duxbury Lane	BROO	C
	OV	210042	70953	200041 201	000	11/14/11	PK	369787	11/18/11	1336.01	-1336.01	709530201 - 101 Sturbridge Court	FIEL	C
	OV	210042	70953	200041 201	001	11/14/11	PK	369787	11/18/11	4163.94	-4163.94	709530201 - 101 Sturbridge Court	FIEL	C
	OV	210009	70953	200007 201	001	10/17/11	PK	362193	10/20/11	16.88	-16.88	709530201 - 101 Sturbridge Court	FIEL	C

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	OV	210009	70953	200007 201	000	10/17/11	PK	362193	10/20/11	281.25	-281.25	709530201 - 101 Sturbridge Court	FIEL	C
	OV	210007	70953	200088 201	002	10/17/11	PK	362193	10/20/11	2273.7	-2273.7	709530201 - 101 Sturbridge Court	FIEL	C
	OV	210007	70953	200088 201	001	10/17/11	PK	362193	10/20/11	34	-34	709530201 - 101 Sturbridge Court	FIEL	C
	OV	210007	70953	200088 201	000	10/17/11	PK	362193	10/20/11	19.55	-19.55	709530201 - 101 Sturbridge Court	FIEL	C
	OV	210094	70953	3701466 201	000	12/13/11	PK	376084	12/16/11	250	-250	709530201 - 101 Sturbridge Court	FIEL	C
	OV	210095	70953	3701463 201	000	12/13/11	PK	376084	12/16/11	12	-12	709530201 - 101 Sturbridge Court	FIEL	C
	OV	210226	70953	3702292 LOT 201	002	05/23/12	PT	27534	05/31/12	2420.06	-2420.06	709530201 - 101 Sturbridge Court	FIEL	C
	OV	210226	70953	3702292 LOT 201	001	05/23/12	PT	27534	05/31/12	456	-456	709530201 - 101 Sturbridge Court	FIEL	C
	OV	210226	70953	3702292 LOT 201	000	05/23/12	PT	27534	05/31/12	129.4	-129.4	709530201 - 101 Sturbridge Court	FIEL	C
	OV	210008	70953	200004 201	000	10/17/11	PK	362193	10/20/11	325	-325	709530201 - 101 Sturbridge Court	FIEL	C
	OV	210041	70953	200091 201	000	11/14/11	PK	369787	11/18/11	400	-400	709530201 - 101 Sturbridge Court	FIEL	C
	OV	210092	70953	200071 201	000	12/13/11	PK	376084	12/16/11	477.7	-477.7	709530201 - 101 Sturbridge Court	FIEL	C
	OV	210092	70953	200071 201	001	12/13/11	PK	376084	12/16/11	442	-442	709530201 - 101 Sturbridge Court	FIEL	C
	OV	210093	70953	200072 201	000	12/13/11	PK	376084	12/16/11	180.2	-180.2	709530201 - 101 Sturbridge Court	FIEL	C
	OV	233484	70953	70953-00233484	001	06/10/14	PT	104887	06/12/14	38	-38	709530242 - 5 Kettering Court	BROO	C
	OV	233484	70953	70953-00233484	002	06/10/14	PT	104887	06/12/14	2643.68	-2643.68	709530242 - 5 Kettering Court	BROO	C
	OV	233361	70953	70953-00233361	001	06/03/14	PK	647009	06/04/14	217.5	-217.5	709530242 - 5 Kettering Court	BROO	C
	OV	233361	70953	70953-00233361	002	06/03/14	PK	647009	06/04/14	13.05	-13.05	709530242 - 5 Kettering Court	BROO	C
	OV	234850	70953	70953-	001	07/28/14	PT	112733	07/31/14	2003.76	-2003.76	709530242 - 5 Kettering Court	BROO	C
	OV	234850	70953	70953-	002	07/28/14	PT	112733	07/31/14	2003.76	-2003.76	709530242 - 5 Kettering Court	BROO	C
	OV	234850	70953	70953-	003	07/28/14	PT	112733	07/31/14	4472.82	-4472.82	709530242 - 5 Kettering Court	BROO	C
	OV	228069	70953	70953-00228069	002	09/30/13	PT	72677	10/10/13	3686.85	-3686.85	709530243 - 7 Kettering Court	CYTH	C
	OV	228069	70953	70953-00228069	001	09/30/13	PT	72677	10/10/13	97.28	-97.28	709530243 - 7 Kettering Court	CYTH	C
	OV	227757	70953	70953-00227757	002	09/23/13	PT	72677	10/10/13	20.25	-20.25	709530243 - 7 Kettering Court	CYTH	C

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	OV	227757	70953	70953-00227757	001	09/23/13	PT	72677	10/10/13	337.5	-337.5	709530243 - 7 Kettering Court	CYTH
	OV	229646	70953	70953-	004	11/25/13	PT	79436	12/05/13	3376.89	-3376.89	709530243 - 7 Kettering Court	CYTH
	OV	229646	70953	70953-	003	11/25/13	PT	79436	12/05/13	225.72	-225.72	709530243 - 7 Kettering Court	CYTH
	OV	229646	70953	70953-	002	11/25/13	PT	79436	12/05/13	247.5	-247.5	709530243 - 7 Kettering Court	CYTH
	OV	229646	70953	70953-	001	11/25/13	PT	79436	12/05/13	1389.96	-1389.96	709530243 - 7 Kettering Court	CYTH
	OV	229575	70953	3737333 0243	000	11/19/13	PT	77788	11/21/13	1135.53	-1135.53	709530243 - 7 Kettering Court	CYTH
	OV	230380	70953	202019 LOT 243	000	01/14/14	PT	84470	01/16/14	400	-400	709530243 - 7 Kettering Court	CYTH
	OV	230540	70953	37394300243	000	02/10/14	PT	87786	02/13/14	746.7	-746.7	709530243 - 7 Kettering Court	CYTH
	OV	230087	70953	202003 LOT 243	000	12/16/13	PT	81475	12/19/13	533.9	-533.9	709530243 - 7 Kettering Court	CYTH
	OV	230087	70953	202003 LOT 243	001	12/16/13	PT	81475	12/19/13	494	-494	709530243 - 7 Kettering Court	CYTH
	OV	230086	70953	202004 LOT 243	000	12/16/13	PT	81475	12/19/13	201.4	-201.4	709530243 - 7 Kettering Court	CYTH
	OV	219429	70953	201451 LOT 244	000	05/28/13	PT	57782	06/06/13	21.76	-21.76	709530244 - 9 Kettering Court	MCDA
	OV	219429	70953	201451 LOT 244	001	05/28/13	PT	57782	06/06/13	38	-38	709530244 - 9 Kettering Court	MCDA
	OV	219429	70953	201451 LOT 244	002	05/28/13	PT	57782	06/06/13	3295.2	-3295.2	709530244 - 9 Kettering Court	MCDA
	OV	218539	70953	70953-00218539	001	05/21/13	PT	56168	05/23/13	307.5	-307.5	709530244 - 9 Kettering Court	MCDA
	OV	218539	70953	70953-00218539	002	05/21/13	PT	56168	05/23/13	18.45	-18.45	709530244 - 9 Kettering Court	MCDA
	OV	223197	70953	70953-	001	07/15/13	PT	63577	07/25/13	2183.94	-2183.94	709530244 - 9 Kettering Court	MCDA
	OV	223197	70953	70953-	002	07/15/13	PT	63577	07/25/13	5197.5	-5197.5	709530244 - 9 Kettering Court	MCDA
	OV	228725	70953	201412 LOT 244	000	10/18/13	PT	74499	10/24/13	1020	-1020	709530244 - 9 Kettering Court	MCDA
	PD	229958	70953	3738783 LOT 244	000	12/09/13	PT	81475	12/19/13	-250	250	709530244 - 9 Kettering Court	MCDA
	OV	226040	70953	201439 LOT 244	000	08/23/13	PT	67554	08/29/13	533.9	-533.9	709530244 - 9 Kettering Court	MCDA

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	OV	226039	70953	201440 LOT 244	000	08/23/13	PT	67554	08/29/13	201.4	-201.4	709530244 - 9 Kettering Court	MCDA	C
	OV	217881	70953	70953-00217881	001	05/15/13	PT	56168	05/23/13	34	-34	709530245 - 11 Kettering Court	BROO	C
	OV	217881	70953	70953-00217881	002	05/15/13	PT	56168	05/23/13	2374.9	-2374.9	709530245 - 11 Kettering Court	BROO	C
	OV	220474	70953	3728084 LOT 245	000	06/14/13	PT	59519	06/20/13	12	-12	709530245 - 11 Kettering Court	BROO	C
	OV	216641	70953	70953-00216641	001	04/29/13	PT	54950	05/09/13	181.25	-181.25	709530245 - 11 Kettering Court	BROO	C
	OV	216641	70953	70953-00216641	002	04/29/13	PT	54950	05/09/13	10.88	-10.88	709530245 - 11 Kettering Court	BROO	C
	OV	224056	70953	3729861 LOT 245	000	07/23/13	PT	63577	07/25/13	734.58	-734.58	709530245 - 11 Kettering Court	BROO	C
	OV	226481	70953	200801 LOT 245	000	08/27/13	PT	67554	08/29/13	2048.5	-2048.5	709530245 - 11 Kettering Court	BROO	C
	OV	226480	70953	200840 LOT 245	000	08/27/13	PT	67554	08/29/13	400	-400	709530245 - 11 Kettering Court	BROO	C
	OV	224051	70953	3729860 LOT 245	000	07/23/13	PT	63577	07/25/13	77.4	-77.4	709530245 - 11 Kettering Court	BROO	C
	OV	222337	70953	200826 LOT 245	000	07/05/13	PT	61954	07/11/13	477.7	-477.7	709530245 - 11 Kettering Court	BROO	C
	OV	222336	70953	200827 LOT 245	000	07/05/13	PT	61954	07/11/13	180.2	-180.2	709530245 - 11 Kettering Court	BROO	C
	OV	216645	70953	70953-00216645	001	04/29/13	PT	54950	05/09/13	335	-335	709530246 - 15 Kettering Court	BLAK	C
	OV	216645	70953	70953-00216645	002	04/29/13	PT	54950	05/09/13	3773.95	-3773.95	709530246 - 15 Kettering Court	BLAK	C
	OV	233641	70953	70953-00233641	001	06/17/14	PT	105886	06/19/14	364.8	-364.8	709530246 - 15 Kettering Court	BLAK	C
	OV	216092	70953	70953-00216092	001	04/22/13	PT	54950	05/09/13	293.75	-293.75	709530246 - 15 Kettering Court	BLAK	C
	OV	216092	70953	70953-00216092	002	04/22/13	PT	54950	05/09/13	17.63	-17.63	709530246 - 15 Kettering Court	BLAK	C
	OV	224050	70953	3729855 LOT 246	000	07/23/13	PT	63577	07/25/13	1056.83	-1056.83	709530246 - 15 Kettering Court	BLAK	C
	OV	221446	70953	70953-	001	06/24/13	PT	61954	07/11/13	890.51	-890.51	709530246 - 15 Kettering Court	BLAK	C
	OV	221446	70953	70953-	002	06/24/13	PT	61954	07/11/13	3517.47	-3517.47	709530246 - 15 Kettering Court	BLAK	C
	OV	226478	70953	200946 LOT 246	000	08/27/13	PT	67554	08/29/13	400	-400	709530246 - 15 Kettering Court	BLAK	C
	OV	230539	70953	37394310246	000	02/10/14	PT	87786	02/13/14	500	-500	709530246 - 15 Kettering Court	BLAK	C

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	OV	224052	70953	3729860 LOT 246	000	07/23/13	PT	63577	07/25/13	869.4	-869.4	709530246 - 15 Kettering Court	BLAK	C
	OV	222333	70953	200934 LOT 246	000	07/05/13	PT	61954	07/11/13	477.7	-477.7	709530246 - 15 Kettering Court	BLAK	C
	OV	234751	70953	37520210246	000	07/23/14	PT	112733	07/31/14	635.2	-635.2	709530246 - 15 Kettering Court	BLAK	C
	OV	227279	70953	3733146 LOT 248	000	09/13/13	PT	70154	09/19/13	1000	-1000	709530248 - 19 Kettering Court	WSLY	C
	OV	223742	70953	70953-00223742	001	07/22/13	PT	63577	07/25/13	38	-38	709530248 - 19 Kettering Court	WSLY	C
	OV	223742	70953	70953-00223742	002	07/22/13	PT	63577	07/25/13	3329.76	-3329.76	709530248 - 19 Kettering Court	WSLY	C
	OV	223203	70953	70953-00223203	001	07/15/13	PT	63577	07/25/13	315	-315	709530248 - 19 Kettering Court	WSLY	C
	OV	223203	70953	70953-00223203	002	07/15/13	PT	63577	07/25/13	18.9	-18.9	709530248 - 19 Kettering Court	WSLY	C
	OV	227436	70953	70953-	001	09/16/13	PT	70154	09/19/13	1245.92	-1245.92	709530248 - 19 Kettering Court	WSLY	C
	OV	227436	70953	70953-	002	09/16/13	PT	70154	09/19/13	6817.64	-6817.64	709530248 - 19 Kettering Court	WSLY	C
	OV	226044	70953	3732114 LOT 249	000	08/23/13	PT	67554	08/29/13	400	-400	709530249 - 16 Kettering Court	BROO	C
	OV	225789	70953	70953-00225789	001	08/19/13	PT	66924	08/22/13	114	-114	709530249 - 16 Kettering Court	BROO	C
	OV	225789	70953	70953-00225789	002	08/19/13	PT	66924	08/22/13	38	-38	709530249 - 16 Kettering Court	BROO	C
	OV	225789	70953	70953-00225789	003	08/19/13	PT	66924	08/22/13	2643.68	-2643.68	709530249 - 16 Kettering Court	BROO	C
	OV	225300	70953	70953-00225300	001	08/12/13	PT	66924	08/22/13	217.5	-217.5	709530249 - 16 Kettering Court	BROO	C
	OV	225300	70953	70953-00225300	002	08/12/13	PT	66924	08/22/13	13.05	-13.05	709530249 - 16 Kettering Court	BROO	C
	OV	228726	70953	201848 LOT 249	000	10/18/13	PT	74499	10/24/13	1048.41	-1048.41	709530249 - 16 Kettering Court	BROO	C
	OV	228726	70953	201848 LOT 249	001	10/18/13	PT	74499	10/24/13	4472.82	-4472.82	709530249 - 16 Kettering Court	BROO	C
	OV	228724	70953	3736065 LOT 249	000	10/18/13	PT	74499	10/24/13	626.67	-626.67	709530249 - 16 Kettering Court	BROO	C
	OV	229846	70953	201851 LOT 249	000	12/03/13	PT	79436	12/05/13	1853	-1853	709530249 - 16 Kettering Court	BROO	C
	OV	229845	70953	201893 LOT 249	000	12/03/13	PT	79436	12/05/13	400	-400	709530249 - 16 Kettering Court	BROO	C

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	OV	228719	70953	201876 LOT 249	000	10/18/13	PT	74499	10/24/13	533.9	-533.9	709530249 - 16 Kettering Court	BROO	C
	OV	228721	70953	201877 LOT 249	000	10/18/13	PT	74499	10/24/13	201.4	-201.4	709530249 - 16 Kettering Court	BROO	C
	OV	219169	70953	70953-00219169	001	05/28/13	PT	57782	06/06/13	19.55	-19.55	709530253 - 8 Kettering Court	FIEL	C
	OV	219169	70953	70953-00219169	002	05/28/13	PT	57782	06/06/13	20.4	-20.4	709530253 - 8 Kettering Court	FIEL	C
	OV	219169	70953	70953-00219169	003	05/28/13	PT	57782	06/06/13	34	-34	709530253 - 8 Kettering Court	FIEL	C
	OV	219169	70953	70953-00219169	004	05/28/13	PT	57782	06/06/13	2273.7	-2273.7	709530253 - 8 Kettering Court	FIEL	C
	OV	219169	70953	70953-00219169	005	05/28/13	PT	57782	06/06/13	203.55	-203.55	709530253 - 8 Kettering Court	FIEL	C
	OV	218549	70953	70953-00218549	001	05/21/13	PT	56168	05/23/13	281.25	-281.25	709530253 - 8 Kettering Court	FIEL	C
	OV	218549	70953	70953-00218549	002	05/21/13	PT	56168	05/23/13	16.88	-16.88	709530253 - 8 Kettering Court	FIEL	C
	OV	218549	70953	70953-00218549	003	05/21/13	PT	56168	05/23/13	18.75	-18.75	709530253 - 8 Kettering Court	FIEL	C
	OV	218549	70953	70953-00218549	004	05/21/13	PT	56168	05/23/13	1.13	-1.13	709530253 - 8 Kettering Court	FIEL	C
	OV	222052	70953	70953-	001	07/01/13	PT	61954	07/11/13	1336.01	-1336.01	709530253 - 8 Kettering Court	FIEL	C
	OV	222052	70953	70953-	002	07/01/13	PT	61954	07/11/13	2340.86	-2340.86	709530253 - 8 Kettering Court	FIEL	C
	OV	222052	70953	70953-	003	07/01/13	PT	61954	07/11/13	225.72	-225.72	709530253 - 8 Kettering Court	FIEL	C
	OV	222052	70953	70953-	004	07/01/13	PT	61954	07/11/13	5411.34	-5411.34	709530253 - 8 Kettering Court	FIEL	C
	OV	226042	70953	3732041 LOT 253	000	08/23/13	PT	67554	08/29/13	249.48	-249.48	709530253 - 8 Kettering Court	FIEL	C
	OV	224047	70953	201215 LOT 253	000	07/23/13	PT	63577	07/25/13	477.7	-477.7	709530253 - 8 Kettering Court	FIEL	C
	OV	224047	70953	201215 LOT 253	001	07/23/13	PT	63577	07/25/13	158.1	-158.1	709530253 - 8 Kettering Court	FIEL	C
	OV	224047	70953	201215 LOT 253	002	07/23/13	PT	63577	07/25/13	102	-102	709530253 - 8 Kettering Court	FIEL	C
	OV	224049	70953	3729527 LOT 253	000	07/23/13	PT	63577	07/25/13	181.6	-181.6	709530253 - 8 Kettering Court	FIEL	C
	OV	224053	70953	3729860 LOT 253	000	07/23/13	PT	63577	07/25/13	182.22	-182.22	709530253 - 8 Kettering Court	FIEL	C

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	OV	226041	70953	3732040 LOT 253	000	08/23/13	PT	67554	08/29/13	771.25	-771.25	709530253 - 8 Kettering Court	FIEL	C
	OV	224046	70953	201216 LOT 253	000	07/23/13	PT	63577	07/25/13	180.2	-180.2	709530253 - 8 Kettering Court	FIEL	C
	OV	231089	70953	70953-00231089	001	03/10/14	PT	91763	03/13/14	38	-38	709530254 - 6 Kettering Court	FIEL	C
	OV	231089	70953	70953-00231089	002	03/10/14	PT	91763	03/13/14	2710.24	-2710.24	709530254 - 6 Kettering Court	FIEL	C
	OV	231089	70953	70953-00231089	003	03/10/14	PT	91763	03/13/14	226.56	-226.56	709530254 - 6 Kettering Court	FIEL	C
	OV	230887	70953	70953-00230887	001	02/24/14	PT	89669	02/27/14	337.5	-337.5	709530254 - 6 Kettering Court	FIEL	C
	OV	230887	70953	70953-00230887	002	02/24/14	PT	89669	02/27/14	20.25	-20.25	709530254 - 6 Kettering Court	FIEL	C
	OV	230887	70953	70953-00230887	003	02/24/14	PT	89669	02/27/14	22.5	-22.5	709530254 - 6 Kettering Court	FIEL	C
	OV	230887	70953	70953-00230887	004	02/24/14	PT	89669	02/27/14	1.35	-1.35	709530254 - 6 Kettering Court	FIEL	C
	OV	232219	70953	2021650254	000	04/23/14	PT	98843	05/01/14	4163.94	-4163.94	709530254 - 6 Kettering Court	FIEL	C
	OV	233284	70953	2021150254	000	05/28/14	PK	647009	06/04/14	2635	-2635	709530254 - 6 Kettering Court	FIEL	C
	OV	233126	70953	2021580254	000	05/25/14	PK	647009	06/04/14	400	-400	709530254 - 6 Kettering Court	FIEL	C
	OV	232576	70953	70953-00232576	001	05/05/14	PT	99831	05/08/14	533.9	-533.9	709530254 - 6 Kettering Court	FIEL	C
	OV	232576	70953	70953-00232576	002	05/05/14	PT	99831	05/08/14	494	-494	709530254 - 6 Kettering Court	FIEL	C
	OV	232576	70953	70953-00232576	003	05/05/14	PT	99831	05/08/14	114	-114	709530254 - 6 Kettering Court	FIEL	C
	OV	232577	70953	70953-00232577	001	05/05/14	PT	99831	05/08/14	201.4	-201.4	709530254 - 6 Kettering Court	FIEL	C
	OV	234134	70953	37500110254	000	07/02/14	PT	109061	07/10/14	400	-400	709530254 - 6 Kettering Court	FIEL	C
	OV	223211	70953	70953-00223211	003	07/15/13	PT	63577	07/25/13	2710.24	-2710.24	709530255 - 4 Kettering Court	FIEL	C
	OV	223211	70953	70953-00223211	002	07/15/13	PT	63577	07/25/13	38	-38	709530255 - 4 Kettering Court	FIEL	C
	OV	223211	70953	70953-00223211	001	07/15/13	PT	63577	07/25/13	21.76	-21.76	709530255 - 4 Kettering Court	FIEL	C
	OV	222054	70953	70953-00222054	001	07/01/13	PT	61954	07/11/13	337.5	-337.5	709530255 - 4 Kettering Court	FIEL	C

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	OV	222054	70953	70953-00222054	002	07/01/13	PT	61954	07/11/13	20.25	-20.25	709530255 - 4 Kettering Court	FIEL	C
	OV	226277	70953	70953-	001	08/26/13	PT	67554	08/29/13	6438.96	-6438.96	709530255 - 4 Kettering Court	FIEL	C
	OV	228731	70953	3734746 LOT 255	000	10/18/13	PT	74499	10/24/13	3124.44	-3124.44	709530255 - 4 Kettering Court	FIEL	C
	OV	228728	70953	3736053 LOT 255	000	10/18/13	PT	74499	10/24/13	1750	-1750	709530255 - 4 Kettering Court	FIEL	C
	OV	229848	70953	202040 0255	000	12/03/13	PT	79436	12/05/13	2635	-2635	709530255 - 4 Kettering Court	FIEL	C
	OV	227938	70953	201758 LOT 255	001	09/27/13	PT	72677	10/10/13	494	-494	709530255 - 4 Kettering Court	FIEL	C
	OV	227938	70953	201758 LOT 255	000	09/27/13	PT	72677	10/10/13	533.9	-533.9	709530255 - 4 Kettering Court	FIEL	C
	OV	231095	70953	70953-00231095	001	03/10/14	PT	91763	03/13/14	201.4	-201.4	709530255 - 4 Kettering Court	FIEL	C
	OV	228730	70953	3735132 LOT 255	000	10/18/13	PT	74499	10/24/13	285	-285	709530255 - 4 Kettering Court	FIEL	C
	OV	224575	70953	3730752 LOT 256	000	08/02/13	PT	65246	08/08/13	1400	-1400	709530256 - 2 Kettering Court	BROO	C
	OV	225306	70953	70953-00225306	001	08/12/13	PT	66924	08/22/13	45.6	-45.6	709530256 - 2 Kettering Court	BROO	C
	OV	225306	70953	70953-00225306	002	08/12/13	PT	66924	08/22/13	-45.6	45.6	709530256 - 2 Kettering Court	BROO	C
	OV	225306	70953	70953-00225306	003	08/12/13	PT	66924	08/22/13	253.65	-253.65	709530256 - 2 Kettering Court	BROO	C
	OV	225306	70953	70953-00225306	004	08/12/13	PT	66924	08/22/13	38	-38	709530256 - 2 Kettering Court	BROO	C
	OV	225306	70953	70953-00225306	005	08/12/13	PT	66924	08/22/13	1856.25	-1856.25	709530256 - 2 Kettering Court	BROO	C
	OV	225306	70953	70953-00225306	006	08/12/13	PT	66924	08/22/13	38	-38	709530256 - 2 Kettering Court	BROO	C
	OV	225306	70953	70953-00225306	007	08/12/13	PT	66924	08/22/13	2643.68	-2643.68	709530256 - 2 Kettering Court	BROO	C
	OV	225306	70953	70953-00225306	008	08/12/13	PT	66924	08/22/13	-38	38	709530256 - 2 Kettering Court	BROO	C
	OV	225306	70953	70953-00225306	009	08/12/13	PT	66924	08/22/13	-2643.68	2643.68	709530256 - 2 Kettering Court	BROO	C
	OV	227078	70953	70953-00227078	001	09/09/13	PT	70154	09/19/13	90	-90	709530256 - 2 Kettering Court	BROO	C
	OV	227078	70953	70953-00227078	002	09/09/13	PT	70154	09/19/13	5.4	-5.4	709530256 - 2 Kettering Court	BROO	C
	OV	210454	70953	200225 261	000	06/22/12	PT	29431	06/28/12	325	-325	709530261 - 9 Dartford Court	LENO	C

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	OV	210317	70953	70953-00210317	001	06/18/12	PT	29431	06/28/12	34	-34	709530261 - 9 Dartford Court	LENO	C
	OV	210317	70953	70953-00210317	002	06/18/12	PT	29431	06/28/12	3166.1	-3166.1	709530261 - 9 Dartford Court	LENO	C
	OV	211654	70953	3717189 LOT 261	000	10/25/12	PT	37782	11/01/12	112.4	-112.4	709530261 - 9 Dartford Court	LENO	C
	OV	210878	70953	3710764 LOT 261	000	07/27/12	PT	31935	08/09/12	12	-12	709530261 - 9 Dartford Court	LENO	C
	OV	210318	70953	70953-00210318	001	06/18/12	PT	29431	06/28/12	256.25	-256.25	709530261 - 9 Dartford Court	LENO	C
	OV	210318	70953	70953-00210318	002	06/18/12	PT	29431	06/28/12	15.38	-15.38	709530261 - 9 Dartford Court	LENO	C
	OV	211481	70953	70953-	001	09/27/12	PT	35766	10/04/12	1013.27	-1013.27	709530261 - 9 Dartford Court	LENO	C
	OV	211481	70953	70953-	002	09/27/12	PT	35766	10/04/12	5761.8	-5761.8	709530261 - 9 Dartford Court	LENO	C
	OV	211577	70953	200266 261	000	10/16/12	PT	36633	10/18/12	1963.5	-1963.5	709530261 - 9 Dartford Court	LENO	C
	OV	211576	70953	200304 261	000	10/16/12	PT	36633	10/18/12	400	-400	709530261 - 9 Dartford Court	LENO	C
	OV	211570	70953	200293 LOT 261	000	10/12/12	PT	36633	10/18/12	775.2	-775.2	709530261 - 9 Dartford Court	LENO	C
	OV	211569	70953	200294 LOT 261	000	10/12/12	PT	36633	10/18/12	180.2	-180.2	709530261 - 9 Dartford Court	LENO	C
	OV	215062	70953	3722807 LOT 261	000	04/02/13	PT	51390	04/04/13	75	-75	709530261 - 9 Dartford Court	LENO	C
	OV	220472	70953	3727874 LOT 262	000	06/14/13	PT	59519	06/20/13	300	-300	709530262 - 8 Dartford Court	FIEL	C
	OV	220476	70953	3728084 LOT 262	000	06/14/13	PT	59519	06/20/13	15.2	-15.2	709530262 - 8 Dartford Court	FIEL	C
	OV	217256	70953	70953-00217256	001	05/06/13	PT	54950	05/09/13	19.55	-19.55	709530262 - 8 Dartford Court	FIEL	C
	OV	217256	70953	70953-00217256	002	05/06/13	PT	54950	05/09/13	34	-34	709530262 - 8 Dartford Court	FIEL	C
	OV	217256	70953	70953-00217256	003	05/06/13	PT	54950	05/09/13	2300.9	-2300.9	709530262 - 8 Dartford Court	FIEL	C
	OV	216658	70953	70953-00216658	001	04/29/13	PT	54950	05/09/13	281.25	-281.25	709530262 - 8 Dartford Court	FIEL	C
	OV	216658	70953	70953-00216658	002	04/29/13	PT	54950	05/09/13	16.88	-16.88	709530262 - 8 Dartford Court	FIEL	C
	OV	219720	70953	70953-	001	06/03/13	PT	57782	06/06/13	1848.83	-1848.83	709530262 - 8 Dartford Court	FIEL	C
	OV	219720	70953	70953-	002	06/03/13	PT	57782	06/06/13	5411.34	-5411.34	709530262 - 8 Dartford Court	FIEL	C

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	OV	222882	70953	3728697 LOT 262	000	07/08/13	PT	61954	07/11/13	253.93	-253.93	709530262 - 8 Dartford Court	FIEL	C
	OV	226479	70953	201136 LOT 262	000	08/27/13	PT	67554	08/29/13	400	-400	709530262 - 8 Dartford Court	FIEL	C
	OV	224054	70953	3729860 LOT 262	000	07/23/13	PT	63577	07/25/13	120.15	-120.15	709530262 - 8 Dartford Court	FIEL	C
	OV	222331	70953	201123 LOT 262	000	07/05/13	PT	61954	07/11/13	477.7	-477.7	709530262 - 8 Dartford Court	FIEL	C
	OV	222332	70953	201124 LOT 262	000	07/05/13	PT	61954	07/11/13	180.2	-180.2	709530262 - 8 Dartford Court	FIEL	C
	OV	215775	70953	3725924 LOT 263	000	04/16/13	PT	52710	04/18/13	325	-325	709530263 - 6 Dartford Court	WSLY	C
	OV	222884	70953	3728698 LOT 263	000	07/08/13	PT	61954	07/11/13	202	-202	709530263 - 6 Dartford Court	WSLY	C
	OV	214650	70953	70953-00214650	001	03/25/13	PT	51390	04/04/13	34	-34	709530263 - 6 Dartford Court	WSLY	C
	OV	214650	70953	70953-00214650	002	03/25/13	PT	51390	04/04/13	2991.3	-2991.3	709530263 - 6 Dartford Court	WSLY	C
	OV	214147	70953	70953-00214147	001	03/11/13	PT	49582	03/21/13	262.5	-262.5	709530263 - 6 Dartford Court	WSLY	C
	OV	214147	70953	70953-00214147	002	03/11/13	PT	49582	03/21/13	15.75	-15.75	709530263 - 6 Dartford Court	WSLY	C
	OV	220473	70953	3727882 LOT 263	000	06/14/13	PT	59519	06/20/13	2728.44	-2728.44	709530263 - 6 Dartford Court	WSLY	C
	OV	215575	70953	70953-	001	04/15/13	PT	52710	04/18/13	5013.36	-5013.36	709530263 - 6 Dartford Court	WSLY	C
	OV	218833	70953	200675 LOT 263	000	05/21/13	PT	56168	05/23/13	382.5	-382.5	709530263 - 6 Dartford Court	WSLY	C
	OV	224048	70953	3729526 LOT 263	000	07/23/13	PT	63577	07/25/13	102	-102	709530263 - 6 Dartford Court	WSLY	C
	OV	218834	70953	200714 LOT 263	000	05/21/13	PT	56168	05/23/13	400	-400	709530263 - 6 Dartford Court	WSLY	C
	OV	220471	70953	200699 LOT 263	000	06/14/13	PT	59519	06/20/13	477.7	-477.7	709530263 - 6 Dartford Court	WSLY	C
	OV	222881	70953	3728699 LOT 263	000	07/08/13	PT	61954	07/11/13	377.6	-377.6	709530263 - 6 Dartford Court	WSLY	C
	OV	220470	70953	200700 LOT 263	000	06/14/13	PT	59519	06/20/13	180.2	-180.2	709530263 - 6 Dartford Court	WSLY	C
	OV	210125	70953	200113 264	000	02/17/12	PT	21742	02/23/12	325	-325	709530264 - 4 Dartford Court	FIEL	C
	OV	210123	70953	200190 LOT 264	000	02/16/12	PT	21742	02/23/12	19.55	-19.55	709530264 - 4 Dartford Court	FIEL	C
	OV	210123	70953	200190 LOT 264	001	02/16/12	PT	21742	02/23/12	34	-34	709530264 - 4 Dartford Court	FIEL	C

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	OV	210123	70953	200190 LOT 264	002	02/16/12	PT	21742	02/23/12	2434.7	-2434.7	709530264 - 4 Dartford Court	FIEL	C
	OV	210879	70953	3710700 LOT 264	000	07/27/12	PT	31935	08/09/12	813.95	-813.95	709530264 - 4 Dartford Court	FIEL	C
	OV	210124	70953	200116 264	000	02/17/12	PT	21742	02/23/12	281.25	-281.25	709530264 - 4 Dartford Court	FIEL	C
	OV	210124	70953	200116 264	001	02/17/12	PT	21742	02/23/12	16.88	-16.88	709530264 - 4 Dartford Court	FIEL	C
	OV	211567	70953	3716565 LOT 264	000	10/12/12	PT	36633	10/18/12	382.61	-382.61	709530264 - 4 Dartford Court	FIEL	C
	OV	210150	70953	200202 264	000	03/15/12	PT	23226	03/22/12	4163.94	-4163.94	709530264 - 4 Dartford Court	FIEL	C
	OV	210955	70953	3710691 LOT 264	000	08/01/12	PT	31935	08/09/12	1974.06	-1974.06	709530264 - 4 Dartford Court	FIEL	C
	OV	210954	70953	3710703 LOT 264	000	08/01/12	PT	31935	08/09/12	250	-250	709530264 - 4 Dartford Court	FIEL	C
	OV	210148	70953	200152 264	000	03/15/12	PT	23226	03/22/12	2635	-2635	709530264 - 4 Dartford Court	FIEL	C
	OV	210149	70953	200193 264	000	03/15/12	PT	23226	03/22/12	400	-400	709530264 - 4 Dartford Court	FIEL	C
	OV	211568	70953	200179 LOT 264	000	10/12/12	PT	36633	10/18/12	477.7	-477.7	709530264 - 4 Dartford Court	FIEL	C
	OV	211568	70953	200179 LOT 264	001	10/12/12	PT	36633	10/18/12	76.5	-76.5	709530264 - 4 Dartford Court	FIEL	C
	OV	211568	70953	200179 LOT 264	002	10/12/12	PT	36633	10/18/12	442	-442	709530264 - 4 Dartford Court	FIEL	C
	OV	212672	70953	70953-	001	01/22/13	PT	44169	01/24/13	325	-325	709530265 - 2 Dartford Court	BROO	C
	OV	212716	70953	3720948 LOT 265	000	01/28/13	PT	45137	02/07/13	350	-350	709530265 - 2 Dartford Court	BROO	C
	OV	212624	70953	3720225 LOT 265	000	01/18/13	PT	44169	01/24/13	300	-300	709530265 - 2 Dartford Court	BROO	C
	OV	212756	70953	70953-00212756	001	01/29/13	PT	45137	02/07/13	34	-34	709530265 - 2 Dartford Court	BROO	C
	OV	212756	70953	70953-00212756	002	01/29/13	PT	45137	02/07/13	2374.9	-2374.9	709530265 - 2 Dartford Court	BROO	C
	OV	212580	70953	70953-00212580	001	01/14/13	PT	44169	01/24/13	181.25	-181.25	709530265 - 2 Dartford Court	BROO	C
	OV	212580	70953	70953-00212580	002	01/14/13	PT	44169	01/24/13	10.88	-10.88	709530265 - 2 Dartford Court	BROO	C
	OV	217901	70953	70953-00217901	001	05/15/13	PT	56168	05/23/13	578	-578	709530266 - 104 Sturbridge Court	WSLY	C
	OV	217901	70953	70953-00217901	002	05/15/13	PT	56168	05/23/13	34	-34	709530266 - 104 Sturbridge Court	WSLY	C

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	OV	217901	70953	70953-00217901	003	05/15/13	PT	56168	05/23/13	2991.3	-2991.3	709530266 - 104 Sturbridge Court	WSLY	C
	OV	217263	70953	70953-00217263	001	05/06/13	PT	54950	05/09/13	262.5	-262.5	709530266 - 104 Sturbridge Court	WSLY	C
	OV	217263	70953	70953-00217263	002	05/06/13	PT	54950	05/09/13	15.75	-15.75	709530266 - 104 Sturbridge Court	WSLY	C
	OV	212409	70959	70959-00212409	001	06/03/14	PK	647009	06/04/14	38	-38	709590045 - 501 CARDIFF CT	BROO	C
	OV	212409	70959	70959-00212409	002	06/03/14	PK	647009	06/04/14	2643.68	-2643.68	709590045 - 501 CARDIFF CT	BROO	C
	OV	210997	70959	70959-00210997	001	05/20/14	PT	101888	05/22/14	217.5	-217.5	709590045 - 501 CARDIFF CT	BROO	C
	OV	210997	70959	70959-00210997	002	05/20/14	PT	101888	05/22/14	13.05	-13.05	709590045 - 501 CARDIFF CT	BROO	C
	OV	215231	70959	70959-	001	07/01/14	PT	108137	07/02/14	903.87	-903.87	709590045 - 501 CARDIFF CT	BROO	C
	OV	217673	70959	37520160045	000	07/23/14	PT	112733	07/31/14	105.93	-105.93	709590045 - 501 CARDIFF CT	BROO	C
	OV	218233	70959	37525730045	000	07/30/14	PT	113457	08/07/14	156.75	-156.75	709590045 - 501 CARDIFF CT	BROO	C
	OV	217302	70959	70959-00217302	001	07/21/14	PT	111403	07/24/14	533.9	-533.9	709590045 - 501 CARDIFF CT	BROO	C
	OV	216650	70959	70959-00216650	001	07/14/14	PT	110515	07/17/14	125.4	-125.4	709590045 - 501 CARDIFF CT	BROO	C
	OV	213085	70959	70959-00213085	001	06/10/14	PT	104887	06/12/14	21.76	-21.76	709590047 - 505 CARDIFF CT	FIEL	C
	OV	213085	70959	70959-00213085	002	06/10/14	PT	104887	06/12/14	38	-38	709590047 - 505 CARDIFF CT	FIEL	C
	OV	213085	70959	70959-00213085	003	06/10/14	PT	104887	06/12/14	2664.04	-2664.04	709590047 - 505 CARDIFF CT	FIEL	C
	OV	211726	70959	70959-00211726	001	05/27/14	PT	102779	05/29/14	337.5	-337.5	709590047 - 505 CARDIFF CT	FIEL	C
	OV	211726	70959	70959-00211726	002	05/27/14	PT	102779	05/29/14	20.25	-20.25	709590047 - 505 CARDIFF CT	FIEL	C
	OV	216654	70959	70959-	001	07/14/14	PT	110515	07/17/14	579.15	-579.15	709590047 - 505 CARDIFF CT	FIEL	C
	OV	217904	70959	70959-00217904	001	07/28/14	PT	112733	07/31/14	217.5	-217.5	709590048 - 507 CARDIFF CT	BROO	C
	OV	217904	70959	70959-00217904	002	07/28/14	PT	112733	07/31/14	13.05	-13.05	709590048 - 507 CARDIFF CT	BROO	C
	OV	213096	70959	70959-00213096	002	06/10/14	PT	104887	06/12/14	2643.68	-2643.68	709590049 - 509 CARDIFF CT	BROO	C
	OV	213096	70959	70959-00213096	001	06/10/14	PT	104887	06/12/14	38	-38	709590049 - 509 CARDIFF CT	BROO	C
	OV	211738	70959	70959-00211738	001	05/27/14	PT	102779	05/29/14	217.5	-217.5	709590049 - 509 CARDIFF CT	BROO	C

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	OV	211738	70959	70959-00211738	002	05/27/14	PT	102779	05/29/14	13.05	-13.05	709590049 - 509 CARDIFF CT	BROO	C
	OV	213100	70959	70959-00213100	001	06/10/14	PT	104887	06/12/14	38	-38	709590050 - 508 CARDIFF CT	FIEL	C
	OV	213100	70959	70959-00213100	002	06/10/14	PT	104887	06/12/14	2531.04	-2531.04	709590050 - 508 CARDIFF CT	FIEL	C
	OV	212433	70959	70959-00212433	001	06/03/14	PK	647009	06/04/14	337.5	-337.5	709590050 - 508 CARDIFF CT	FIEL	C
	OV	212433	70959	70959-00212433	002	06/03/14	PK	647009	06/04/14	20.25	-20.25	709590050 - 508 CARDIFF CT	FIEL	C
	OV	214498	70959	70959-	001	06/24/14	PT	107076	06/26/14	1336.01	-1336.01	709590050 - 508 CARDIFF CT	FIEL	C
	OV	217674	70959	37520180050	000	07/23/14	PT	112733	07/31/14	356.89	-356.89	709590050 - 508 CARDIFF CT	FIEL	C
	OV	216667	70959	70959-00216667	001	07/14/14	PT	110515	07/17/14	533.9	-533.9	709590050 - 508 CARDIFF CT	FIEL	C
	OV	216668	70959	70959-00216668	001	07/14/14	PT	110515	07/17/14	125.4	-125.4	709590050 - 508 CARDIFF CT	FIEL	C
	OV	211747	70959	70959-00211747	003	05/27/14	PT	102779	05/29/14	2643.68	-2643.68	709590051 - 506 CARDIFF CT	BROO	C
	OV	211747	70959	70959-00211747	002	05/27/14	PT	102779	05/29/14	38	-38	709590051 - 506 CARDIFF CT	BROO	C
	OV	211747	70959	70959-00211747	001	05/27/14	PT	102779	05/29/14	193.8	-193.8	709590051 - 506 CARDIFF CT	BROO	C
	OV	211029	70959	70959-00211029	002	05/20/14	PT	101888	05/22/14	13.05	-13.05	709590051 - 506 CARDIFF CT	BROO	C
	OV	211029	70959	70959-00211029	001	05/20/14	PT	101888	05/22/14	217.5	-217.5	709590051 - 506 CARDIFF CT	BROO	C
	OV	218235	70959	37525670051	000	07/30/14	PT	113457	08/07/14	255	-255	709590051 - 506 CARDIFF CT	BROO	C
	OV	217319	70959	70959-00217319	001	07/21/14	PT	111403	07/24/14	533.9	-533.9	709590051 - 506 CARDIFF CT	BROO	C
	OV	218234	70959	37525650051	000	07/30/14	PT	113457	08/07/14	349.6	-349.6	709590051 - 506 CARDIFF CT	BROO	C
	OV	217320	70959	70959-00217320	001	07/21/14	PT	111403	07/24/14	125.4	-125.4	709590051 - 506 CARDIFF CT	BROO	C
	OV	217321	70959	70959-00217321	001	07/21/14	PT	111403	07/24/14	3619.41	-3619.41	709590052 - 504 CARDIFF CT	GLNH	C
	OV	216673	70959	70959-00216673	001	07/14/14	PT	110515	07/17/14	337.5	-337.5	709590052 - 504 CARDIFF CT	GLNH	C
	OV	216673	70959	70959-00216673	002	07/14/14	PT	110515	07/17/14	20.25	-20.25	709590052 - 504 CARDIFF CT	GLNH	C
	OV	213107	70959	70959-00213107	001	06/10/14	PT	104887	06/12/14	192.85	-192.85	709590054 - 500 CARDIFF CT	GLNH	C
	OV	213107	70959	70959-00213107	002	06/10/14	PT	104887	06/12/14	148.54	-148.54	709590054 - 500 CARDIFF CT	GLNH	C

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	OV	215936	70959	70959-00215936	001	07/07/14	PT	109061	07/10/14	3312.64	-3312.64	709590054 - 500 CARDIFF CT	GLNH	C
	OV	215937	70959	70959-00215937	001	07/07/14	PT	109061	07/10/14	337.5	-337.5	709590054 - 500 CARDIFF CT	GLNH	C
	OV	215937	70959	70959-00215937	002	07/07/14	PT	109061	07/10/14	20.25	-20.25	709590054 - 500 CARDIFF CT	GLNH	C
	OV	216680	70959	70959-00216680	001	07/14/14	PT	110515	07/17/14	38	-38	709590061 - 410 ROWLEY CT	BROO	C
	OV	216680	70959	70959-00216680	002	07/14/14	PT	110515	07/17/14	2643.68	-2643.68	709590061 - 410 ROWLEY CT	BROO	C
	OV	215264	70959	70959-00215264	001	07/01/14	PT	108137	07/02/14	217.5	-217.5	709590061 - 410 ROWLEY CT	BROO	C
	OV	215264	70959	70959-00215264	002	07/01/14	PT	108137	07/02/14	13.05	-13.05	709590061 - 410 ROWLEY CT	BROO	C
	OV	210639	70951	200757 141	000	05/10/12	PT	26807	05/17/12	325	-325	709510141 - 27 Duxbury Lane	BYRO	C
	OV	210679	70951	200832 LOT 141	000	05/11/12	PT	26807	05/17/12	2595.7	-2595.7	709510141 - 27 Duxbury Lane	BYRO	C
	OV	214531	70951	3710695 LOT 141	000	07/27/12	PT	31935	08/09/12	24.3	-24.3	709510141 - 27 Duxbury Lane	BYRO	C
	OV	221107	70951	3717180 LOT 141	000	10/25/12	PT	37782	11/01/12	276.6	-276.6	709510141 - 27 Duxbury Lane	BYRO	C
	OV	210678	70951	200760 LOT 141	000	05/11/12	PT	26807	05/17/12	200	-200	709510141 - 27 Duxbury Lane	BYRO	C
	OV	210678	70951	200760 LOT 141	001	05/11/12	PT	26807	05/17/12	12	-12	709510141 - 27 Duxbury Lane	BYRO	C
	OV	212840	70951	200792 141	000	07/06/12	PT	30229	07/12/12	867	-867	709510141 - 27 Duxbury Lane	BYRO	C
	OV	212867	70951	200817 LOT 141	000	07/06/12	PT	30229	07/12/12	477.7	-477.7	709510141 - 27 Duxbury Lane	BYRO	C
	OV	225358	70951	3719753 LOT 141	000	12/28/12	PT	43005	01/10/13	220.4	-220.4	709510141 - 27 Duxbury Lane	BYRO	C
	OV	215516	70951	70951-	001	08/06/12	PT	31935	08/09/12	325	-325	709510142 - 29 Duxbury Lane	EVER	C
	OV	215517	70951	70951-00215517	001	08/06/12	PT	31935	08/09/12	1615.9	-1615.9	709510142 - 29 Duxbury Lane	EVER	C
	OV	221108	70951	3717180 LOT 142	000	10/25/12	PT	37782	11/01/12	8	-8	709510142 - 29 Duxbury Lane	EVER	C
	OV	221108	70951	3717180 LOT 142	001	10/25/12	PT	37782	11/01/12	152.15	-152.15	709510142 - 29 Duxbury Lane	EVER	C
	OV	215518	70951	70951-00215518	001	08/06/12	PT	31935	08/09/12	156.25	-156.25	709510142 - 29 Duxbury Lane	EVER	C
	OV	215518	70951	70951-00215518	003	08/06/12	PT	31935	08/09/12	9.38	-9.38	709510142 - 29 Duxbury Lane	EVER	C
	OV	212839	70951	200538 142	000	07/06/12	PT	30229	07/12/12	867	-867	709510142 - 29 Duxbury Lane	EVER	C

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	OV	225357	70951	3719753 LOT 142	000	12/28/12	PT	43005	01/10/13	95.95	-95.95	709510142 - 29 Duxbury Lane	EVER	C
	OV	212866	70951	200564 LOT 142	000	07/06/12	PT	30229	07/12/12	477.7	-477.7	709510142 - 29 Duxbury Lane	EVER	C
	OV	211151	70951	70951-	001	06/18/12	PT	29431	06/28/12	325	-325	709510145 - 28 Duxbury Lane	SHER	C
	OV	220033	70951	201085 LOT 145	000	10/12/12	PT	36633	10/18/12	1858.55	-1858.55	709510145 - 28 Duxbury Lane	SHER	C
	OV	235942	70951	3727873 LOT 145	000	06/14/13	PT	59519	06/20/13	709.8	-709.8	709510145 - 28 Duxbury Lane	SHER	C
	OV	220071	70951	201016 145	000	10/16/12	PT	36633	10/18/12	212.5	-212.5	709510145 - 28 Duxbury Lane	SHER	C
	OV	220071	70951	201016 145	001	10/16/12	PT	36633	10/18/12	12.75	-12.75	709510145 - 28 Duxbury Lane	SHER	C
	OV	228544	70951	3721486 LOT 145	000	02/18/13	PT	46719	02/21/13	300	-300	709510145 - 28 Duxbury Lane	SHER	C
	OV	220072	70951	201049 145	000	10/16/12	PT	36633	10/18/12	2558.5	-2558.5	709510145 - 28 Duxbury Lane	SHER	C
	OV	220034	70951	201073 LOT 145	000	10/12/12	PT	36633	10/18/12	477.7	-477.7	709510145 - 28 Duxbury Lane	SHER	C
	OV	210710	70951	3703292 LOT 147	000	05/23/12	PT	27534	05/31/12	153.1	-153.1	709510147 - 24 Duxbury Lane	MILL	C
	OV	210749	70951	3702763 147	000	05/24/12	PT	27534	05/31/12	221	-221	709510147 - 24 Duxbury Lane	MILL	C
	OV	210199	70951	200127 LOT 147	000	12/30/11	PT	19368	01/05/12	1581	-1581	709510147 - 24 Duxbury Lane	MILL	C
	OV	210303	70951	200153 141	000	01/19/12	PT	20352	01/26/12	477.7	-477.7	709510147 - 24 Duxbury Lane	MILL	C
	OV	238757	70951	70951-00238757	001	07/15/13	PT	63577	07/25/13	2298.08	-2298.08	709510151 - 101 Yount Court	SHER	C
	OV	237495	70951	70951-00237495	001	07/01/13	PT	61954	07/11/13	262.5	-262.5	709510151 - 101 Yount Court	SHER	C
	OV	237495	70951	70951-00237495	002	07/01/13	PT	61954	07/11/13	15.75	-15.75	709510151 - 101 Yount Court	SHER	C
	OV	243231	70951	70951-	001	09/03/13	PT	68428	09/05/13	472.23	-472.23	709510151 - 101 Yount Court	SHER	C
	OV	245979	70951	3735121 LOT 151	000	10/18/13	PT	74499	10/24/13	210.87	-210.87	709510151 - 101 Yount Court	SHER	C
	OV	243529	70951	202965 LOT 151	000	09/03/13	PT	68428	09/05/13	533.9	-533.9	709510151 - 101 Yount Court	SHER	C
	OV	244119	70951	3733595 LOT 151	000	09/13/13	PT	70154	09/19/13	353.4	-353.4	709510151 - 101 Yount Court	SHER	C
	OV	245978	70951	202771 LOT 157	000	10/18/13	PT	74499	10/24/13	960.5	-960.5	709510157 - 110 Yount Court	BYRO	C

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	OV	245980	70951	3735122 LOT 157	000	10/18/13	PT	74499	10/24/13	267.9	-267.9	709510157 - 110 Yount Court	BYRO	C
	OV	225832	70951	3719986 LOT 158	000	01/04/13	PT	43005	01/10/13	200	-200	709510158 - 108 Yount Court	MILL	C
	OV	221112	70951	3717181 LOT 158	000	10/25/12	PT	37782	11/01/12	208	-208	709510158 - 108 Yount Court	MILL	C
	OV	221112	70951	3717181 LOT 158	001	10/25/12	PT	37782	11/01/12	56.2	-56.2	709510158 - 108 Yount Court	MILL	C
	OV	230951	70951	70951-	001	04/01/13	PT	51390	04/04/13	325	-325	709510160 - 104 Yount Court	BYRO	C
	OV	231147	70951	202184 LOT 160	000	04/02/13	PT	51390	04/04/13	2595.7	-2595.7	709510160 - 104 Yount Court	BYRO	C
	OV	231559	70951	3725060 LOT 160	000	04/12/13	PT	52710	04/18/13	8	-8	709510160 - 104 Yount Court	BYRO	C
	OV	230953	70951	70951-00230953	001	04/01/13	PT	51390	04/04/13	200	-200	709510160 - 104 Yount Court	BYRO	C
	OV	230953	70951	70951-00230953	002	04/01/13	PT	51390	04/04/13	12	-12	709510160 - 104 Yount Court	BYRO	C
	OV	233086	70951	70951-	001	05/06/13	PT	54950	05/09/13	509.36	-509.36	709510160 - 104 Yount Court	BYRO	C
	OV	235939	70951	3727878 LOT 160	000	06/14/13	PT	59519	06/20/13	84.64	-84.64	709510160 - 104 Yount Court	BYRO	C
	OV	234788	70951	202170 LOT 160	000	05/28/13	PT	57782	06/06/13	477.7	-477.7	709510160 - 104 Yount Court	BYRO	C
	OV	238394	70951	3728696 LOT 160	000	07/08/13	PT	61954	07/11/13	158.8	-158.8	709510160 - 104 Yount Court	BYRO	C
	OV	244346	70951	70951-00244346	001	09/16/13	PT	70154	09/19/13	8.55	-8.55	709510170 - 16 Harwick Court	BYRO	C
	OV	244346	70951	70951-00244346	002	09/16/13	PT	70154	09/19/13	60.8	-60.8	709510170 - 16 Harwick Court	BYRO	C
	OV	244346	70951	70951-00244346	003	09/16/13	PT	70154	09/19/13	2889.44	-2889.44	709510170 - 16 Harwick Court	BYRO	C
	OV	246330	70951	70951-00246330	001	10/28/13	PT	76020	11/07/13	240	-240	709510170 - 16 Harwick Court	BYRO	C
	OV	246330	70951	70951-00246330	002	10/28/13	PT	76020	11/07/13	14.4	-14.4	709510170 - 16 Harwick Court	BYRO	C
	OV	244347	70951	70951-00244347	001	09/16/13	PT	70154	09/19/13	240	-240	709510170 - 16 Harwick Court	BYRO	C
	OV	244347	70951	70951-00244347	002	09/16/13	PT	70154	09/19/13	14.4	-14.4	709510170 - 16 Harwick Court	BYRO	C
	OV	247612	70951	203227 LOT 170	000	12/03/13	PT	79436	12/05/13	960.5	-960.5	709510170 - 16 Harwick Court	BYRO	C
	OV	246689	70951	3736647 LOT 170	000	11/04/13	PT	76020	11/07/13	178.5	-178.5	709510170 - 16 Harwick Court	BYRO	C
	OV	246686	70951	3736646 LOT 170	000	11/04/13	PT	76020	11/07/13	197.6	-197.6	709510170 - 16 Harwick Court	BYRO	C

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	OV	247592	70951	3737822 LOT 170	000	12/03/13	PT	79436	12/05/13	300	-300	709510170 - 16 Harwick Court	BYRO	C
	OV	246683	70951	203251 LOT 170	000	11/04/13	PT	76020	11/07/13	533.9	-533.9	709510170 - 16 Harwick Court	BYRO	C
	OV	248726	70951	3739429 LOT 170	000	01/14/14	PT	84470	01/16/14	450	-450	709510170 - 16 Harwick Court	BYRO	C
	OV	222584	70951	70951-	001	11/13/12	PT	38599	11/15/12	325	-325	709510171 - 14 Harwick Court	SHER	C
	OV	222585	70951	70951-00222585	001	11/13/12	PT	38599	11/15/12	1991.95	-1991.95	709510171 - 14 Harwick Court	SHER	C
	OV	220902	70951	70951-00220902	001	10/24/12	PT	37782	11/01/12	212.5	-212.5	709510171 - 14 Harwick Court	SHER	C
	OV	220902	70951	70951-00220902	002	10/24/12	PT	37782	11/01/12	12.75	-12.75	709510171 - 14 Harwick Court	SHER	C
	OV	225834	70951	201774 LOT 171	000	01/04/13	PT	43005	01/10/13	2558.5	-2558.5	709510171 - 14 Harwick Court	SHER	C
	OV	225835	70951	201799 LOT 171	000	01/04/13	PT	43005	01/10/13	477.7	-477.7	709510171 - 14 Harwick Court	SHER	C
	OV	226971	70951	3720221 LOT 171	000	01/18/13	PT	44169	01/24/13	181.45	-181.45	709510171 - 14 Harwick Court	SHER	C
	OV	226972	70951	3720222 LOT 171	000	01/18/13	PT	44169	01/24/13	56.2	-56.2	709510171 - 14 Harwick Court	SHER	C
	OV	230959	70951	70951-	001	04/01/13	PT	51390	04/04/13	325	-325	709510172 - 12 Harwick Court	MILL	C
	OV	231146	70951	202277 LOT 172	000	04/02/13	PT	51390	04/04/13	1779.2	-1779.2	709510172 - 12 Harwick Court	MILL	C
	OV	231558	70951	3725060 LOT 172	000	04/12/13	PT	52710	04/18/13	8	-8	709510172 - 12 Harwick Court	MILL	C
	OV	230961	70951	70951-00230961	001	04/01/13	PT	51390	04/04/13	168.75	-168.75	709510172 - 12 Harwick Court	MILL	C
	OV	230961	70951	70951-00230961	002	04/01/13	PT	51390	04/04/13	10.13	-10.13	709510172 - 12 Harwick Court	MILL	C
	OV	239437	70951	70951-00239437	001	07/22/13	PT	63577	07/25/13	1980.64	-1980.64	709510174 - 8 Harwick Court	MILL	C
	OV	239438	70951	70951-00239438	001	07/22/13	PT	63577	07/25/13	202.5	-202.5	709510174 - 8 Harwick Court	MILL	C
	OV	239438	70951	70951-00239438	002	07/22/13	PT	63577	07/25/13	12.15	-12.15	709510174 - 8 Harwick Court	MILL	C
	OV	242651	70951	70951-	001	08/26/13	PT	67554	08/29/13	532.62	-532.62	709510174 - 8 Harwick Court	MILL	C
	OV	245972	70951	3735124 LOT 174	000	10/18/13	PT	74499	10/24/13	151	-151	709510174 - 8 Harwick Court	MILL	C
	OV	244117	70951	203071 LOT 174	000	09/13/13	PT	70154	09/19/13	533.9	-533.9	709510174 - 8 Harwick Court	MILL	C

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	OV	245971	70951	3735125 LOT 174	000	10/18/13	PT	74499	10/24/13	247.95	-247.95	709510174 - 8 Harwick Court	MILL	C
	OV	242652	70951	70951-00242652	001	08/26/13	PT	67554	08/29/13	2909.92	-2909.92	709510175 - 6 Harwick Court	ABIN	C
	OV	241510	70951	70951-00241510	001	08/12/13	PT	66924	08/22/13	232.5	-232.5	709510175 - 6 Harwick Court	ABIN	C
	OV	241510	70951	70951-00241510	002	08/12/13	PT	66924	08/22/13	13.95	-13.95	709510175 - 6 Harwick Court	ABIN	C
	OV	247613	70951	203312 LOT 175	000	12/03/13	PT	79436	12/05/13	1011.5	-1011.5	709510175 - 6 Harwick Court	ABIN	C
	OV	245968	70951	203336 LOT 175	000	10/18/13	PT	74499	10/24/13	533.9	-533.9	709510175 - 6 Harwick Court	ABIN	C
	OV	245975	70951	3736063 LOT 175	000	10/18/13	PT	74499	10/24/13	252.7	-252.7	709510175 - 6 Harwick Court	ABIN	C
	OV	249162	70951	37403290180	000	02/10/14	PT	87786	02/13/14	500	-500	709510180 - 105 Amherst Way	HERR	C
	OV	248362	70951	70951-00248362	001	01/06/14	PT	83672	01/09/14	2111.2	-2111.2	709510180 - 105 Amherst Way	HERR	C
	OV	247484	70951	70951-00247484	001	12/02/13	PT	79436	12/05/13	225	-225	709510180 - 105 Amherst Way	HERR	C
	OV	247484	70951	70951-00247484	002	12/02/13	PT	79436	12/05/13	13.5	-13.5	709510180 - 105 Amherst Way	HERR	C
	OV	252228	70951	2036460180	000	04/23/14	PT	98843	05/01/14	1708.5	-1708.5	709510180 - 105 Amherst Way	HERR	C
	PD	238258	70951	37453900180	000	04/17/14	PT	98029	04/24/14	926.5	-926.5	709510180 - 105 Amherst Way	HERR	C
	OV	249783	70951	2036710180	000	03/05/14	PT	91763	03/13/14	533.9	-533.9	709510180 - 105 Amherst Way	HERR	C
	OV	250424	70951	37447120180	000	03/26/14	PT	94630	04/03/14	226.1	-226.1	709510180 - 105 Amherst Way	HERR	C
	OV	250426	70951	37447440180	000	03/27/14	PT	94630	04/03/14	226.1	-226.1	709510180 - 105 Amherst Way	HERR	C
	OV	253751	70951	70951-00253751	001	05/13/14	PT	100839	05/15/14	2298.08	-2298.08	709510186 - 112 Amherst Way	SHER	C
	OV	253148	70951	70951-00253148	001	05/05/14	PT	99831	05/08/14	262.5	-262.5	709510186 - 112 Amherst Way	SHER	C
	OV	253148	70951	70951-00253148	002	05/05/14	PT	99831	05/08/14	15.75	-15.75	709510186 - 112 Amherst Way	SHER	C
	OV	255306	70951	70951-	001	06/03/14	PK	647009	06/04/14	472.23	-472.23	709510186 - 112 Amherst Way	SHER	C
	OV	256063	70951	37490250186	000	06/12/14	PT	105886	06/19/14	92.07	-92.07	709510186 - 112 Amherst Way	SHER	C
	OV	256897	70951	70951-00256897	001	06/24/14	PT	107076	06/26/14	533.9	-533.9	709510186 - 112 Amherst Way	SHER	C

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	OV	259211	70951	37525740186	000	07/30/14	PT	113457	08/07/14	192.85	-192.85	709510186 - 112 Amherst Way	SHER	C
	OV	253754	70951	70951-00253754	001	05/13/14	PT	100839	05/15/14	2889.44	-2889.44	709510187 - 110 Amherst Way	BYRO	C
	OV	253152	70951	70951-00253152	001	05/05/14	PT	99831	05/08/14	240	-240	709510187 - 110 Amherst Way	BYRO	C
	OV	253152	70951	70951-00253152	002	05/05/14	PT	99831	05/08/14	14.4	-14.4	709510187 - 110 Amherst Way	BYRO	C
	OV	253469	70951	37470290187	000	05/07/14	PT	100839	05/15/14	300	-300	709510187 - 110 Amherst Way	BYRO	C
	OV	256899	70951	70951-00256899	001	06/24/14	PT	107076	06/26/14	533.9	-533.9	709510187 - 110 Amherst Way	BYRO	C
	OV	257670	70951	37500080187	000	07/02/14	PT	109061	07/10/14	226.1	-226.1	709510187 - 110 Amherst Way	BYRO	C
	OV	253757	70951	70951-00253757	001	05/13/14	PT	100839	05/15/14	1980.64	-1980.64	709510188 - 108 Amherst Way	MILL	C
	OV	253156	70951	70951-00253156	001	05/05/14	PT	99831	05/08/14	202.5	-202.5	709510188 - 108 Amherst Way	MILL	C
	OV	253156	70951	70951-00253156	002	05/05/14	PT	99831	05/08/14	12.15	-12.15	709510188 - 108 Amherst Way	MILL	C
	OV	255806	70951	70951-	001	06/10/14	PT	104887	06/12/14	812.3	-812.3	709510188 - 108 Amherst Way	MILL	C
	OV	257672	70951	37504690188	000	07/02/14	PT	109061	07/10/14	247	-247	709510188 - 108 Amherst Way	MILL	C
	OV	256345	70951	70951-00256345	001	06/17/14	PT	105886	06/19/14	533.9	-533.9	709510188 - 108 Amherst Way	MILL	C
	OV	257671	70951	37500100188	000	07/02/14	PT	109061	07/10/14	230.85	-230.85	709510188 - 108 Amherst Way	MILL	C
	OV	254811	70951	70951-00254811	001	05/27/14	PT	102779	05/29/14	98.8	-98.8	709510192 - 100 Amherst Way	ABIN	C
	OV	254811	70951	70951-00254811	002	05/27/14	PT	102779	05/29/14	2909.92	-2909.92	709510192 - 100 Amherst Way	ABIN	C
	OV	254310	70951	70951-00254310	001	05/20/14	PT	101888	05/22/14	232.5	-232.5	709510192 - 100 Amherst Way	ABIN	C
	OV	254310	70951	70951-00254310	002	05/20/14	PT	101888	05/22/14	13.95	-13.95	709510192 - 100 Amherst Way	ABIN	C
	OV	210012	70952	200008 2	000	10/17/11	PK	362193	10/20/11	325	-325	709520002 - 103 Berwick Court	CYTH	C
	OV	210010	70952	200082 2	000	10/17/11	PK	362193	10/20/11	87.4	-87.4	709520002 - 103 Berwick Court	CYTH	C
	OV	210010	70952	200082 2	001	10/17/11	PK	362193	10/20/11	3311.55	-3311.55	709520002 - 103 Berwick Court	CYTH	C
	OV	210011	70952	200011 2	000	10/17/11	PK	362193	10/20/11	281.25	-281.25	709520002 - 103 Berwick Court	CYTH	C

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	OV	210011	70952	200011 2	001	10/17/11	PK	362193	10/20/11	16.88	-16.88	709520002 - 103 Berwick Court	CYTH	C
	OV	210162	70952	200046 LOT 2	000	12/30/11	PT	19368	01/05/12	2380	-2380	709520002 - 103 Berwick Court	CYTH	C
	OV	210294	70952	200073 2	000	01/19/12	PT	20352	01/26/12	477.7	-477.7	709520002 - 103 Berwick Court	CYTH	C
	OV	210392	70952	200073 LOT 2	000	02/16/12	PT	21742	02/23/12	119	-119	709520002 - 103 Berwick Court	CYTH	C
	OV	210295	70952	200074 2	000	01/19/12	PT	20352	01/26/12	112.2	-112.2	709520002 - 103 Berwick Court	CYTH	C
	OV	210161	70952	200220 LOT 3	000	12/30/11	PT	19368	01/05/12	903.87	-903.87	709520003 - 105 Berwick Court	BROO	C
	OV	210292	70952	200248 3	000	01/19/12	PT	20352	01/26/12	477.7	-477.7	709520003 - 105 Berwick Court	BROO	C
	OV	210291	70952	200249 3	000	01/19/12	PT	20352	01/26/12	112.2	-112.2	709520003 - 105 Berwick Court	BROO	C
	OV	229397	70952	203122 LOT 4	000	02/28/13	PT	48162	03/07/13	325	-325	709520004 - 107 Berwick Court	FIEL	C
	OV	229399	70952	203200 LOT 4	000	02/28/13	PT	48162	03/07/13	2434.7	-2434.7	709520004 - 107 Berwick Court	FIEL	C
	OV	229398	70952	203125 LOT 4	000	02/28/13	PT	48162	03/07/13	281.25	-281.25	709520004 - 107 Berwick Court	FIEL	C
	OV	229398	70952	203125 LOT 4	001	02/28/13	PT	48162	03/07/13	16.88	-16.88	709520004 - 107 Berwick Court	FIEL	C
	OV	210552	70952	201252 21	000	03/15/12	PT	23226	03/22/12	325	-325	709520021 - 125 Berwick Court	BROO	C
	OV	210656	70952	201331 LOT 21	000	03/16/12	PT	23226	03/22/12	2374.9	-2374.9	709520021 - 125 Berwick Court	BROO	C
	OV	210553	70952	201255 21	000	03/15/12	PT	23226	03/22/12	181.25	-181.25	709520021 - 125 Berwick Court	BROO	C
	OV	210553	70952	201255 21	001	03/15/12	PT	23226	03/22/12	10.88	-10.88	709520021 - 125 Berwick Court	BROO	C
	OV	210563	70952	201166 25	000	03/15/12	PT	23226	03/22/12	325	-325	709520025 - 138 Berwick Court	MCDA	C
	OV	210654	70952	201244 LOT 25	000	03/16/12	PT	23226	03/22/12	2960.25	-2960.25	709520025 - 138 Berwick Court	MCDA	C
	OV	210562	70952	201169 25	000	03/15/12	PT	23226	03/22/12	256.25	-256.25	709520025 - 138 Berwick Court	MCDA	C
	OV	210562	70952	201169 25	001	03/15/12	PT	23226	03/22/12	15.38	-15.38	709520025 - 138 Berwick Court	MCDA	C
	OV	231542	70953	70953-00231542	001	04/01/14	PT	94630	04/03/14	217.5	-217.5	709530200 - 2 Duxbury Lane	BROO	C
	OV	231542	70953	70953-00231542	002	04/01/14	PT	94630	04/03/14	13.05	-13.05	709530200 - 2 Duxbury Lane	BROO	C
	OV	220229	70953	70953-	001	06/10/13	PT	59519	06/20/13	758.34	-758.34	709530245 - 11 Kettering Court	BROO	C
	OV	220229	70953	70953-	002	06/10/13	PT	59519	06/20/13	4472.82	-4472.82	709530245 - 11 Kettering Court	BROO	C
	OV	214141	70953	70953-	001	03/11/13	PT	49582	03/21/13	325	-325	709530247 - 17 Kettering Court	FIEL	C

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	OV	214142	70953	70953-00214142	001	03/11/13	PT	49582	03/21/13	19.55	-19.55	709530247 - 17 Kettering Court	FIEL	C
	OV	214142	70953	70953-00214142	002	03/11/13	PT	49582	03/21/13	34	-34	709530247 - 17 Kettering Court	FIEL	C
	OV	214142	70953	70953-00214142	003	03/11/13	PT	49582	03/21/13	2273.7	-2273.7	709530247 - 17 Kettering Court	FIEL	C
	OV	214142	70953	70953-00214142	004	03/11/13	PT	49582	03/21/13	203.55	-203.55	709530247 - 17 Kettering Court	FIEL	C
	OV	220475	70953	3728084 LOT 247	000	06/14/13	PT	59519	06/20/13	292.6	-292.6	709530247 - 17 Kettering Court	FIEL	C
	OV	220475	70953	3728084 LOT 247	001	06/14/13	PT	59519	06/20/13	120.2	-120.2	709530247 - 17 Kettering Court	FIEL	C
	OV	214143	70953	70953-00214143	001	03/11/13	PT	49582	03/21/13	281.25	-281.25	709530247 - 17 Kettering Court	FIEL	C
	OV	214143	70953	70953-00214143	002	03/11/13	PT	49582	03/21/13	16.88	-16.88	709530247 - 17 Kettering Court	FIEL	C
	OV	214143	70953	70953-00214143	003	03/11/13	PT	49582	03/21/13	18.75	-18.75	709530247 - 17 Kettering Court	FIEL	C
	OV	214143	70953	70953-00214143	004	03/11/13	PT	49582	03/21/13	1.13	-1.13	709530247 - 17 Kettering Court	FIEL	C
	OV	215225	70953	70953-	001	04/08/13	PT	52710	04/18/13	1336.01	-1336.01	709530247 - 17 Kettering Court	FIEL	C
	OV	215225	70953	70953-	002	04/08/13	PT	52710	04/18/13	225.72	-225.72	709530247 - 17 Kettering Court	FIEL	C
	OV	215225	70953	70953-	003	04/08/13	PT	52710	04/18/13	225.72	-225.72	709530247 - 17 Kettering Court	FIEL	C
	OV	215225	70953	70953-	004	04/08/13	PT	52710	04/18/13	5411.34	-5411.34	709530247 - 17 Kettering Court	FIEL	C
	OV	219427	70953	200625 LOT 247	000	05/28/13	PT	57782	06/06/13	400	-400	709530247 - 17 Kettering Court	FIEL	C
	OV	216900	70953	200612 LOT 247	000	04/29/13	PT	54950	05/09/13	477.7	-477.7	709530247 - 17 Kettering Court	FIEL	C
	OV	216900	70953	200612 LOT 247	001	04/29/13	PT	54950	05/09/13	442	-442	709530247 - 17 Kettering Court	FIEL	C
	OV	216900	70953	200612 LOT 247	002	04/29/13	PT	54950	05/09/13	102	-102	709530247 - 17 Kettering Court	FIEL	C
	OV	228720	70953	3735129 LOT 248	000	10/18/13	PT	74499	10/24/13	816.75	-816.75	709530248 - 19 Kettering Court	WSLY	C
	OV	230814	70953	37423110248	000	02/19/14	PT	89669	02/27/14	100	-100	709530248 - 19 Kettering Court	WSLY	C
	OV	230381	70953	201676 LOT 248	000	01/14/14	PT	84470	01/16/14	400	-400	709530248 - 19 Kettering Court	WSLY	C
	OV	229574	70953	201661 0248	000	11/19/13	PT	77788	11/21/13	533.9	-533.9	709530248 - 19 Kettering Court	WSLY	C
	OV	229831	70953	3737819 LOT 248	000	12/03/13	PT	79436	12/05/13	680.2	-680.2	709530248 - 19 Kettering Court	WSLY	C

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	OV	230085	70953	3738613 LOT 248	000	12/16/13	PT	81475	12/19/13	500	-500	709530248 - 19 Kettering Court	WSLY	C
	OV	229573	70953	201662 0248	000	11/19/13	PT	77788	11/21/13	201.4	-201.4	709530248 - 19 Kettering Court	WSLY	C
	OV	232695	70953	37470330254	000	05/07/14	PT	100839	05/15/14	2667.06	-2667.06	709530254 - 6 Kettering Court	FIEL	C
	OV	232694	70953	37470280254	000	05/07/14	PT	100839	05/15/14	510	-510	709530254 - 6 Kettering Court	FIEL	C
	OV	232693	70953	37470270254	000	05/07/14	PT	100839	05/15/14	295.45	-295.45	709530254 - 6 Kettering Court	FIEL	C
	OV	229260	70953	3736645 LOT 256	000	11/04/13	PT	76020	11/07/13	400	-400	709530256 - 2 Kettering Court	BROO	C
	OV	228078	70953	70953-	001	09/30/13	PT	72677	10/10/13	4953.96	-4953.96	709530256 - 2 Kettering Court	BROO	C
	OV	228078	70953	70953-	002	09/30/13	PT	72677	10/10/13	7031.48	-7031.48	709530256 - 2 Kettering Court	BROO	C
	OV	228078	70953	70953-	003	09/30/13	PT	72677	10/10/13	-7031.48	7031.48	709530256 - 2 Kettering Court	BROO	C
	OV	228723	70953	3736066 LOT 256	000	10/18/13	PT	74499	10/24/13	1877.04	-1877.04	709530256 - 2 Kettering Court	BROO	C
	OV	229262	70953	3736644 LOT 256	000	11/04/13	PT	76020	11/07/13	1000	-1000	709530256 - 2 Kettering Court	BROO	C
	OV	229847	70953	202049 0256	000	12/03/13	PT	79436	12/05/13	2635	-2635	709530256 - 2 Kettering Court	BROO	C
	OV	229847	70953	202049 0256	001	12/03/13	PT	79436	12/05/13	646	-646	709530256 - 2 Kettering Court	BROO	C
	OV	229847	70953	202049 0256	002	12/03/13	PT	79436	12/05/13	535.5	-535.5	709530256 - 2 Kettering Court	BROO	C
	OV	229844	70953	201348 LOT 256	000	12/03/13	PT	79436	12/05/13	400	-400	709530256 - 2 Kettering Court	BROO	C
	OV	228722	70953	201331 LOT 256	000	10/18/13	PT	74499	10/24/13	533.9	-533.9	709530256 - 2 Kettering Court	BROO	C
	OV	228722	70953	201331 LOT 256	001	10/18/13	PT	74499	10/24/13	494	-494	709530256 - 2 Kettering Court	BROO	C
	OV	228722	70953	201331 LOT 256	002	10/18/13	PT	74499	10/24/13	8.55	-8.55	709530256 - 2 Kettering Court	BROO	C
	OV	229261	70953	3736649 LOT 256	000	11/04/13	PT	76020	11/07/13	333.45	-333.45	709530256 - 2 Kettering Court	BROO	C
	OV	231096	70953	70953-00231096	001	03/10/14	PT	91763	03/13/14	201.4	-201.4	709530256 - 2 Kettering Court	BROO	C
	OV	229830	70953	3737818 LOT 256	000	12/03/13	PT	79436	12/05/13	450	-450	709530256 - 2 Kettering Court	BROO	C
	OV	228718	70953	3736074 LOT 256	000	10/18/13	PT	74499	10/24/13	1300	-1300	709530256 - 2 Kettering Court	BROO	C

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	OV	226043	70953	3732042 LOT 261	000	08/23/13	PT	67554	08/29/13	200	-200	709530261 - 9 Dartford Court	LENO	C
	OV	210325	70953	70953-00210325	001	06/18/12	PT	29431	06/28/12	180.2	-180.2	709530264 - 4 Dartford Court	FIEL	C
	OV	215344	70953	3725058 LOT 265	000	04/12/13	PT	52710	04/18/13	1500	-1500	709530265 - 2 Dartford Court	BROO	C
	OV	215061	70953	3723874 LOT 265	000	04/02/13	PT	51390	04/04/13	452.2	-452.2	709530265 - 2 Dartford Court	BROO	C
	OV	215057	70953	3723875 LOT 265	000	04/02/13	PT	51390	04/04/13	77.4	-77.4	709530265 - 2 Dartford Court	BROO	C
	OV	213490	70953	70953-	001	02/25/13	PT	48162	03/07/13	4472.82	-4472.82	709530265 - 2 Dartford Court	BROO	C
	OV	215059	70953	200380 LOT 265	000	04/02/13	PT	51390	04/04/13	1572.5	-1572.5	709530265 - 2 Dartford Court	BROO	C
	OV	215056	70953	3723876 LOT 265	000	04/02/13	PT	51390	04/04/13	1079.5	-1079.5	709530265 - 2 Dartford Court	BROO	C
	OV	215060	70953	200419 LOT 265	000	04/02/13	PT	51390	04/04/13	400	-400	709530265 - 2 Dartford Court	BROO	C
	OV	215063	70953	200405 LOT 265	000	04/02/13	PT	51390	04/04/13	477.7	-477.7	709530265 - 2 Dartford Court	BROO	C
	OV	215058	70953	200406 LOT 265	000	04/02/13	PT	51390	04/04/13	180.2	-180.2	709530265 - 2 Dartford Court	BROO	C
	OV	219723	70953	70953-	001	06/03/13	PT	57782	06/06/13	8323.92	-8323.92	709530266 - 104 Sturbridge Court	WSLY	C
	OV	222883	70953	3728700 LOT 266	000	07/08/13	PT	61954	07/11/13	1467.18	-1467.18	709530266 - 104 Sturbridge Court	WSLY	C
	OV	226482	70953	201000 LOT 266	000	08/27/13	PT	67554	08/29/13	382.5	-382.5	709530266 - 104 Sturbridge Court	WSLY	C
	OV	226482	70953	201000 LOT 266	001	08/27/13	PT	67554	08/29/13	408	-408	709530266 - 104 Sturbridge Court	WSLY	C
	OV	226483	70953	201037 LOT 266	000	08/27/13	PT	67554	08/29/13	400	-400	709530266 - 104 Sturbridge Court	WSLY	C
	OV	222335	70953	201024 LOT 266	000	07/05/13	PT	61954	07/11/13	477.7	-477.7	709530266 - 104 Sturbridge Court	WSLY	C
	OV	222335	70953	201024 LOT 266	001	07/05/13	PT	61954	07/11/13	197.2	-197.2	709530266 - 104 Sturbridge Court	WSLY	C
	OV	224055	70953	3729860 LOT 266	000	07/23/13	PT	63577	07/25/13	1189.3	-1189.3	709530266 - 104 Sturbridge Court	WSLY	C

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	OV	222334	70953	201025 LOT 266	000	07/05/13	PT	61954	07/11/13	180.2	-180.2	709530266 - 104 Sturbridge Court	WSLY
	OV	212413	70959	70959-00212413	001	06/03/14	PK	647009	06/04/14	97.28	-97.28	709590046 - 503 CARDIFF CT	CYTH
	OV	212413	70959	70959-00212413	002	06/03/14	PK	647009	06/04/14	3686.85	-3686.85	709590046 - 503 CARDIFF CT	CYTH
	OV	211002	70959	70959-00211002	001	05/20/14	PT	101888	05/22/14	337.5	-337.5	709590046 - 503 CARDIFF CT	CYTH
	OV	211002	70959	70959-00211002	002	05/20/14	PT	101888	05/22/14	20.25	-20.25	709590046 - 503 CARDIFF CT	CYTH
1392314 - JLS MASONRY INC									**845 Invoices**	**763621.78**	**-763621.78**		
1392318 - ALPHA OMEGA CONSTRUCTION													

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PODoc Type	Purchase Order	Sub Account	Po Header Description	Sub Account Description	Contract Note
				Standard Business Unit	
ON	00201163	30	FENCING-star builder	General Liability	
ON	00201149	30	FENCING-star builder	General Liability	
ON	00201149	30	FENCING-star builder	General Liability	
ON	00201149	30	FENCING-star builder	General Liability	
OP	03717013	32140	repair mailbox	Theft/Vandal-Stndg IND	Labor and material to repair mailbox
ON	00200444	42051.02	EXTERIOR DOORS-PROBUILD	Ext Door Materials	
ON	00200501	10	PIT GRAVEL-jls	Workers Comp	
ON	00200504	10	FOUNDATION STEEL - jls	Workers Comp	
ON	00200504	10	FOUNDATION STEEL - jls	Workers Comp	
ON	00200589	10	FOUNDATION STEEL - jls	Workers Comp	
ON	00200589	10	FOUNDATION STEEL - jls	Workers Comp	

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ON	00200564	10	SLAB/FLATWORK LABOR-jls	Workers Comp	
ON	00200576	10	SLAB/FLATWORK LABOR-jls	Workers Comp	
ON	00200586	10	PIT GRAVEL-jls	Workers Comp	
ON	00200538	10	STONE-jls (annatole stone)	Workers Comp	
ON	00200932	10	FOUNDATION STEEL - jls	Workers Comp	
ON	00200932	10	FOUNDATION STEEL - jls	Workers Comp	
ON	00200792	10	STONE-jls (annatole stone)	Workers Comp	
ON	00200817	10	SLAB/FLATWORK LABOR-jls	Workers Comp	
ON	00200922	10	SLAB/FLATWORK LABOR-jls	Workers Comp	
ON	00200922	10	SLAB/FLATWORK LABOR-jls	Workers Comp	
ON	00200929	10	PIT GRAVEL-jls	Workers Comp	
ON	00201003	10	SLAB/FLATWORK LABOR-jls	Workers Comp	
ON	00201102	10	FOUNDATION STEEL - jls	Workers Comp	
ON	00201102	10	FOUNDATION STEEL - jls	Workers Comp	
ON	00201099	10	PIT GRAVEL-jls	Workers Comp	
ON	00201178	10	SLAB/FLATWORK LABOR-jls	Workers Comp	
ON	00201178	10	SLAB/FLATWORK LABOR-jls	Workers Comp	
OP	03710680	10	Riddley, Labor Cost Error	Workers Comp	Flatwork labor cost error
OP	03710690	10	Riddley, Labor Error	Workers Comp	.10 at 80sf
OP	03710695	10	Riddley, Labor Error	Workers Comp	.10 at 243sf
				Standard Business Unit	
				Standard Business Unit	
				Standard Business Unit	
ON	00201316	10	SLAB/FLATWORK LABOR-jls	Workers Comp	

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ON	00201445	10	SLAB/FLATWORK LABOR-jls	Workers Comp	
ON	00201533	10	SLAB/FLATWORK LABOR-jls	Workers Comp	
ON	00201595	10	MASONRY LABOR-jls	Workers Comp	
ON	00201700	10	STONE-jls (annatole stone)	Workers Comp	
ON	00201742	10	STONE-jls (annatole stone)	Workers Comp	
ON	00201896	10	STONE-jls (annatole stone)	Workers Comp	stone grill island
ON	00201919	10	FOUNDATION STEEL - jls	Workers Comp	
ON	00201919	10	FOUNDATION STEEL - jls	Workers Comp	
ON	00201916	10	PIT GRAVEL-jls	Workers Comp	
ON	00201996	10	SLAB/FLATWORK LABOR-jls	Workers Comp	
ON	00201996	10	SLAB/FLATWORK LABOR-jls	Workers Comp	
OP	03710663	10	Riddley, Labor error	Workers Comp	.10 at 562 sf .10 at 132 sf
OP	03710682	10	Riddley, Brick Labor	Workers Comp	.495 at 424 ea
OP	03710683	10	Riddley, Flatwork Labor	Workers Comp	.10 at 562 sf
OP	03710684	10	Riddley, Labor Error	Workers Comp	.10 at 562 sf .95 at 390 sf
OP	03710685	10	Riddley, Labor Error	Workers Comp	.10 at 120 sf .10 at 562 sf .95 at 324 sf
OP	03710686	10	Riddley, Labor Error	Workers Comp	.10 at 243sf
OP	03710693	10	Riddley, Brick Repair	Workers Comp	Repair at Water Heater Pipe
OP	03710694	10	Riddley, Labor Error	Workers Comp	.10 at 80sf
OP	03710696	10	Riddley, Cost Error	Workers Comp	8.50 at 34sf
OP	03710697	10	Riddley, Cost Error	Workers Comp	8.50 at 100sf
OP	03710702	10	Riddley, Driveway Repair	Workers Comp	Replace wing on Driveway and Fix Cracks in Patio
OP	03710765	10	Riddley, Labor Error	Workers Comp	.10 at 80sf
				Standard Business Unit	
OP	03710691	10	Riddley, Labor Error	Workers Comp	.495 at 3988

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)P	03710700	10	Riddley, Labor Error	Workers Comp	.95 at 711sf, .10 at 90sf, .10 at 1082sf, .10 at 212sf
)P	03710703	10	Riddley, Repair Stone	Workers Comp	Repair Stone damaged by Siding Vendor
)P	03710764	10	Riddley, Labor Error	Workers Comp	.10 at 120 sf
)N	00200363	40023.07	PIT GRAVEL-jls	Pit Gravel	
)N	00200441	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00200366	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200366	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200400	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00200428	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)P	03710680	45530.01	Riddley, Labor Cost Error	Driveway/Lead walk-Turnkey	Flatwork labor cost error
)N	00200586	40023.07	PIT GRAVEL-jls	Pit Gravel	
)P	03717180	40025.03	slab difference	Slab Pour	slab difference #5629
)P	03717181	40025.03	slab difference	Slab Pour	slab difference #6026
)P	03716566	40025.03	short materials	Slab Pour	short materials
)N	00200664	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00200589	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200589	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200623	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)N	00200649	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00200671	40023.07	PIT GRAVEL-jls	Pit Gravel	
)N	00200747	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)P	03710690	40025.03	Riddley, Labor Error	Slab Pour	.10 at 80sf
)N	00200674	40026.02	FOUNDATION STEEL - jls	Foundation Steel	

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ON	00200674	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200708	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00200735	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200090	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00200163	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03701464	40025.03	cordwell, concrete	Slab Pour	flatwork labor PO short
ON	00200093	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200093	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200173	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00200252	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03701464	40025.03	cordwell, concrete	Slab Pour	flatwork labor PO short
OP	03703292	40025.03	Original PO incorrect	Slab Pour	Pricing should have been .950 not .850 per square foot
ON	00200176	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200176	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200210	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00200238	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03704293	45530.01	cut and repour drive	Driveway/Lead walk-Turnkey	cut out section of drive and repour due to having to move water tap
ON	00200009	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00200083	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03703292	40025.03	Original PO incorrect	Slab Pour	Pricing should have been .950 not .850 per square foot

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DP	03703293	40025.03	inclement weather	Slab Pour	cover all flat work with poly and straw due to freezing temperatures to help protect freshly poured concrete
DP	03701464	40025.03	cordwell, concrete	Slab Pour	flatwork labor PO short
DN	00200012	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00200012	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00200045	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
DN	00200070	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
DP	03704292	45530.01	cut and repour drive	Driveway/Lead walk-Turnkey	cut out section of drive and repour so water tap could be moved
DN	00200259	40023.07	PIT GRAVEL-jls	Pit Gravel	
DP	03703292	40025.03	Original PO incorrect	Slab Pour	Pricing should have been .950 not .850 per square foot
DP	03703293	40025.03	inclement weather	Slab Pour	cover fresh flatwork with poly and straw due to freezing temperatures
DP	03701464	40025.03	cordwell, concrete	Slab Pour	flatwork labor PO short
DN	00200332	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00200262	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00200262	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00200295	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
DN	00200320	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
DP	03704291	45530.01	cut and repour drive	Driveway/Lead walk-Turnkey	cut out section of drive to move water tap and repour
DN	00201099	40023.07	PIT GRAVEL-jls	Pit Gravel	

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)P	03714943	40025.03	crash pole at WH	Slab Pour	crash pole needed to protect gas line at water heater.
)N	00201178	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201178	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201178	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201102	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00201102	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00201136	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00201163	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00201377	40023.07	PIT GRAVEL-jls	Pit Gravel	
)N	00201452	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)P	03717181	40025.03	slab difference	Slab Pour	slab difference #6043
)N	00201380	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00201380	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00201412	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)N	00201437	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00200873	40023.07	PIT GRAVEL-jls	Pit Gravel	
)N	00200922	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00200922	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00200922	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00200876	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200876	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200906	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)N	00200917	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	

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ON	00200917	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00201820	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00201893	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201823	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201823	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201882	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03721925	45530.01	drive	Driveway/Lead walk-Turnkey	additional 385 SQ. Ft. @ .95 per ft.
OP	03721926	45530.01	price correction	Driveway/Lead walk-Turnkey	OP was 0.10 short on (0.85 per ft.) Additional 0.10 per foot for 562 sq. ft. of concrete
ON	00201857	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00202295	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202295	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202366	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202329	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
OP	03730762	43040.01	price correction	Masonry Labor 1	labor for additional 699 brick @ $0.495 per brick
OP	03739580	43040.02	window sill	Masonry Labor 2	labor and material to repair damaged window sill/ row lock
OP	03732039	45530.01	correction	Driveway/Lead walk-Turnkey	additional labor for footage and price correction
ON	00202356	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00202808	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202808	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202739	40026.02	FOUNDATION STEEL - jls	Foundation Steel	

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ON	00202739	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202795	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00201213	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00201288	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201216	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201216	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201248	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201275	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00201296	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00201367	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03717181	40025.03	slab difference	Slab Pour	slab price difference #6042
ON	00201299	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201299	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201331	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
OP	03727879	43060.01	fireplace grill stone	Stone Turnkey 1	labor and material for fireplace grill
ON	00201356	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00201903	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00202498	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201977	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201906	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201906	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201939	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
OP	03721925	45530.01	drive	Driveway/Lead walk-Turnkey	Additional 202 sq. ft of concrete drive @ .95 per ft.

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)P	03721926	45530.01	price correction	Driveway/Lead walk-Turnkey	OP was 0.10 short (at 0.85 per ft.) Additiona 0.10 per ft. for 562 sq. ft.
)N	00201963	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00200929	40023.07	PIT GRAVEL-jls	Pit Gravel	
)P	03717181	40025.03	slab difference	Slab Pour	slab difference #5868
)P	03717181	40025.03	slab difference	Slab Pour	slab difference #6052
)P	03717181	40025.03	slab difference	Slab Pour	slab difference #6080
)P	03714942	40025.03	crash pole for WH	Slab Pour	crach pole to protect gas line at water heater in garage.
)N	00201003	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00200932	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200932	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200966	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00200993	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00201569	40023.07	PIT GRAVEL-jls	Pit Gravel	
)N	00201644	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201572	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00201572	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00201606	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00201633	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00201633	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00201998	40023.07	PIT GRAVEL-jls	Pit Gravel	
)P	03721487	40023.99	footings	Retention - Excavation	labor and material for addtional footing requirements
)N	00202077	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	

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ON	00202001	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202001	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202035	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
OP	03723440	43040.01	brick labor	Masonry Labor 1	346 bbrick short on labor estimate at 0.495 per brick
OP	03724570	45530.01	price correction	Driveway/Lead walk-Turnkey	additional labor for 176' at $0.95 per foot.
OP	03724571	45530.01	price correction	Driveway/Lead walk-Turnkey	additional $0.10 labor for 562' of concrete
ON	00202062	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00202464	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03727873	40025.03	concrete	Slab Pour	additional $0.10 per foot
OP	03730507	40025.03	price correction	Slab Pour	additional labor (208 ft) and $0.10 price correction
ON	00202391	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202391	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
OP	03730505	43040.01	remove brick	Masonry Labor 1	labor to remove brick
OP	03730506	43040.02	brick labor	Masonry Labor 2	laabor to lay brick
ON	00202425	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00202450	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00202584	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202584	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202518	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202518	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202550	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00202576	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	

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ON	00202684	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202610	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202610	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201730	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03727873	40025.03	concrete	Slab Pour	price and footage correction
ON	00201688	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201651	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00202668	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03733596	45530.01	driveway	Driveway/Lead walk-Turnkey	additional labor for 720' of concrete and price correction
ON	00201654	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201654	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201715	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03726080	45530.01	price correction	Driveway/Lead walk-Turnkey	$0.10 per ft. labor increase for driveway. 562'
ON	00203483	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00203484	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00203484	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00203518	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00203543	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03737831	45530.01	driveay	Driveway/Lead walk-Turnkey	614 additional feet of concrete
OP	03729525	45530.01	driveway	Driveway/Lead walk-Turnkey	PO for 562' of concrete at 0.85 per ft.... poured 1030' at 0.95 per foot
ON	00202263	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	

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ON	00202855	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
OP	03727878	43040.01	additional brick	Masonry Labor 1	additioanl labor for additional 229 brick
ON	00202236	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00202823	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202823	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202894	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202879	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03735123	45530.02	additioanl labor	City Sidewalk - Turnkey	additional labor for 263sf
OP	03736639	45530.99	driveway repair	Retention Flatwork	labor and material to repair driveway
ON	00203174	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00203104	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00203104	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00203136	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00203169	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
ON	00203160	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03735126	45530.02	additional labor	City Sidewalk - Turnkey	additional labor for 150 sf
OP	03735127	40023.99	additional footing labot	Retention - Excavation	additional labor to dig right side of home per engineer
ON	00203444	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00203444	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00203376	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00203376	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00203407	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
OP	03742273	43040.01	threshold support	Masonry Labor 1	labor and material for brick threshold

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OP	03736064	43040.01	additional brick	Masonry Labor 1	(1175) brick to finish
ON	00203434	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03736648	45530.01	flat work	Driveway/Lead walk-Turnkey	additional 114' of concrete labor
OP	03736639	45530.99	driveway repair	Retention Flatwork	labor and material to repair garage due to incorreect blue prints
ON	00203835	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00203836	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00203836	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
OP	03750005	45530.01	driveway	Driveway/Lead walk-Turnkey	additional labor for 263' of concrete
ON	00203895	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00203924	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00203924	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00203925	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00203925	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
OP	03746992	40026.04	flip house	Foundation Materials	labor and material to flip foundation
ON	00203957	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
OP	03748472	43040.01	additional labor	Masonry Labor 1	additional labor for 285 brick @ 0.495 per
OP	03749035	45530.01	additional labor	Driveway/Lead walk-Turnkey	additional labor for 200'
ON	00203984	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03742274	40023.99	engineering requirement	Retention - Excavation	labor to dig deeper footings due to compaction results
ON	00203707	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00203708	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00203708	40026.02	FOUNDATION STEEL - jls	Foundation Steel	

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ON	00203742	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
OP	03744745	43040.01	brick	Masonry Labor 1	additional labor for 214 brick
ON	00203769	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03746993	45530.01	driveway	Driveway/Lead walk-Turnkey	labor for additional 216' of concrete
ON	00204019	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00204020	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00204020	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00204054	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00204079	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03749035	45530.01	additional labor	Driveway/Lead walk-Turnkey	additional labor for 248'
OP	03750007	40023.99	additional digging	Retention - Excavation	additional labor to dig footers for compaction
ON	00204520	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00204521	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00204521	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
OP	03750006	40026.04	flip swing of garage	Foundation Materials	labor and material to flip house after boxing
ON	00204988	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00204983	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00204983	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00204983	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00204983	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00204621	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00204621	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	

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ON	00204622	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00204622	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00204711	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00204712	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00204712	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
OP	03749034	40023.99	extra footing depth	Retention - Excavation	additional cost to dig deeper footing to achieve compaction
ON	00204440	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00204466	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03752020	45530.01	additional concrete	Driveway/Lead walk-Turnkey	additional labor for 388' of concrete
ON	00201916	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00201996	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201996	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201919	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201919	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
OP	03717344	40026.07	additional concrete	Foundation Concrete	additional concrete #5884
OP	03717195	40026.07	incorrect plans	Foundation Concrete	incorrect home plan
ON	00201953	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201956	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00201999	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
ON	00201982	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00201982	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03719535	45530.99	patio repair	Retention Flatwork	labor and material to repair damaged Patio
OP	03717349	45531.12	crash pole	Flatwork Materials	labor and material for crash pole (gas line safety)

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)P	03701467	40025.03	cordwell, concrete	Slab Pour	re-form house
)P	03701462	40025.03	cordwell, concrete	Slab Pour	flatwork labor PO short
)P	03703291	40025.03	wrong pricing on the original	Slab Pour	pricing should have been .950 not .850 per square foot
)P	03702762	43040.01	cordwell, labor	Masonry Labor 1	brick PO short
)P	03704294	45530.01	patio extension	Driveway/Lead walk-Turnkey	patio extension
)N	00200183	40023.07	PIT GRAVEL-jls	Pit Gravel	
)N	00200264	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)P	03703291	40025.03	wrong pricing on the original	Slab Pour	pricing should have been .950 not .850 per square foot
)P	03701462	40025.03	cordwell, concrete	Slab Pour	flatwork labor PO short
)N	00200186	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200186	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)P	03702762	43040.01	cordwell, labor	Masonry Labor 1	brick PO short
)N	00203158	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)N	00203184	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)P	03727872	45530.01	price correction	Driveway/Lead walk-Turnkey	additional charge due to price correction
)N	00203185	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
)N	00202915	40023.07	PIT GRAVEL-jls	Pit Gravel	
)P	03720947	40023.99	compaction requirements	Retention - Excavation	additional labor and materiel to satisfy engineering requirements
)N	00202987	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00202987	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00202918	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00202918	40026.02	FOUNDATION STEEL - jls	Foundation Steel	

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ON	00202951	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00202989	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
ON	00202977	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00202978	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00200779	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00200859	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03710663	40025.03	Riddley, Labor error	Slab Pour	.10 at 562 sf .10 at 132 sf
ON	00200782	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200782	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200816	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00200843	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200844	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00200603	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00200685	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03703291	40025.03	wrong pricing on the original	Slab Pour	Original PO had wrong sq ft pricing should have been .950 not .850
OP	03703291	40025.03	wrong pricing on the original	Slab Pour	pricing was .850 should have been .950 per square foot
ON	00200606	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200606	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200641	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00200667	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200668	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00200483	40023.07	PIT GRAVEL-jls	Pit Gravel	

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)N	00200536	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)P	03703291	40025.03	wrong pricing on the original	Slab Pour	pricing should have been .950 not .850 per square foot
)N	00200486	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200486	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200517	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00201896	43060.02	STONE-jls (annatole stone)	Stone Turnkey 2	stone grill island
)N	00200531	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00200532	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
)N	00202812	40023.07	PIT GRAVEL-jls	Pit Gravel	
)N	00202896	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00203111	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00202815	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00202815	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00202849	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00202852	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)P	03724568	45530.01	concrete	Driveway/Lead walk-Turnkey	additional labor charge for 440' on concrete at $0.95 per foot
)N	00202878	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00202879	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
)P	03724569	45531.12	price correction	Flatwork Materials	additional $0.10 per foot for 694' of concrete
)N	00201558	40023.07	PIT GRAVEL-jls	Pit Gravel	
)N	00201638	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201561	40026.02	FOUNDATION STEEL - jls	Foundation Steel	

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ON	00201561	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
OP	03717196	40026.07	slab difference	Foundation Concrete	slab difference #5628
OP	03717196	40026.07	slab difference	Foundation Concrete	Driveway difference #5909
ON	00201595	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201623	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00201624	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00202009	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00202082	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202082	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202012	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202012	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
OP	03717196	40026.07	slab difference	Foundation Concrete	slab difference #6044
ON	00202046	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
OP	03719536	43040.01	labor	Masonry Labor 1	additional labor to finish. 460 brick at .495 each #6255
OP	03717348	43040.01	additional labor	Masonry Labor 1	additional labor (1) cube
OP	03719754	45530.01	driveways	Driveway/Lead walk-Turnkey	additional labor for concrete 563'
ON	00202075	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03722804	45530.99	driveway damage	Retention Flatwork	labor and matertial to replace damaged concrete at curb
ON	00201466	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00201546	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201469	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201469	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201503	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201506	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	

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)N	00201533	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00201534	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
)N	00200273	40023.07	PIT GRAVEL-jls	Pit Gravel	
)N	00200354	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)P	03701462	40025.03	cordwell, concrete	Slab Pour	flatwork labor PO short
)P	03703291	40025.03	wrong pricing on the original	Slab Pour	pricing should have been .950 not .850 per square foot
)N	00200276	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200276	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200310	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00200310	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)P	03702762	43040.01	cordwell, labor	Masonry Labor 1	brick PO short
)N	00200338	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00200339	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
)N	00200096	40023.07	PIT GRAVEL-jls	Pit Gravel	
)N	00200175	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)P	03701462	40025.03	cordwell, concrete	Slab Pour	flatwork labor PO short
)N	00200099	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200099	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200131	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)N	00200157	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00200158	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
)N	00201289	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)N	00201316	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00201317	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	

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ON	00203024	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00203101	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00203027	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00203027	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00203059	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00203059	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00203059	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
OP	03727872	45530.01	price correction	Driveway/Lead walk-Turnkey	additional charge due to price correction
ON	00203084	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00203085	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00200893	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00200972	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200972	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03710685	40025.03	Riddley, Labor Error	Slab Pour	.10 at 120 sf .10 at 562 sf .95 at 324 sf
ON	00200896	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200896	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200930	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00200974	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
ON	00200960	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200960	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03710702	45530.01	Riddley, Driveway Repair	Driveway/Lead walk-Turnkey	Replace wing on Driveway and Fix Cracks in Patio
ON	00200961	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00200984	40023.07	PIT GRAVEL-jls	Pit Gravel	
OP	03710684	40025.03	Riddley, Labor Error	Slab Pour	.10 at 562 sf .95 at 390 sf

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)N	00201056	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201056	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00200987	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200987	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)P	03717196	40026.07	slab difference	Foundation Concrete	slab difference #5603
)N	00201022	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)P	03710697	43060.01	Riddley, Cost Error	Stone Turnkey 1	8.50 at 100sf
)N	00201049	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)P	03717197	40025.03	slab difference	Slab Pour	slab difference #5605
)N	00201202	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)P	03710682	43040.01	Riddley, Brick Labor	Masonry Labor 1	.495 at 424 ea
)N	00201205	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)P	03710696	43060.01	Riddley, Cost Error	Stone Turnkey 1	8.50 at 34sf
)N	00201232	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)P	03710683	45530.01	Riddley, Flatwork Labor	Driveway/Lead walk-Turnkey	.10 at 562 sf
)N	00202096	40023.07	PIT GRAVEL-jls	Pit Gravel	
)N	00202168	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00202168	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)P	03717197	40025.03	slab difference	Slab Pour	slab difference #6045
)N	00202099	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00202099	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00202132	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)P	03717348	43040.01	additional labor	Masonry Labor 1	Additional labor (2) cubes
)P	03719536	43040.01	labor	Masonry Labor 1	additional labor to complete 1380 brick at .495 each. #6254
)N	00202170	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	

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ON	00202159	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00202159	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03719754	45530.01	driveways	Driveway/Lead walk-Turnkey	additional concrete labor 293'
ON	00200544	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00200596	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200547	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200547	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
OP	03710693	43040.01	Riddley, Brick Repair	Masonry Labor 1	Repair at Water Heater Pipe
ON	00200578	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00200591	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200592	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00201380	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00201453	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201453	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03710686	40025.03	Riddley, Labor Error	Slab Pour	.10 at 243sf
ON	00201383	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201383	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201418	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00201445	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00201446	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00202300	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00202375	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03717197	40025.03	slab difference	Slab Pour	slab difference #6032
ON	00202303	40026.02	FOUNDATION STEEL - jls	Foundation Steel	

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ON	00202303	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202336	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00202338	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00202365	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03719754	45530.01	driveways	Driveway/Lead walk-Turnkey	additional labor for 67' of concrete
ON	00202623	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00202704	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202626	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202626	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202660	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00202686	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00202687	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00202202	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00202277	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202277	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202808	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03717197	40025.03	slab difference	Slab Pour	slab difference #6033
ON	00202205	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202205	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202239	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00202280	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
ON	00202265	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03719773	45530.01	driveway, patio, extension	Driveway/Lead walk-Turnkey	additional labor for 510' of concrete

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DP	03719537	45531.01	crash pole	Flatwork Concrete Material	labor and material to install crash pole for tankless waterheater #6250
DP	03717350	45531.01	crash pole	Flatwork Concrete Material	labor and material for crash pole
DN	00202718	40023.07	PIT GRAVEL-jls	Pit Gravel	
DN	00203205	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00202794	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00202794	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00202721	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00202721	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00202755	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
DN	00202783	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
DP	03722805	45530.01	parking pad	Driveway/Lead walk-Turnkey	additional labor and material to pour and finish side parking pad of 311 sq. ft.
DP	03722806	45530.01	price correction	Driveway/Lead walk-Turnkey	price correction for labor. PO was for 0.85 per ft. price is 0.95. $0.10 for 884 sq. ft
DN	00202784	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
DN	00202389	40023.07	PIT GRAVEL-jls	Pit Gravel	
DN	00202462	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00202462	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DP	03717197	40025.03	slab difference	Slab Pour	slab difference #6091
DN	00202392	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00202392	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DP	03716567	40026.04	short	Foundation Materials	materials for drive
DP	03719785	43041.02	stone	Masonry Materials	additional stone to finish 30' at 8.50

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ON	00202426	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00202467	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
ON	00202452	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00202452	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03719754	45530.01	driveways	Driveway/Lead walk-Turnkey	additional labor for 123' of concrete drive
OP	03730761	40023.99	comapaction	Retention - Excavation	labor to dig 1/2 of foundation 2-3' deep for compaction
ON	00203322	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00203246	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00203246	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00203279	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
OP	03735119	43040.01	additional brick labor	Masonry Labor 1	additioanl 206 brick @ $0.495 per brick
ON	00203306	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03735118	45530.01	driveway overage	Driveway/Lead walk-Turnkey	188 sf additional convrete labor
OP	03735120	45530.02	additional labor footage	City Sidewalk - Turnkey	additional 44 sf of labor
ON	00203410	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00203410	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00203419	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00203419	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
OP	03735128	43060.01	additional stone	Stone Turnkey 1	additional 30 sf
ON	00203374	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00203400	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00203401	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00202535	40023.07	PIT GRAVEL-jls	Pit Gravel	

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ON	00202612	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202538	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202538	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
OP	03719527	40026.04	crash pole	Foundation Materials	labor and material to install crash pole for tankless waterheater
OP	03720994	43040.01	additional brick	Masonry Labor 1	additional brick labor for 150 brick
ON	00202572	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00202609	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
OP	03720223	45530.01	extra labor	Driveway/Lead walk-Turnkey	additional labor for 76' of concrete
OP	03720224	45530.01	price correction	Driveway/Lead walk-Turnkey	price correction: origional PO was priced at 0.85 per foot.the correct price in 0.95 per foot. the home was for 830'
ON	00202598	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00202598	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00202599	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00201764	40023.07	PIT GRAVEL-jls	Pit Gravel	
OP	03710765	40025.03	Riddley, Labor Error	Slab Pour	.10 at 80sf
ON	00201843	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201767	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201767	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201801	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201829	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00201829	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00201830	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	

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ON	00201663	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00201744	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03710694	40025.03	Riddley, Labor Error	Slab Pour	.10 at 80sf
ON	00201666	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201666	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201700	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00201742	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
ON	00201727	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00201728	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00201072	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00201152	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201075	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201075	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201109	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00201136	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00201137	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00201561	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201561	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201569	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201569	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201573	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201524	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
OP	03735333	43060.01	additional stone	Stone Turnkey 1	assitional 150 sf of stone per community specs

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ON	00201550	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00201551	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00202499	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202499	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202500	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202500	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202238	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202238	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202238	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202589	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202324	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
OP	03748474	43040.01	brick labor	Masonry Labor 1	additional labor for 1084 brick at $0.495 per brick
ON	00202274	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
OP	03748473	43060.01	stone	Stone Turnkey 1	additional labor and material for 115' of stone at $8.50 per ft.
ON	00202317	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
ON	00202299	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03748475	45530.01	additional labor	Driveway/Lead walk-Turnkey	additional labor for 484' of concrete at 0.95 per foot. reference CO # 3 for detail
ON	00202300	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00200041	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00200041	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00200007	40026.02	FOUNDATION STEEL - jls	Foundation Steel	

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ON	00200007	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200088	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200088	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200088	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03701466	40025.03	cordwell, concrete	Slab Pour	re-form house
OP	03701463	40025.03	cordwell, concrete	Slab Pour	flatwork labor PO short
OP	03702292	40025.03	flatwork	Slab Pour	extra brick for model
OP	03702292	40025.03	flatwork	Slab Pour	parking lot labor
OP	03702292	40025.03	flatwork	Slab Pour	extra flat work
ON	00200004	40023.07	PIT GRAVEL-jls	Lot Grade-Extras	
ON	00200091	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
ON	00200071	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200071	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200072	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00202347	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202347	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202348	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202348	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202423	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00202423	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00202423	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201939	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201939	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201940	40026.02	FOUNDATION STEEL - jls	Foundation Steel	

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ON	00201940	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201975	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201975	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201975	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201975	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
OP	03737333	43040.01	additional labor	Masonry Labor 1	additional labor for 2294 brick
ON	00202019	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
OP	03739430	45530.01	drive/ walkway	Driveway/Lead walk-Turnkey	additional labor for 746' of concrete
ON	00202003	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00202003	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00202004	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00201451	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201451	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201451	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201374	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201374	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201409	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201409	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201412	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
OP	03738783	45300.01	float sub floor	Hardwood Flooring	lkabor and material to float out unlevel slab for hardwoods. Back Charge Reason: unlevel sub floors Back Charge Contact and Date: mauricio 12/03
ON	00201439	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	

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ON	00201440	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00200842	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200842	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03728084	40025.03	price correction	Slab Pour	price correction
ON	00200763	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200763	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
OP	03729861	43040.01	brick labor	Masonry Labor 1	additional labor for 1484 brick
ON	00200801	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00200840	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
OP	03729860	45530.01	driveways	Driveway/Lead walk-Turnkey	0.10 price correction for 774 ' of concrete
ON	00200826	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200827	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00200944	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200944	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00202486	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200873	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200873	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
OP	03729855	43040.01	brick labor	Masonry Labor 1	additional labor for 2135 brick
ON	00200906	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00200906	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00200946	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
OP	03739431	45530.01	driveway repair	Driveway/Lead walk-Turnkey	additional labor to repair 2 section of concrete

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)P	03729860	45530.01	driveways	Driveway/Lead walk-Turnkey	price correction for footage and PO amount per foot. poured1418 SQ Ft
)N	00200934	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)P	03752021	45530.99	equipment rental	Retention Flatwork	equipment rental for a ' Georgia buggy' to haul concrete due to the lot condition
)P	03733146	40023.99	engineering requirement	Retention - Excavation	additional labor for engineering requirement.
)N	00201677	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201677	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201682	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00201682	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00201635	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00201635	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)P	03732114	40023.99	compaction requirement	Retention - Excavation	additional labor to meet compaction requirements
)N	00201813	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201813	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201813	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201814	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00201814	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00201848	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00201848	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)P	03736065	43040.01	additioanl brick	Masonry Labor 1	(1266) additional brick labor
)N	00201851	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)N	00201893	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	

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ON	00201876	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00201877	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00201231	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201231	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201231	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201231	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201231	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201153	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201153	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201153	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201153	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201187	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201187	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201187	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201187	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
OP	03732041	43040.01	additional labor	Masonry Labor 1	additional labor for 504 brick
ON	00201215	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00201215	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00201215	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03729527	45530.01	patio	Driveway/Lead walk-Turnkey	additional concrete and labor for patio and price correction
OP	03729860	45530.01	driveways	Driveway/Lead walk-Turnkey	price correction for footage and PO amount. Poured 320 sq ft

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)P	03732040	45530.01	correction	Driveway/Lead walk-Turnkey	correction for additional footage (683) and incorrect priceon origional PO
)N	00201216	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
)N	00202079	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00202079	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00202079	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00202080	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00202080	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00202080	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00202080	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00202165	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00202115	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)N	00202158	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
)N	00202141	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00202141	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00202141	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00202142	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
)P	03750011	45530.99	driveway repair	Retention Flatwork	additional labor to replace damaged section of concrete
)N	00201772	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201772	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201772	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201780	40026.02	FOUNDATION STEEL - jls	Foundation Steel	

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)N	00201780	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00201785	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)P	03734746	43040.01	additional labor	Masonry Labor 1	additional 6312 brick for rear of home
)P	03736053	43040.02	additional labor	Masonry Labor 2	additional labor for brick on front elevation
)N	00202040	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)N	00201758	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00201758	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00201759	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
)P	03735132	45530.02	additional labor	City Sidewalk - Turnkey	labor for additional 300' of concrete
)P	03730752	40023.99	comapction	Retention - Excavation	additional labor to dig footings 5' for compaction and clean footers due to rain
)N	00201350	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201350	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201350	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201350	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201350	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201350	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201350	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201350	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00201350	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00202031	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00202031	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200225	40023.07	PIT GRAVEL-jls	Lot Grade-Extras	

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ON	00200306	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200306	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03717189	40025.03	slab difference	Slab Pour	slab differrence #6088
OP	03710764	40025.03	Riddley, Labor Error	Slab Pour	.10 at 120 sf
ON	00200228	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200228	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200263	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00200263	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00200266	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00200304	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
ON	00200293	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200294	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
OP	03722807	45530.99	concrete repair	Retention Flatwork	labor and material to replace damaged concrete at curb
OP	03727874	40023.99	conpaction requirement	Retention - Excavation	additional labor for digging footings per engineering requirements
OP	03728084	40025.03	price correction	Slab Pour	price correction
ON	00201134	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201134	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201134	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201061	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201061	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201095	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00201095	43040.01	MASONRY LABOR-jls	Masonry Labor 1	

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)P	03728697	43040.01	qty correction	Masonry Labor 1	labor for additional 513 brick
)N	00201136	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
)P	03729860	45530.01	driveways	Driveway/Lead walk-Turnkey	price correction for price and PO amount. Poured 815 sq ft.
)N	00201123	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00201124	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
)P	03725924	40023.07	pit gravel / lot 263	Lot Grade-Extras	ref po 200638 ON#57 stonesp
)P	03728698	40025.03	price correction	Slab Pour	addional labor 120'
)N	00200715	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00200715	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00200641	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200641	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)P	03727882	43040.01	additional brick	Masonry Labor 1	additional labor for 5512 brick
)N	00200724	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00200675	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)P	03729526	43060.01	stone	Stone Turnkey 1	additional 12' of stone
)N	00200714	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
)N	00200699	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)P	03728699	45530.01	price correction	Driveway/Lead walk-Turnkey	additional labor for additional concrete and price correction of price per ft.
)N	00200700	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
)N	00200113	40023.07	PIT GRAVEL-jls	Lot Grade-Extras	
)N	00200190	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00200190	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	

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ON	00200190	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03710700	40025.03	Riddley, Labor Error	Slab Pour	.95 at 711sf, .10 at 90sf, .10 at 1082sf, .10 at 212sf
ON	00200116	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200116	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
OP	03716565	40026.07	short materials also patio ext	Foundation Concrete	materials plus patio
ON	00200202	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
OP	03710691	43040.01	Riddley, Labor Error	Masonry Labor 1	.495 at 3988
OP	03710703	43040.02	Riddley, Repair Stone	Masonry Labor 2	Repair Stone damaged by Siding Vendor
ON	00200152	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00200193	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
ON	00200179	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200179	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200179	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200345	40023.07	PIT GRAVEL-jls	Lot Grade-Extras	
OP	03720948	40023.99	additional labor	Retention - Excavation	additional labor to meet engineering requirements
OP	03720225	40025.03	move forms	Slab Pour	labor and material to move forms after origional completion
ON	00200421	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200421	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200348	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200348	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201039	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201039	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	

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ON	00201039	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200966	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200966	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200144	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200144	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200145	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200145	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200178	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
OP	03752016	43040.01	brick labor	Masonry Labor 1	additional labor for 214 brick
OP	03752573	45530.01	driveway	Driveway/Lead walk-Turnkey	labor for additional 165'
ON	00200208	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200209	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00200428	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200428	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200428	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200429	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200429	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200462	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00200710	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200710	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200525	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200525	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200526	40026.02	FOUNDATION STEEL - jls	Foundation Steel	

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ON	00200526	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200333	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200333	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200334	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200334	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200367	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
OP	03752018	43040.01	brick	Masonry Labor 1	additional labor for 721 brick
ON	00200398	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200399	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00200241	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200241	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200241	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200242	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200242	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
OP	03752567	43060.01	stone	Stone Turnkey 1	labor and material for additional stone
ON	00200303	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03752565	45530.01	driveway	Driveway/Lead walk-Turnkey	additional labor for 368'
ON	00200304	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00200816	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200817	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200817	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200619	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200619	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	

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ON	00200619	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200620	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200620	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200916	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200916	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200917	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200917	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200757	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00200832	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03710695	40025.03	Riddley, Labor Error	Slab Pour	.10 at 243sf
OP	03717180	40025.03	slab difference	Slab Pour	slab difference #5810
ON	00200760	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200760	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200792	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00200817	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
OP	03719753	45530.01	driveway	Driveway/Lead walk-Turnkey	additional labor for 232' of concrete
ON	00200501	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00200576	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
OP	03717180	40025.03	slab difference	Slab Pour	slab difference #5630
OP	03717180	40025.03	slab difference	Slab Pour	slab differernce #5811
ON	00200504	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200504	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200538	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	

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DP	03719753	45530.01	driveway	Driveway/Lead walk-Turnkey	labor for an additional 101' of concrete
DN	00200564	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
DN	00201013	40023.07	PIT GRAVEL-jls	Pit Gravel	
DN	00201085	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DP	03727873	40025.03	concrete	Slab Pour	price correction and footage correction
DN	00201016	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00201016	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DP	03721486	40026.04	move forms	Foundation Materials	labor and material to move forms after box check
DN	00201049	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
DN	00201073	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
DP	03703292	40025.03	Original PO incorrect	Slab Pour	pricing should have been .950 not.850 per square foot
DP	03702763	43040.01	cordwell, labor	Masonry Labor 1	stone PO short
DN	00200127	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
DN	00200153	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
DN	00202979	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00202980	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00202980	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00202938	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
DP	03735121	43040.01	additional brick labor	Masonry Labor 1	additional labor for 426 brick
DN	00202965	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
DP	03733595	45530.01	driveway	Driveway/Lead walk-Turnkey	additional labor and price correction for 934' of concrete
DN	00202771	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	

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)P	03735122	45530.02	additional labor	City Sidewalk - Turnkey	additional 282 sf of material labor
)P	03719986	40025.03	flip foundation	Slab Pour	labor and material to flip foot print
)P	03717181	40025.03	slab difference	Slab Pour	slab difference #5895
)P	03717181	40025.03	slab difference	Slab Pour	slab difference #6098
)N	00202109	40023.07	PIT GRAVEL-jls	Pit Gravel	
)N	00202184	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)P	03725060	40025.03	price correction	Slab Pour	80' of concrete $0.10 per foor
)N	00202112	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00202112	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00202144	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)P	03727878	43040.01	additional brick	Masonry Labor 1	additional labor for additional 171 brick
)N	00202170	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)P	03728696	45530.02	driveway	City Sidewalk - Turnkey	additional labor for additional 108' of concrete
)N	00203264	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00203264	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00203264	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00203592	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00203592	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00203271	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00203271	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00203227	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)P	03736647	43060.01	stone	Stone Turnkey 1	additional 21' of stone
)P	03736646	45530.01	driveway	Driveway/Lead walk-Turnkey	additional 208' feet of labor for concrete

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DP	03737822	45530.01	extended patio	Driveway/Lead walk-Turnkey	additional labor to extend patio
DN	00203251	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
DP	03739429	45530.02	walkway	City Sidewalk - Turnkey	labor for wwalkway to garage service door
DN	00201738	40023.07	PIT GRAVEL-jls	Pit Gravel	
DN	00201810	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00201741	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00201741	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00201774	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
DN	00201799	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
DP	03720221	45530.01	flat work	Driveway/Lead walk-Turnkey	labor for additional flat work missing from PO for 191'
DP	03720222	45530.01	price correction	Driveway/Lead walk-Turnkey	price correction (0.10) per foot for 562'. note: should have paid 0.95 per foot. origional PO was for 0.85 per foot.
DN	00202199	40023.07	PIT GRAVEL-jls	Pit Gravel	
DN	00202277	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DP	03725060	40025.03	price correction	Slab Pour	80' of concrete $0.10 per foot
DN	00202202	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00202202	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00203083	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00203010	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00203010	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00203044	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
DP	03735124	43040.01	additional brick labor	Masonry Labor 1	additional 305 brick
DN	00203071	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	

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DP	03735125	45530.02	additional labor	City Sidewalk - Turnkey	additional 261 sf
DN	00203351	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00203352	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00203352	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00203312	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
DN	00203336	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
DP	03736063	45530.01	drive and patio	Driveway/Lead walk-Turnkey	additional 266' of concrete labor
DP	03740329	40023.99	compaction requirement	Retention - Excavation	labor and equipment to dig 100% of the footings to acheive compaction.
DN	00203611	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00203612	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00203612	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00203646	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
DP	03745390	43060.01	additional stone	Stone Turnkey 1	additional 109' of stone
DN	00203671	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
DP	03744712	45530.01	driveway	Driveway/Lead walk-Turnkey	additional labor for 238' of concrete
DP	03744744	45530.01	driveway	Driveway/Lead walk-Turnkey	additional labor for 238'
DN	00204207	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00204208	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00204208	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00204242	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
DP	03749025	43040.01	additional brick	Masonry Labor 1	additional 186 brick
DN	00204269	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	

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DP	03752574	45530.01	driveway	Driveway/Lead walk-Turnkey	labor for additional 203'
DN	00204122	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00204123	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00204123	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DP	03747029	40026.04	flip house	Foundation Materials	labor and material to flip foundation. light post was in the way
DN	00204179	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
DP	03750008	45530.01	driveway	Driveway/Lead walk-Turnkey	additional labor for 238' of concrete
DN	00204300	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00204301	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00204301	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00204335	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
DP	03750469	43040.01	extra brick	Masonry Labor 1	addional 499 brick to finish
DN	00204363	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
DP	03750010	45530.01	driveway	Driveway/Lead walk-Turnkey	additional labor for additional 243' of concrete
DN	00204407	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00204407	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00204408	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00204408	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
DN	00200008	40023.07	PIT GRAVEL-jls	Pit Gravel	
DN	00200082	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00200082	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
DN	00200011	40026.02	FOUNDATION STEEL - jls	Foundation Steel	

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ON	00200011	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200046	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
ON	00200073	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200073	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200074	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00200220	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00200248	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
ON	00200249	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00203122	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00203200	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00203125	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00203125	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201252	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00201331	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201255	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201255	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201166	40023.07	PIT GRAVEL-jls	Pit Gravel	
ON	00201244	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00201169	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00201169	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202239	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00202239	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200798	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00200798	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
ON	00200547	40023.07	PIT GRAVEL-jls	Lot Grade-Extras	

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)N	00200621	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00200621	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00200621	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)N	00200621	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
)P	03728084	40025.03	price correction	Slab Pour	additional concrete and price correction
)P	03728084	40025.03	price correction	Slab Pour	price correction
)N	00200550	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200550	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200550	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200550	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
)N	00200584	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00200584	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00200584	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00200584	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00200625	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
)N	00200612	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00200612	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00200612	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)P	03735129	43040.01	additional brick labor	Masonry Labor 1	additional 1650 brick
)P	03742311	43040.02	patio threshold	Masonry Labor 2	labor and material to install patio threshold
)N	00201676	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
)N	00201661	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)P	03737819	45530.01	driveway	Driveway/Lead walk-Turnkey	additional labor for 716' of concrete at $0.95 per foot

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)P	03738613	45530.01	replace driveway	Driveway/Lead walk-Turnkey	labor to remove and replace 2 sectiones of driveway due to sewer damage
)N	00201662	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
)P	03747033	43040.01	brick	Masonry Labor 1	additional labor for 5388 brick
)P	03747028	43060.01	stone	Stone Turnkey 1	additional 60' of stone
)P	03747027	45530.02	driveway	City Sidewalk - Turnkey	labor for additional 311'
)P	03736645	40026.06	stoop	Front Stoop Material	labor and material for front stoop
)N	00201356	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00201356	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00201356	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)P	03736066	43040.01	additional brick	Masonry Labor 1	(3792) additional brick
)P	03736644	43040.02	wing wall	Masonry Labor 2	labor to build wing wall
)N	00202049	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)N	00202049	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)N	00202049	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)N	00201348	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
)N	00201331	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00201331	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00201331	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)P	03736649	45530.01	flat work	Driveway/Lead walk-Turnkey	additional 351' feet of concrete labor
)N	00201332	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
)P	03737818	45530.99	extra patio	Retention Flatwork	labor to add patio under deck
)P	03736074	45530.99	parging	Retention Flatwork	labor and material to parge basement walls

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)P	03732042	43040.02	repair	Masonry Labor 2	labor and material to repair brick at fireplace vent
)N	00200180	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
)P	03725058	43040.01	brick/ stone	Masonry Labor 1	labor and material to add brick and stone at front elevation
)P	03723874	43040.01	price correction	Masonry Labor 1	price correction for 476 sq. ft. of brick to complete work at 0.95 per ft.
)P	03723875	43040.01	price correction	Masonry Labor 1	price correction for incorrect bid amount. 0.10 per foot for 774 sq ft of brick
)N	00200428	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)N	00200380	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)P	03723876	43060.01	price correction	Stone Turnkey 1	127 additional sq. ft. of stone at $8.50 per sq. ft. to finish
)N	00200419	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
)N	00200405	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00200406	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
)N	00201049	43040.01	MASONRY LABOR-jls	Masonry Labor 1	
)P	03728700	43040.01	additional brick	Masonry Labor 1	additional 2964 brick @ .495
)N	00201000	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)N	00201000	43060.01	STONE-jls (annatole stone)	Stone Turnkey 1	
)N	00201037	45050.07	STONE-jls (annatole stone)	Fireplace Surround-Stone	
)N	00201024	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)N	00201024	45530.01	SLAB/FLATWORK LABOR-jls	Driveway/Lead walk-Turnkey	
)P	03729860	45530.01	driveways	Driveway/Lead walk-Turnkey	price correction for footage and PO amount. Poured 2152 sq ft

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ON	00201025	45530.02	SLAB/FLATWORK LABOR-jls	City Sidewalk - Turnkey	
ON	00200049	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200049	40025.03	SLAB/FLATWORK LABOR-jls	Slab Pour	
ON	00200050	40026.02	FOUNDATION STEEL - jls	Foundation Steel	
ON	00200050	40026.02	FOUNDATION STEEL - jls	Foundation Steel	

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EXHIBIT D

#	House #	Street	Last payment Date
1	28	Duxbury Lane	8/9/2012
2	29	Duxbury Lane	10/25/2012
3	32	Duxbury Lane	5/11/2012
4	30	Duxbury Lane	11/1/2012
5	28	Duxbury Lane	2/18/2013
6	26	Duxbury Lane	7/27/2012
7	24	Duxbury Lane	1/26/2012
8	22	Duxbury Lane	12/16/2011
9	20	Duxbury Lane	1/26/2012
10	18	Duxbury Lane	1/26/2012
11	10	Duxbury Lane	10/24/2013
12	101	Yount Court	9/19/2013
13	103	Yount Court	8/23/2013
14	105	Yount Court	12/20/2012
15	107	Yount Court	9/6/2012
17	109	Yount Court	2/7/2013
16	111	Yount Court	7/1/2013
17	110	Yount Court	9/19/2013
18	108	Yount Court	11/1/2012
19	106	Yount Court	12/20/2012
20	104	Yount Court	6/20/2013
21	102	Yount Court	5/9/2013
22	100	Yount Court	11/1/2012
23	1	Harwick Court	1/10/2013
24	3	Harwick Court	4/4/2013
25	5	Harwick Court	8/29/2013
26	7	Harwick Court	8/8/2013
27	9	Harwick Court	9/19/2013
28	11	Harwick Court	6/20/2013
29	15	Harwick Court	12/5/2013
30	16	Harwick Court	1/16/2014
31	14	Harwick Court	1/10/2013

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EXHIBIT D

32	12	Harwick Court	7/25/2013
33	10	Harwick Court	10/24/2013
34	8	Harwick Court	10/24/2013
35	6	Harwick Court	12/5/2013
36	4	Harwick Court	10/24/2013
37	2	Harwick Court	2/27/2014
38	101	Berwick Court	10/20/2013
39	103	Berwick Court	5/31/2012
40	105	Berwick Court	5/31/2012
41	107	Berwick Court	5/23/2013
42	121	Berwick Court	5/31/2012
43	123	Berwick Court	5/31/2012
44	125	Berwick Court	12/20/2012
45	127	Berwick Court	6/6/2013
46	142	Berwick Court	8/9/2012
47	140	Berwick Court	11/1/2012
48	138	Berwick Court	11/1/2012
49	136	Berwick Court	1/10/2013
50	134	Berwick Court	8/9/2012
51	132	Berwick Court	12/20/2012
52	130	Berwick Court	1/10/2013
53	128	Berwick Court	2/21/2013
54	126	Berwick Court	1/10/2013
55	124	Berwick Court	4/4/2013
56	122	Berwick Court	1/10/2013
57	120	Berwick Court	10/24/2013
58	118	Berwick Court	10/24/2013
59	116	Berwick Court	2/7/2013
60	114	Berwick Court	9/6/2012
61	112	Berwick Court	8/23/2012
62	106	Berwick Court	5/17/2012
63	1	Chatham Court	4/18/2013
64	3	Chatham Court	8/9/2012

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EXHIBIT D

65	5	Chatham Court	12/20/2012
66	7	Chatham Court	12/20/2012
67	9	Chatham Court	4/4/2013
68	11	Chatham Court	11/1/2012
69	8	Chatham Court	4/4/2013
70	6	Chatham Court	12/20/2012
71	101	Sturbridge Court	5/31/2012
72	104	Sturbridge Court	8/29/2013
73	17	Kettering Court	6/6/2013
74	2	Kettering Court	12/5/2013
75	4	Kettering Court	12/5/2013
76	6	Kettering Court	2/27/2014
77	8	Kettering Court	8/29/2013
78	16	Kettering Court	12/5/2013
79	19	Kettering Court	2/27/2014
80	15	Kettering Court	8/29/2013
81	11	Kettering Court	8/29/2013
82	9	Kettering Court	10/24/2013
83	7	Kettering Court	2/13/2014
84	9	Dartford Court	8/29/2013
85	8	Dartford Court	8/29/2013
86	6	Dartford Court	7/25/2013
87	4	Dartford Court	10/18/2012
88	2	Dartford Court	4/18/2013

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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., 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 MEMORANDUM IN OPPOSITION TO DEFENDANT JLS MASONRY, INC.'S MOTION FOR JNOV AND/OR NEW TRIAL**
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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Plaintiff submits this Memorandum Opposing Defendant, JLS Masonry, Inc.'s ("JLS"), Motion for JNOV and/or New Trial filed on September 22, 2023.[1]

SUMMARY OF ARGUMENT

This Court should deny JNOV on all grounds because JLS never made a directed verdict motion, or any motion related to the breach of implied warranty claim against it at trial.

This Court should sustain Plaintiff's $15,000,000 verdict against Horton because it has not been challenged, let alone addressed, in JLS's post-trial Motion.

This Court should sustain the $4,000,000 verdict against JLS on the assigned Horton claim(s) because JLS waived its ability challenge this verdict by not objecting to the evidence that was adduced, the law that was charged, or the verdict form that was submitted to the jury.

This Court should further deny JNOV as to the $4,000,000 verdict against JLS because the only three grounds[2] that might be construed as being preserved for further consideration by this Court, do not warrant disturbance because this Court's rulings on these issues are supported by the law and the jury's verdict is supported by the evidence. As to the statute of limitations ("SOL"), this Court should find:

1. JLS contractually extended the SOL for ten years and Horton's claims were brought within this time frame;

2. Even if the ten-year extension did not apply, JLS failed to present evidence that Horton was aware of any uncorrected defects associated with JLS's work before late 2019 and/or the evidence presented supports the jury's rejection of this affirmative defense;

3. JLS failed argue SOL to the jury and failed to submit a special interrogatory asking the jury to decide the SOL question; and,

[1] AS of this drafting, no memorandum in support of the motion has been received.
[2] Of the 13 grounds listed in JLS's Motion, only Ground 5 – Statute of Limitations ("SOL"), Ground 8 – damages evidence, and Ground 12 – settlement disclosure are preserved for consideration.

4. Evidence as to the SOL applicable to the homeowners is irrelevant as JLS has not filed any exceptions to Plaintiff's verdict against Horton.

As to evidence of damages supporting the verdict, JLS admitted that it worked on 46% of these homes and this Court should find that this admission supports the jury's $4,000,000 verdict (which is less than half of the $9,200,000 shown and requested by Plaintiff). This Court should further find that JLS's criticisms of Plaintiff's expert's damage calculations and considerations was an issue of fact properly submitted to the jury.

As to JLS's exception relating to failure to disclose to the jury the amount of the Horton settlement, this Court should find that the jury was fully informed that Horton settled with Plaintiff both because the Court informed the jury that Plaintiffs' claim against Horton had been resolved and JLS repeatedly informed the jury of the existence of this settlement (and argued the Horton empty chair defense extensively); and therefore *Poston*, the only case which JLS's JNOV Motion relies, is inapplicable here.

Even if the unpreserved grounds are considered on their merits, there is no error of law or in the admission of evidence that warrants vacating the verdict.

JLS's alternative New Trial Motion is also substantively without merit given JLS failed to object to evidence (including the introduction of Plaintiff's repair estimate) during the trial of this matter and the jury's verdict falls within the range of evidence presented to the jury and is otherwise supported by properly admitted evidence and unexcepted law.

In sum, JLS lacks a legal basis to complain given (1) its lack of objections to evidence, testimony, jury charges, or verdict form; and (2) its reliance on unpreserved grounds. Each of the foregoing reasons independently warrant this Court's denial of JLS's JNOV and/or New Trial Motion.

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PERTINENT BACKGROUND[3]

A. General Overview

1. This case is a construction defect class action involving 220 single-family homes suffering from multiple building code violations and other improper construction conditions.

2. The homes are in the Rose Hill subdivision in Easley, South Carolina, and all were built by D.R. Horton ("Horton") and its subcontractors.

3. Plaintiff and Class Representative, Natalie Zitek, filed her Complaint against Horton on September 25, 2019, alleging negligence/gross negligence and breach of implied warranties.

4. Horton filed its Amended Answer and Third-Party Complaint against its subcontractors on March 11, 2021, alleging negligence/gross negligence, breach of implied warranties, breach of express warranties, breach of contract, contractual indemnity, and equitable indemnity.

5. The Class was certified on January 27, 2021. Only thirteen homes chose to opt-out of the lawsuit. The case was designated as complex on March 16, 2022. Mediation occurred from June 5 to June 9, 2023. Discovery concluded on June 9, 2023.

6. The case was pre-tried on September 1, 2023.

7. This case was tried between September 5 and September 15, 2023.[4]

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[3] Background facts discussed herein are more focused on the brick, stone, and concrete work performed by JLS since it was the last Defendant remaining through verdict. For further background, see the Introduction and Statement of Undisputed Facts sections included in Plaintiff's Pre-Trial Brief filed on August 31, 2023.

[4] According to the Court's August 17, 2023 Order, which is incorporated herein by reference:

> The Court finds that the same jury should hear all of the issues in this case. However, **the claims of the Defendant against the Third-Party Defendants . . .**

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B. Plaintiff's Case Against Horton ("Phase I")

8. Phase I of the trial involving Plaintiff's claims against Horton spanned from September 5 to September 13, 2023.[5]

9. On Tuesday, September 5, 2023, jury selection occurred. Plaintiff had four jury strikes, while Horton and Third- and Fourth-Party Defendants shared sixteen jury strikes (over Plaintiff's objection).

10. Following jury selection, Plaintiff and Horton gave opening statements to the jury.

11. In Horton's opening statement, Horton's counsel several times or more both took "responsibility" for the defective stone veneer that exists throughout Rose Hill and conceded to the existence of code violations. JLS did not object to any portion of Horton's opening.

12. Plaintiff's first witness, Horton's expert Steve Moore, was called on September 6th.

13. Steve Moore testified as to "hundreds" of building code violations and defects existing in the stone and brick walls of these homes, including: (a) missing movement joints at garage lintel brick areas; (b) improperly fastened wall ties; (c) insufficient flashing; (d) missing and misplaced weep holes; (e) inadequate stone clearance; (f) stone directly adhered to brick; and (g) exposed lath and torn weather barriers at stone-clad walls.

> **are affected by any liability attributed to the Defendant by the jury**. Accordingly, Phase I of the trial shall be that of liability of the Defendant to the Plaintiff. . . . Should the jury find for the Plaintiff on any issue of liability and/or punitive damages, Phase II of the trial shall consist of the Defendant proceeding with its claims against the Third-Party Defendants.

8/17/23 Order, p. 3 (emphasis added). JLS did not file a proposed trial plan, did not object to phasing, and did not move to reconsider this Order.

[5] As clarified by the Court at the September 1, 2023 pretrial hearing, Third- and Fourth-Party Defendants had the option to fully participate in Phase I by giving opening statements, objecting to evidence and testimony, and cross-examining witnesses. However, most of these Defendants, including JLS, did not exercise these opportunities.

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14. Steve Moore also testified as to the duties of Horton's subcontractors including the duties to (a) comply with their contracts; (b) follow building code requirements and, (d) review and report design errors or omissions; and (e) ensure that their work is defect free. Trial Trans. 86.9-87.4.[6]

15. Plaintiff's second witness, Class Representative Natalie Zitek, was called on September 7th.

16. Mrs. Zitek testified to the loose stone veneer, cracking brick veneer, and cracking concrete at her home, which she began to learn/noticed in late 2019 after Horton repaired her home four times between 2013 and 2018.

17. Mrs. Zitek also testified that it was going to take close to $30,000,000 to fully repair these class defects and that she was concerned for her home and her and her family's health due to falling stones, separating brick, and potential radon exposure.

18. Plaintiff's third witness, Horton's Warranty Manager Pam Williamson, was called by publication immediately after Mrs. Zitek.

19. Ms. Willamson testified that Horton fixed all known construction issues before it left the neighborhood:

> Q. Is it your belief that whatever these issues were, that they were all adequately addressed by the DR Horton warranty process?
>
> A. I do believe so.
>
> Q. At least for the time being.
>
> A. Correct.
>
> Q. So if there's -- if there's a stone falling off recently, it's not something that you all were aware of at the time.

[6] Moore's portion of the Trial Transcript is attached as Exhibit "A".

A. Correct. I mean, I haven't seen any requests come in from Rose Hill for quite some time.

(Williamson Depo. Trans. 71:24-72:10).

20. Ms. Williamson testified that Horton repaired Mrs. Zitek's home and fixed her "warranty" issues:

Q. But as a factual matter, you're not suggesting, for instance, that Ms. Zitek should have sued you-all for the 2017 defects in 2017 because you-all did the repairs in 2018, right?

A. It's warranty timeframe.

Q. You-all did the repairs, right?

A. Yeah. They were covered under warranty.

Q. In theory you-all fixed whatever the problems were, correct?

A. That is correct.

(Williamson Depo. Trans. 237:8-17).

21. Plaintiff's fourth witness, JLS's 30(b)(6) representative Christopher De La Torre, was called by publication[7] immediately after Ms. Williamson.

22. JLS admitted the work it performed at Rose Hill:

Q. Let me just make sure I have the question that I want. Give me one moment. What type of work does JLS do?

A. So we do footings, basements, slabs, exterior flat work, and brick and stone.

Q. If you know, what type of work did JLS do at Rose Hill?

A. We did the brick, and I cannot remember if we did the slabs or flat work in there yet or not. We did quite a bit down there. I can't remember if we did the flat work in there or not.

Q. What's flat work?

[7] JLS failed to make any objections or counter-designations to this publication within the Court's pre-trial deadlines, or when JLS was called as a witness, or during its publication.

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A. Like the slabs, driveways, things like that. I think we did some driveways towards the tail end, but I can't remember if we did any of the monoslabs in there.

Q. Okay. What about stonework?

A. We did the stonework in there and the brick.

Q. All right. So brick, stone, driveways. Did you do patios or walkways?

A. Yeah, that's flat work.

Q. Okay.

A. I just can't remember how much we did in there or not.

(De La Torre Depo. Trans. 19:9-20:13).

23. JLS admitted it would not point out design omissions to Horton:

Q. I guess my question is: When you were looking at the plans or you were meeting with D.R. Horton's superintendent and you saw that brick was going to go -- be supported by a lintel, it was going to go 12 feet up on a second floor, were the plans, in your opinion, sufficient to deal with that?

MR. CUSHMAN: Object to form.

You can answer.

A. I mean, it was -- we were going off of a plan that was provided by D.R. Horton with an engineer stamp on it, so we had assumed that it was, you know, correct.

Q. What if it was silent on that issue? Let's say, for example -- and, again, we'll get to the plans here shortly, but if it didn't say anything about the support of a second-story brick above a lintel, would you ask D.R. Horton to get an engineer involved or make your own suggestions or say anything at all?

MR. CUSHMAN: Object to form.

A. No.

Q. Okay. By no, is that just you wouldn't ask anything?

A. Yeah, we wouldn't say anything. We didn't know otherwise.

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(De La Torre Depo. Trans. 75:9-76:9).

24. JLS admitted it was unfamiliar with applicable masonry codes and standards:

Q. Do you know what the code says or the code requires for supporting brick heights for this or like this?

A. No.

(De La Torre Depo. Trans. 76:25-77:3)

***

Q. Okay. Here is R703.7.2, exterior veneer support. As you can see, Dr. Whitlock calls out, [t]here shall be a movement joint between the veneer supported by the wood or cold-formed steel construction and the veneer supported by the foundation. You see that?

A. Mm-hmm. Yes.

Q. Were you aware of that requirement in the code?

A. No, I was not.

(De La Torre Depo. Trans. 115:2-11)

***

Q. I've moved down to 5 Harwick. Do you see that the stone comes all the way down to the concrete?

A. Yes.

Q. All right. And is it your testimony that you don't know the clearance requirements and stone installation was not something you're really familiar with?

A. Correct.

(De La Torre Depo. Trans. 141:18-142:1).

25. JLS admitted it did not know if the wall ties were proper and that Dr. Whitlock's photos showed flashing that did not extend to daylight:

Q. Okay. All right. So let me back up my question a little bit. There is an allegation that these wall ties are not 7/8 inch wide and, therefore,

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not appropriate. Do you know or does JLS know if that is correct or not?

A. I do not.

(De La Torre Depo. Trans. 79:4-9)

***

Q. Would you ever measure them?

A. No.

(De La Torre Depo. Trans. 80:17-18)

***

Q. I want to show you one of the pictures from Dr. Whitlock. This is 8 Duxbury, base of a wall. Have you seen this picture before?

A. Yes.

Q. All right. So the flashing comes through, as you can see here, a course of brick. There is a weep here. Do you see that?

A. Yes.

Q. All right. But the flashing does not extend all the way out to daylight. It is, I don't know, a quarter of an inch, half an inch back. Do you see that?

A. Yes.

(De La Torre Depo. Trans. 86:9-21)

***

Q. Is there a requirement that flashing and weeps be installed above the angle iron and lintels?

A. Yes.

Q. Okay. And on 206 Buxton, do you see the flashing come down, but it barely turns horizontal. Do you see that?

A. Yes.

Q. Is that an appropriate installation of flashing?

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A. No, that is not.

Q. It needs to come out at least close to daylight?

A. Yes.

(De La Torre Depo. Trans. 112:8-21).

26. JLS admitted that the flashing at the garage lintel was also incorrect:

Q. In your opinion, you believe that the flashing above the angle iron and lintels would come down vertically and then turn horizontally and come close to daylight, if not all the way to daylight?

A. Yes.

Q. And that's the correct way to do it?

A. Yes.

Q. And this photograph, 206 Buxton, is not the correct way to do it, right?

A. Correct.

(De La Torre Depo. Trans. 113:1-11).

27. JLS admitted that "mortar slop" was excessive behind these homes' brick clad walls:

Q. And is this mortar slop here at 206 Buxton behind the brick?

A. Yes.

Q. Is that an excessive amount of mortar slop?

A. Yeah, it's not an ideal amount.

(De La Torre Depo. Trans. 120:25-121:5).

28. JLS agreed that the stone adhered to brick should not be separating and that he had no idea how this defective condition could be fixed:

Q. Would you agree with me that these stones should not be coming off like this, separating?

A. Yeah, they shouldn't be separating.

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Q. Do you have any idea how this issue could be fixed?

A. No.

(De La Torre Depo. Trans. 131:11-17).

29. Plaintiff's fifth witness, expert Dr. Rhett Whitlock, was called on September 8th.[8]

30. Dr. Whitlock was qualified as an expert in engineering, building envelopes, forensic evaluation, and repair estimation without timely objection.[9]

31. Dr. Whitlock testified that these homes commonly contained many building code violations and other defective conditions, particularly at foundations and stone and brick clad walls, and that these defects have resulted damages such as cracking, separation, potential radon exposure, and water intrusion, all of which will require circa $30,000,000[10] to repair.

32. Thousands of Dr. Whitlock's photos showing building code violations and cracking stone, brick, and concrete were stipulated into evidence and discussed at length during Dr. Whitlock's and other witnesses' testimony.

33. According to Dr. Whitlock, it was Horton and its subcontractors who were responsible for these problems and their repair costs.

34. Plaintiff's seventh witness, homeowner Courtney Scheutz, was called on September 12th.[11]

35. Ms. Scheutz testified that she was hit in the head by stones that fell off her house from above her garage where stones were improperly adhered directly to brick.

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[8] Plaintiff's sixth witness was Horton employee John Martin, who conceded that the stone veneer construction had been improperly performed.

[9] After Dr. Whitlock was certified without objection, Horton did unsuccessfully *voir dire* Dr. Whitlock on his window manufacturing knowledge in an attempt to limit that testimony.

[10] The repair cost estimate was modified from time to time at trial to eliminate some issues/damages from the trial which had been settled out.

[11] Plaintiff's eighth witness was expert Andy Sherard relating to drainage issues.

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36. Plaintiff's ninth and tenth witnesses, Horton employees Brian Keith Waddell and Edmond Jeanfreau,[12] were called on September 13th.

37. Both Mr. Waddell and Mr. Jeanfreau testified to Horton's reliance on its subcontractors to know the code and do their work in compliance with the code and industry standards.

38. Plaintiff's eleventh witness, homeowner Heather Ray, testified about multiple issues she had at her home, including brick cracks above her garage and falling stone. [13]

39. In addition to these witnesses, Plaintiff entered multiple exhibits including exhibits that related to the stone, brick, and concrete ("masonry") work performed by JLS. These exhibits include:

1. Pl. Ex. 1.8, JLS Subcontract
2. Pl. Ex. 1.9, JLS Purchase Agreement
3. Pl. Ex. 4.3, JLS Purchase Orders
4. Pl. Ex. 11.16, JLS Warranty Service Work Orders
5. Pl. Ex. 24.16, Whitlock Repair Cost Estimate
6. Pl. Exs. 24.20D, 25.31, Whitlock Stone Photos
7. Pl. Exs. 24.20C, 25.27, Whitlock Brick Photos
8. Pl. Exs. 25.17, 25.19, 25.28, 243, Whitlock Concrete Photos
9. Pl. Ex. 15.3/Def. Ex. 19, DRH Standard Details (showing sealing of concrete cracks)

40. JLS did not object to any of the above witness testimony and exhibits, or otherwise participate in during Phase I, other than joining in on some of Horton's repetitious Motions to decertify the class, all which were denied.

C. Close of Plaintiff's Case and Directed Verdict Motions

[12] Mr. Jeanfreau was called via publication in Plaintiff's case during Phase I and called live in Horton's case during Phase II.

[13] Plaintiff's twelfth and final witness, called after Ms. Ray, was Horton employee Jay Henderson.

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41. After six days of Phase I testimony, Plaintiff rested on the afternoon of September 13th.

42. On September 14, 2023, JLS filed a cursory Motion for Directed Verdict ("DV") as to Horton's claims against it on SOL, SOR and unidentified indemnification grounds.[14] *See* JLS's 9/14/23 Mot. for DV. However, JLS's Supporting Memo **only** argued SOL and SOR and abandoned the prior, vague "indemnification" ground. *See* JLS's 9/14/23 Memo. Supp. Mot. for DV. This Motion and Memo also never raised anything related to Horton's claims for breach of implied warranty against JLS. This written Motion and Memo were never brought to the Court's attention.

43. On September 14, 2023, both Plaintiff and Horton moved for DV on all claims between them.

44. Part of Plaintiff's DV Motion was based on Horton's own admissions during its opening statements of code violations and being responsible for the brick-to-stone defect at the Rose Hill homes. Trial Trans. 8:12-8:17.[15]

45. Horton then moved for decertification of the class once again. JLS and other remaining subcontractors joined in on this motion. Trial Trans. 42:22-43:23.

46. Horton's DV Motion was based mainly on a lack of damages proven by Plaintiff for all issues.

[14] This Motion was filed by Elizabeth Martineau, attorney for one of JLS's insurance carriers, Erie, who settled with Plaintiff before the jury reached a verdict. The remaining JLS attorney, represents JLS's other carrier Selective Insurance. The Motion simply referenced "on the basis of . . . the issue of indemnification."

[15] The portions of the Trial Transcript referenced herein are collectively attached as Exhibit "B".

47. After DV arguments on September 14, 2023, but before the Court ruled, Plaintiff, Horton, and subsequently, most other parties, settled out of the case. JLS was given the afternoon off to prepare to put on its case.

D. Plaintiff's Settlement with Horton

48. The confidential settlement between Horton and Plaintiff included a payment by Horton to Plaintiff, a covenant not to execute from Plaintiff to Horton, an assignment by Horton of its Third-Party claims and related rights to Plaintiff, and a tender of Horton's defense against Plaintiff's claims to the remaining Third- and Fourth-Party Defendants (collectively "Subcontractors").

49. JLS asked the Court to disclose the settlement amount to the jury, but the Court denied this Motion. Trial Trans. 78:23-79:12.

50. All other Subcontractors then reached settlements with Plaintiff, except JLS and M&M Foundations.[16]

51. JLS rejected the tender of Horton's defense. Given the elimination of Horton's defense, the completion of Phase I was essentially consolidated with Phase II, without objection.[17]

E. Completion of Trial ("Phase II")

52. The balance of the trial occurred on September 15, 2023, involving Horton's claims (now assigned to Plaintiff and the Class) against the last remaining Subcontractor, JLS.

[16] M&M Foundations ultimately settled with Plaintiff before the second set of opening statements.
[17] After the Horton settlement was put on the record, the court adjourned from time to time on the afternoon of September 14th for the parties to reorganized after the departure of Horton. When it became apparent that JLS would be the only active defendant left (M&M's participation had been non-existent until then), JLS announced it would not be putting on a defense for Horton and that it would proceed directly to call its witnesses.

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53. Many of the matters related to Phase II of this trial proceeded without objection or exception, to wit:

- Plaintiff and Horton had previously stipulated 99% of Plaintiff's exhibits into evidence during Phase One, without objection by JLS;
- Plaintiff's jury charges were submitted and charged without any objection from JLS.
- JLS agreed to call its witnesses first and allowed Plaintiff as Horton's designee to follow.
- JLS did not provide its own proposed verdict form. JLS ultimately agreed to a revised version of Plaintiff's pretrial verdict form. The parties consented to removing "Negligence" and preserving "Breach of Implied Warranty," "Contractual Indemnity," and "Equitable Indemnity" as options for JLS's liability to Horton.

54. Before opening statements on the remaining claims, JLS requested this Court rule on the outstanding DV and decertification Motions made by Horton.

55. Horton's Motion for decertification was denied. Trial Trans. 85:25-87:11.

56. Horton's DV Motion was denied in full. Trial Trans. 87:12-88:1.

57. Plaintiff requested this Court then rule on Plaintiff's DV Motion based on Horton's admissions during opening statements. This Motion was granted as to the stone veneer defects at Rose Hill. Trial Trans. 88:4-89:13.

58. JLS then moved to stay the case, arguing that the only claim at issue is Horton's contractual indemnity claim which is up on appeal. Trial Trans. 103:4-16. JLS also moved for disclosure of the confidential settlement amount between Plaintiff and Horton again, arguing that the only damages that can be claimed against JLS are what Horton paid to settle, and Horton is now a sham defendant.[18] Trial Trans. 104:15-106:7.

[18] Neither of these Motions by JLS were ever raised as proper DV Motions.

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59. JLS's Motion was denied as to settlement disclosure:

> The jury is obviously aware DR Horton was contesting the case, and the jury is aware that DR Horton wants it settled, so the deceptive part of the case that the Court in the Poston case found there to be a sham defendant is not present in this case, and it can be distinguished from our situation, so I'm going to deny your motion, Mr. Ross.

Trial Trans. 107:14-20.

60. The Court did not rule on JLS's Motion to stay regarding indemnity, and JLS failed to ask the Court to so rule.

61. Subsequently, JLS made yet another Motion to decertify the class. The Court noted that this Motion had been previously denied. Trial Trans. 107:23-108:20.

62. Following opening statements, JLS proceeded to present its case first. JLS called one witness, expert Derek Hodgin. Hodgin based his entire opinion on a one hour visit to Rose Hill over the course of a four-year lawsuit and reviewing photographs by others. Trial Trans. 147:20-148:3; 152:1-3. Hodgin agreed with Plaintiff's expert that all stone veneer throughout Rose Hill needed to be removed and replaced, Trial Trans. 132:1-4, but he disputed some of the brick and concrete repairs.

63. JLS did not call its damage estimator, any representative of JLS, or any other witness in its case. JLS's repair estimate was admitted into evidence without testimony.

64. JLS stipulated that it was responsible for 46% of the masonry work at Rose Hill. Trial Trans. 115:1-4.

65. In rebuttal, Plaintiff called two witnesses, expert Dr. Rhett Whitlock, and Horton employee Edmond Jeanfreau.

66. Dr. Whitlock had already been qualified as an expert in Phase I with no objection from JLS. JLS did not make a single objection during nearly two days of testimony from Dr. Whitlock in Phase I.

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67. At the close of evidence, the jury was left considering the testimony of fourteen witnesses and over 150 exhibits called and entered by Plaintiff, and one witness and five exhibits called and entered by JLS.

F. Various Motions by Plaintiff and JLS

68. Prior to closing arguments, Plaintiff moved for DV on the brick issues based on overwhelming evidence of code violations, noting that DV had already been granted on the stone issues. This Motion was denied. Trial Trans. 236:25-237:25.

69. JLS then moved for a dismissal based on Plaintiff's failure to prove damages. This Motion was denied. Trial Trans. 238:2-15.

70. Plaintiff moved for a complete DV on its claims against Horton based on lack of evidence presented by Horton or JLS and the only remaining question for the jury being whether Horton's liability should be extended to JLS. This Motion was denied. Trial Trans. 238:16-240:12.

71. At this time, JLS reargued for settlement disclosure based upon its sham defendant theory. This Motion was denied. Trial Trans. 240:7-20.

72. JLS further moved for dismissal based on the SOL. Trial Trans. 241:13-242:9. The Court denied JLS's SOL Motion: "Again, the Court has heard the statute of limitations argument, and I deny that motion." Trial Trans. 242:10-11.

73. During its argument on its motion to dismiss pursuant to the SOL, JLS made a one sentence reference to *Stoneledge*, asking the Court to "kick out" all claims *except indemnity*. Trial Trans. 241:18-23. The Court denied the motion to dismiss on the SOL, and did address the reference to Stoneledge, and JLS never asked the Court to do so. Trial Trans. 242:21-243:7 (JLS's counsel conceding the Court had not ruled on this issue).

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74. JLS did not move for directed verdict upon SOR or make the Court aware of or argue the written September 14, 2023 DV Motion or raise most of the JNOV grounds it now asserts.

G. Closing Arguments, Jury Charges, Verdict Form and Verdict

75. Prior to closing arguments, the Court conducted a charge conference with Plaintiff's proposed charges (there were none proposed by Horton or JLS). The conference principally involved removing Plaintiff's charges that were no longer relevant to the issues. JLS did not object to the proposed amended charges at the conclusion of the conference or after they were charged to the jury.

76. The final verdict form that JLS agreed to removed "Negligence" and "Breach of Contract," but retained "Contractual Indemnity," "Equitable Indemnity," and "Breach of Implied Warranty" causes of action against JLS.

77. JLS acknowledged this Court's ruling(s) . Trial Trans. 246:5-12 ("All right, I mean, I understand the Court's ruling").

78. Subsequently, both parties gave closing arguments to the jury. Plaintiff's closing argument highlighted the overwhelming evidence which had been presented over the last two weeks of the masonry and concrete defects which JLS was admittedly 46% responsible. Plaintiff explained why JLS, a subcontractor, shared the liability for the defects with Horton, and asked the jury to award $9,200,000 from JLS—46%—of the requested $20,000,000 total sought in damages.

79. In JLS's closing argument, JLS improperly disclosed multiple times that a settlement had been reached between Plaintiff and Horton. Trial Trans. 277:16-20. JLS focused on why the jury should not rely on Dr. Whitlock's damage model instead of explaining to the jury

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why JLS's work was not defective—because it was unable to do so based on the substantial evidence Plaintiff introduced. Trial Trans. 269:5-21.

80. During deliberations, the jury proffered a question regarding the meaning of indemnity. The parties agreed to a charge on indemnity to be read to the jury. Trial Trans. 304:1-310:18.

81. After this charge, Plaintiff, and one of JLS's carriers, Erie, placed a partial settlement on the record.

82. Shortly thereafter, the jury came back with a verdict in favor of Plaintiff in the amount of $15,000,000 on Plaintiff's negligence claim against Horton, and a verdict in favor of Plaintiff on its assigned Horton claims in the amount of $4,000,000 on Horton's breach of implied warranty claims against JLS.

83. JLS has not challenged the $15,000,000 verdict against Horton, or made any motions related thereto. That portion of the verdict is the law of the case.

84. JLS only challenges the $4,000,000 entered against it. JLS's grounds are either procedurally or substantially without merit as discussed in detail below.

APPLICABLE LEGAL PRINCIPLES

A.) Judgment Notwithstanding the Verdict

A properly made directed verdict motion is a necessary precursor to any JNOV motion. In other words, a JNOV motion allows the court to reconsider its ruling on a directed verdict motion, but the court's consideration is limited to the grounds previously argued for directed verdict. Rule 50(b), SCRCP. Thus, where no directed verdict motion is made at the close of all evidence, no JNOV motion can follow. *RFT Mgmt. Co., LLC v. Tinsley & Adams*, L.L.P., 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012) ("When a party fails to renew a motion for a directed verdict at the

close of all evidence, he waives his right to move for JNOV."). Moreover, issues not raised or not ruled upon by the court may not be later raised in a post-trial motion for JNOV or otherwise. *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995) (noting a party may not use a post-trial motion to raise an issue that could have been raised at trial).

In otherwise ruling on a properly made JNOV motion, the court cannot disturb the factual findings of a jury unless a review of the record shows no evidence which reasonably supports them. *Horry County v. Laychur*, 315 S.C. 364, 434 S.E.2d 259 (1993); *Force v. Richland Mem'l Hosp.*, 322 S.C. 283, 471 S.E.2d 714 (Ct. App. 1996). In making this determination, the court must view the evidence, and the inferences reasonably drawn therefrom, in the light most favorable to the non-moving party. *Gilliiand v. Doe*, 357 S.C. 197, 592 S.E.2d 626 (2004); *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 494 S.E.2d 835 (Ct. App. 1997). The court is only concerned with the existence of evidence, not its weight, and the court does not have authority to decide credibility issues or to resolve conflicts in the testimony or the evidence. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003); *Reiland v. Southland Equip. Serv., Inc.*, 330 S.C. 617, 500 S.E.2d 145 (Ct. App. 1998). Thus, the court must deny a motion for JNOV when the evidence leads to more than one inference or its inferences are in doubt. *Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281 (2003); *Welch v. Epstein*, 342 S.C. 279, 536 S.E.2d 408 (Ct. App. 2000). Similarly stated, the court should uphold a jury's verdict if there is any evidence to sustain it. *Burns v. Universal Health Services, Inc.*, 361 S.C. 221, 231-33, 603 S.E.2d 605, 611 (Ct. App. 2004); *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651 (Ct. App. 1994).

B.) New Trial Absolute and New Trial *Nisi Remittur*

Unlike motions for JNOV, new trial motions assume the existing evidence presents questions reserved for the jury's determination; but ask whether, in light of all the evidence, the

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jury reached the appropriate result. Thus, in ruling on new trial motions, the court, as the "thirteenth juror", has the discretionary power to deny both a new trial absolute and a *nisi remittutur* if the court agrees with the jury's verdict based upon the law and the facts, evidence and testimony presented at trial. Rule 59, SCRCP; *South Carolina State Hwy. Dep't v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975); *Fallon v. Rucks*, 217 S.C. 180, 189, 60 S.E.2d 88, 92 (1950) (noting the trial court's discretion is "founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict and the judge's view of them. . . ."); *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996) (noting the grant or denial of new trial motions rests within the trial court's discretion, and the court's decision will not be disturbed on appeal unless the court's findings are wholly unsupported by the evidence or its conclusions are controlled by error of law).

A court may grant new trial motions only when there is prejudicial error in the admission of evidence or if the verdict is excessive or inadequate. *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993); *see also O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993) (finding new trial motions can only be granted when the verdict is grossly inadequate or excessive "so as to be the result of passion, caprice, prejudice, or some influence outside of the evidence"); *Watts v. Bell Oil Co. of Ocean Drive, Inc.*, 266 S.C. 61, 63, 221 S.E.2d 529, 530 (1976) (For a trial court to order a new trial based on erroneous admission of testimony, "the record must show not only error but also prejudice."). However, the jury's determination of damages is entitled to substantial deference, and therefore, a jury's verdict should be upheld when it is possible to do so in order to effectuate the jury's express intentions. *Vinson*, 324 S.C. at 404, 477 S.E.2d at 723.

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ARGUMENT

I. JLS Did Not Make a Single Proper Directed Verdict Motion or Implied Warranty-Related Motion at Trial

A DV motion is a **prerequisite** for any JNOV motion; and, here, the only Motions JLS made were either Motions to stay, decertify, or for unspecified relief. This alone bars every JNOV ground now brought before this Court except possibly the SOL motion, which was based upon a misstatement of the record. Moreover, JLS did not argue or make any Motions, DV or otherwise, related to Horton's implied warranty claim. JLS's failure to follow procedure precludes JNOV entirely. The closest JLS came to a proper motion for a directed verdict was its SOL motion, which was properly denied on evidentiary grounds. JLS has no proper grounds for its JNOV/New Trial Motion. The jury verdict stands.

II. JLS Does Not Challenge the $15,000,000 Verdict Against Horton

As an initial matter, this Court should sustain Plaintiff's $15,000,000 verdict against Horton because JLS does not challenge this verdict. JLS **only** challenges the $4,000,000 against it, and therefore this Court should only consider this latter verdict in the context of this JNOV Motion. *See generally* JLS's JNOV Motion & Memo (making no mention of Plaintiff's $15,000,000 verdict against Horton).[19]

III. JLS Cannot Challenge the $4,000,000 Verdict Against It Because JLS Did Not Object to the Jury Charges and Agreed to the Verdict Form

No grounds asserted by JLS warrant JNOV because JLS did not object to the jury charges and agreed to the verdict form which were submitted to the jury.[20] The jury found JLS liable for breach of implied warranty and JLS can no longer challenge this verdict now that it has been

[19] This verdict is independently relevant as Horton was only provided a covenant, not a release, and JLS's contract required that JLS provide Horton with additional insured coverage.
[20] JLS also failed to propose or submit a verdict form or jury charges.

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rendered. *See* Verdict Form, attached hereto as Exhibit "C"; *see also Johnson v. Hoechst Celanese Corp*., 317 S.C. 415, 421, 453 S.E.2d 908, 912 (Ct. App. 1995) (holding by failing to object to a verdict form until after a liability verdict had been reached, appellant failed to preserve any issue relating to the verdict form); *Ambruoso v. Lee*, No. 2010-UP-158, 2010 WL 10079451, at *4 (S.C. Ct. App. Feb. 23, 2010) (unpublished) (holding that trial court did not err in finding defendant waived any objection to verdict form when it failed to do so prior to submitting form to jury).[21] Having agreed to a verdict form that permitted the jury to find for Plaintiff on implied warranty, JLS cannot now argue that it was improper for the jury to attribute its award to implied warranty.

IV. JLS is Not Entitled JNOV on Any of the Three Grounds It May Have Preserved

There are only three grounds that might be considered preserved for consideration in the JNOV[22] and all three fail on the merits for the following reasons.

A. JLS's SOL Defense Fails Because JLS Contractually Extended the SOL to 10 Years; the Evidence (or Lack Thereof) Supports the Jury's Verdict; JLS Failed to Argue SOL to the Jury and Failed to Submit a Special Interrogatory After the Jury Returned its Verdict; and, the Issue of Whether the SOL is Applicable to the Homeowners is Irrelevant as JLS Has Not Filed Any Exceptions to Plaintiff's Verdict Against Horton

1. *JLS's Subcontract (Pl. Ex. 1.8) Extends the SOL By Ten (10) Years*

JLS's Subcontract contractually extended liability to Horton for ten years:

> 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 . . .

[21] *Ambruoso* attached hereto as Exhibit "D".

[22] Note again, any additional grounds in JLS's written DV Motion are not relevant as JLS never brought the existence of the written Motion to the Court's (or Plaintiff's) attention, and never argued these additional grounds to the Court.

> 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.

Pl. Ex. 1.8 (emphasis added); *see also Anonymous Taxpayer v. S.C. Dep't of Revenue*, 377 S.C. 425, 440, 661 S.E.2d 73, 80 (2008) ("A party can waive a statute of limitations defense, but the waiver must be shown by words or conduct, including an **express agreement**.") (emphasis added)).

Horton's claims against JLS brought in 2021 are well within this ten-year extended SOL window even using 2014 as the SOL start date as argued, *albeit* incorrectly, by JLS.

2. ***No Evidence Exists That Shows Horton was Aware of Uncorrected Defects Within Three Years of its Third-Party Complaint Against JLS or, At Minimum, Multiple Inferences Exist as to When the SOL First Began to Run***

Here, JLS maintains the SOL clock started ticking in 2014; however, the evidence shows that Horton had no reason to know that their final brick repair at the Zitek house had failed until Plaintiff filed this lawsuit in September 2019, and served Horton several months later, and Horton's claims against JLS were brought within three years of this date.

In fact, Mrs. Zitek herself testified that she was unaware of any uncorrected brick, stone, or concrete issues "until 2019" when Dr. Whitlock inspected her home.[23] Horton testified similarly that it believed it had corrected all issues at Rose Hill through its warranty process and that it was "unaware" of *e.g.*, stone falling off of these homes until after this lawsuit was filed. *See* Williamson Depo. Trans. 71:24-72:10. Dr. Whitlock also testified that the code violations he documented were

[23] The Court will recall that Horton fixed Plaintiff's brick façade in 2018, and it was not until Dr. Whitlock's inspection in 2019 that the crack under her daughter's second floor, twin window on the front of the house was discovered.

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"latent" and not visible – if a homeowner cannot see an issue to report it, it can be inferred that no such report was made, and Horton was equally unaware of these hidden issues.

Plaintiff believes this evidence squarely establishes that Horton did not know it had a cause of action against its subcontractors regarding these common, latent defects until late 2019. However, at minimum, the record contains sufficient evidence to render this a question of fact for the jury. As recently held by the South Carolina Supreme Court in *Walbeck, v. I'On Co., LLC*:

> Because the myriad of evidence adduced during this lengthy trial presented quintessential jury issues, we disagree with the court of appeals' reversal of the jury verdicts. **We find the trial court properly submitted Homeowners' claims and the issue of the statute of limitations to the jury, and we find its verdict was supported by the evidence**.

--- S.E.2d ---, 2023 WL 1809318, *5 (2023) (emphasis added); *see also Logan v. Cherokee Landscaping & Grading Co*., 389 S.C. 611, 618, 698 S.E.2d 879, 883 (Ct. App. 2010) ("If there is conflicting evidence as to whether a claimant knew or should have known he or she had a cause of action, the question is one for the jury."); *Turner v. Milliman*, 381 S.C. 101, 111, 671 S.E.2d 636, 641 (Ct. App. 2009) (As long as there is "more than one reasonable inference as to when the [plaintiffs] knew or should have known they had a claim against [defendant]," summary judgment on the expiration of the statute of limitations is inappropriate), *aff'd in part, rev'd in part on other grounds*, 392 S.C. 116, 708 S.E.2d 766 (2011).

Walbeck was a trial that involved conflicting evidence as to when homeowners/HOA discovered a developer's failure to turn over certain, civic areas. *Walbeck*, 2023 WL 1809318, at *4.[24] At trial, the developer argued that it was entitled to a directed verdict on SOL grounds because the homeowners were on notice that the HOA did not own the civic areas as early as 2001 when these areas were "completed" and no later than 2005 when a proposed budget purportedly sent to

[24] Class Counsel represented the I'On homeowners in *Walbeck*.

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HOA members included a line item suggesting that these areas were being "rented" by a third-party. *Id.* at *19. The homeowners argued that developer promulgated a decade-long scheme in which it continually promised to convey the civic areas to the HOA but was secretly working to sell these areas for profit and that there was ample, conflicting evidence as to when the homeowners knew that they had a claim. *Id.* The civic areas were ultimately sold by the developer to a third-party on August 5, 2009, and the trial court was left to determine whether this date was the "notice" date, or an earlier date as argued by the developer. *Id.*

The trial court found that the evidence created questions of fact as to the SOL; and left the jury to decide when the homeowners discovered their claims. *Id.* at *13. The jury ultimately found that the homeowners discovered their claims on August 5, 2009, and returned a $1,750,000 verdict in the HOA's favor. *Id.* at *14. The developer appealed and the court of appeals reversed the verdict, finding that the trial court erred in submitting the SOL question to the jury. *Id.* at *13. The South Carolina Supreme Court granted *certiorari* and overturned the court of appeal's SOL ruling and reinstated the HOA's verdict, finding that:

> We believe this case is similar in some respects to *Stoneledge at Lake Keowee Owners' Ass'n v. IMK Development Co., LLC*, 435 S.C. 176, 177, 866 S.E.2d 577, 578 (2021), **where the Court implicitly acknowledged that although defendants in that case may have had a colorable argument as to the running of the statute of limitations, this Court nonetheless affirmed the jury's verdict**. *See id.* ("Application of both the basic three-year limitations period and the discovery rule in any given case **can present factual issues for a jury to resolve**. ... [**W]e are constrained by our standard of review and conclude that under the facts of this case, there was a jury issue as to whether the statute of limitations had expired** by the time the action was commenced against [the defendant]"). In *Stoneledge*, the jury found in favor of the homeowners after the trial court denied defendants' motion for directed verdict based on the statute of limitations. **As is the case here, there was a question of fact as to when Homeowners were put on notice**.
>
> Because ample evidence was presented supporting the jury's determination of when Homeowners were on notice, the jury's verdicts are reinstated. **While there is an argument that the budgetary provision relied on by the court of appeals could**

> **have led to notice, the jury was cognizant of that argument but was convinced by the ample contrary evidence. That finding, because it was supported by sufficient evidence, should not have been overturned on appeal**. Accordingly, we find that these claims are timely.

Id. at *19 (emphasis added).

Just as in *Walbeck*, the evidence proffered here to date creates, at the very least, a question of fact regarding their discovery that a cognizable cause of action existed against JLS and this Court did not err in finding the same.

3. JLS Failed to Argue SOL to the Jury and Failed to Submit a Special SOL Interrogatory Before or After Verdict

Whether the SOL applies to bar a claim is typically a question of fact for the jury. JLS cannot now argue that Horton's claims against it are barred by the SOL when JLS failed to argue the SOL to the jury and, by doing so, waived this defense. *See e.g., I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (preservation of error rules "prevent[ ] a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case").[25]

JLS also failed to submit a supplemental interrogatory for SOL on the verdict form (and failed to propose a verdict form) before or after damages were determined for Plaintiff's claims against Horton. *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 191, 708 S.E.2d 787, 797 (Ct. App. 2011) ("Appellants waived appellate review [of trial court's failure to submit

[25] In fact, many of JLS's exceptions are essentially evidentiary matters which JLS waived or abandoned by 1) not objecting to the admission of the supporting evidence, and/or 2) by not arguing the issue to the jury in closing. Moreover, all of JLS's evidentiary arguments go the weight of the evidence, not its improper admission.

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a special verdict form to the jury] because they failed to request a special interrogatory when the deciding jury was available and in place to review such a matter.").

Even if JLS had properly submitted a special verdict form, "the question of whether to require a jury to return a special verdict is one committed to the discretion of the trial court." *Steele v. Dillard*, 327 S.C. 340, 343, 486 S.E.2d 278, 279 (Ct. App. 1997). In *Steele*, the Court of Appeals found no error in the Trial Court's decision to deny a special verdict on comparative negligence requested by the defendant. *Id.* at 280. Not only was the use of a special verdict completely in the Trial Court's discretion, but the defendant also failed to show any prejudice because of the Court's refusal. *Id.* (quoting 5A C.J.S. Appeal & Error § 1762(b), at 1136 (1958)) ("Error in the refusal to submit special interrogatories or special issues to the jury will constitute ground for reversal only if prejudice results to the complaining party."). Here, since the evidence did not support the SOL defense, and JLS did not argue SOL to the jury, it cannot show prejudice. Thus, there is no error which warrants JNOV and/or a New Trial on these grounds.

4. SOL is Irrelevant Because JLS Failed to Challenge Plaintiff's Verdict Against Horton

Lastly, this Court correctly found that JLS's SOL defense was inapplicable until after the jury returned a verdict against Horton. Trial Trans. 246:5-10 ("[T]he [SOL] would go toward the negligence claim against D.R. Horton"). The jury returned a $15,000,000 verdict against Horton which, as mentioned earlier, JLS failed to challenge in its JNOV Motion. *See supra* Section II. JLS has therefore also waived its ability to argue the applicability of the SOL to this verdict. *See Mende v. Conway Hosp., Inc.*, 304 S.C. 313, 315, 404 S.E.2d 33, 34 (1991) (conduct that is inconsistent with the intention to insist on the SOL constitutes waiver of the defense). The JLS SOL was only applicable to Horton's claim against JLS. Here, there was no evidence that Horton knew of the defects (as it thought they had been repaired), until it was served with this suit on January 15, 2020.

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B. The Defect, Damage, and Repair costs evidence, along with JLS's Concession that it Worked on 46% of Homes, Supports the Verdict

JLS stipulated that it completed 46% of Class homes. Dr. Whitlock further testified that it was JLS's duty to comply with the Code; JLS worked on 46% of these houses; and he calculated 9.2M as 46% of the 20M he estimated was necessary for the stone, brick and concrete repairs. Trial Trans. 206:24; 207:7-13; 209:6-210:1; 210:13-212:8; 229:9-18; 231:19-23.

It was JLS's burden, not Plaintiff's, to show the jury "any differences" – JLS did not meet its burden. In fact, the only exhibit JLS attempted to enter as to this point was an incorrect chart that was prepared by counsel which the Court rightfully excluded. *See* JLS's JNOV Motion & Memo, Ex. D (Ex. D is NOT in evidence). JLS did not, and still does not, challenge the Court's exclusion of this chart.

JLS's oft-repeated attempts to discredit Dr. Whitlock's damage model and repair estimate is **not** a question of law for this Court and therefore not legitimate ground for JNOV. JLS's JNOV Motion & Memo, p. 8. Dr. Whitlock was qualified as an expert in "repair estimation" **without objection** from JLS (or Horton). The accuracy of Dr. Whitlock's methodology, home classifications, repair numbers, etc., therefore became a question of fact for the jury and the jury decided that JLS was liable for $4,000,000 of the damages. *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 425, 717 S.E.2d 765, 776 ("We find no abuse of discretion. . .in admitting this [expert] testimony. . .[T]he court recognized Appellants' argument to exclude the testimony was based on a belief that the damages suffered by each type of owner were different. The trial court found the basis of Appellants' attack on DeSantis was the believability, rather than the admissibility, of his testimony. The court noted the different methodologies used by the parties' experts. . .The trial court found both methodologies to be appropriate measures of loss of use.").

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There is no error of law here and the evidence, again, supports the verdict notwithstanding JLS's disagreement with the result.

C. Horton is an Assignor and Not a Sham Defendant

This Court correctly ruled that the "deceptive" part of a sham defendant is non-existent here and properly excluded Plaintiff's Covenant Not to Execute with Horton:

> [I]n my reading of the *Poston* case, Mr. Lucey, you correctly pointed out there's a stipulated setoff. But also, **the existence of the settlement itself was denied the jury in that case,** the actual covenant itself, but the language that the Court used did not go toward the – it wasn't a matter of the amount. It says as a result, the jury was denied information to which it was entitled as to the sources of renumeration available to the Plaintiff and by who such renumeration would be paid. **The amount of the settlement was not an issue**. . .**I'm going to find in this case that the settlement – the jury is aware of DR Horton's existence**. The jury is aware DR Horton was contesting the case, and the jury is aware that DR Horton wants it settled, so the deceptive part of the case that the Court in the Poston case found there to be a sham defendant is not present in this case, and it can be distinguished from our situation, so I'm going to deny [JLS's] motion.

Trial Trans. 107:1-20 (emphasis added).

The well settled rule in South Carolina, as this Court recognized, is that insurance and settlements should not be infused into a trial. Rules 408 and 411, SCRE. The infusion of insurance and settlements into a trial is extremely prejudicial and usually outweighs any probative value. *Id.; see also Pier View Condominium Association, Inc. v. Johns Manville, Inc.*, 2019 WL 13112011, *5-6 (D.S.C. 2009). ("[T]here is no reason, for the purposes of [S.C. Code Ann. § 15-38-50] to order the disclosure of the amount of the credit **until a verdict** finding liability on the part of [defendant] has been reached") (emphasis added) (internal citations omitted).

JLS is trying to overturn this traditional rule by relying on *Poston.* JLS's JNOV Motion & Memo, p. 7 (citing *Poston v Barnes*, 294 S.C. 261, 265, 363 S.E.2d 888, 890 (1987)). However, *Poston* involved a "deceptive," "secret" agreement that the jury was entirely unaware of which is the opposite of what occurred at this trial. Here, the jury was fully informed that Plaintiff and

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Horton had resolved their differences, and that Horton's claim had been assigned to Plaintiff. Trial Trans. 273:23-25; 277:16-278:16.

This Court's refusal to allow the amount of the settlement into evidence was therefore not an error. In fact, the Court's ruling was consistent with Rules 408 and 411, SCRE, and the rulings of our Supreme Court following *Poston. See, e.g., Scott by McClure v. Fruehauf Corp.*, 302 S.C. 364, 368, 296 S.E.2d 354, 356 (1990) (finding that defendants' reliance on *Poston* was "misplaced" where plaintiff released a tire manufacturer and proceeded to verdict against a trailer manufacturer and supplier because tire manufacturer's release did not affect the remaining parties' liability to plaintiff); *Vaughan v. City of Anderson*, 300 S.C. 55, 58, 386 S.E.2d 297, 299 (1989) (finding defendant "did not remain a defendant under the guise of a settlement agreement as described in *Poston"*); *Ackerman v. Travelers Indemnity Co.*, 318 S.C. 137, 146-47, 456 S.E.2d 408, 413 (Ct. App. 1995) (recognizing the validity of a Covenant Not to Execute similar to what Horton and Plaintiff entered here). JLS has not offered a compelling reason for this Court to contravene these evidentiary Rules or the current law of this State.

1. JLS Got What It Asked for by Telling the Jury About Plaintiff and Horton's "Settlement"

As an additional sustaining ground, after the Court informed the jury that some matters had been resolved, it was JLS who told the jury about the settlement and JLS cannot now complain about any judicial error in failing to disclose the existence of a settlement. JLS stated to the jury in closing:

> [W]e got caught a little by surprise when D.R. Horton **settled** the case yesterday . . . But let's think about this, DR Horton, America's number one builder built this neighborhood, **settled out yesterday, and is now asking you to make my client pay them** when they had all the control, provided all the design, all the responsibility, and we did only what they asked us to do. . .So, what I'd ask for you guys to do at the end of the day, is when you go down through here and look at it, if you decide to award damages, a nominal amount over to DR Horton. Again, this

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> is not going to Plaintiff, but for the claims that have been assigned. **But we are talking about DR Horton against JLS . . . So, at the end of the day, guys, I would ask that you think about whether or not you're going to award damages against JLS at all, and then if you do, I would ask for a nominal amount.**

Trial Trans. 273:23-25; 277:16-278:16 (emphasis added).

The issue of settlement was therefore tried by consent to the jury. *See, e.g., Ellis v. Arkansas Louisiana Gas Co.*, 609 F.2d 436, 439-40 (10th Cir. 1979), *cert. denied*, 445 U.S. 964 (1980) (noting implied consent is found where the parties recognized that the issue entered the case at trial and acquiesced in the introduction of evidence on that issue without objection); *McCurry v. Keith*, 325 S.C. 441, 481 S.E.2d 166 (Ct. App. 1997) (finding that a party waived right to challenge evidence when party referenced the evidence in opening statements).

There is simply no basis for JNOV in this situation, where the jury is asked to allocate fault and damages between two parties, and then does so, based upon evidence the presented, agreed upon jury charges, and an agreed upon verdict form. Trial Trans. 273:23-25; 277:16-278:16.

2. JLS Cannot Prove Prejudice Because it Can't Prove Its Entitlement to Any Damage Reduction

Under the Horton agreement, Plaintiff retained the right to allocate the settlement proceeds. Plaintiff informed the Court that the proceeds were being allocated to issues other than brick, stone, and concrete. Therefore, JLS was not entitled to a damage reduction for the amount paid by Horton, and the failure to inform the jury of this amount is of no moment. *Palmetto Pointe at Peas Island Condo. Prop. Owners Ass'n, Inc. v. Island Pointe, LLC*, 440 S.C. 190, 204, 890 S.E.2d 603, 610 (Ct. App. 2023), *reh'g denied* (Aug. 10, 2023) ("[a] plaintiff is entitled to allocate settlement funds in the most advantageous way to it, even if that may disadvantage a nonsettling tortfeasor").

3. Horton's Incapacity was Created by JLS

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To the extent that Horton was a "sham" Defendant, this was a condition created by JLS. The JLS contract provided for JLS to defend and indemnify Horton. When Horton resolved the claims against it, it tendered its remaining defense to the remaining defendants, on the record. Trial Trans 78:2-19. All other Defendants settled. And JLS refused to accept the defense of Horton, on the record. Trial Trans. 99:24-100:4. It was JLS's refusal to accept the defense that led to Horton becoming a pass through defendant.

However, as the existence of the Plaintiff-Horton settlement and assignment was disclosed to the jury, Horton was not a sham Defendant, and the jury was fully informed that JLS would only be responsible for its share of the verdict against Horton.[26]

V. The Remaining Grounds of JLS's JNOV Motion Are Not Preserved for Consideration

The remaining grounds set forth in JLS's JNOV Motion & Memo are procedurally improper because: (1) JLS failed to alert the Court as to their existence, (2) JLS raised the grounds, but the Court never ruled on them, or (3) JLS failed to raise them at all or at the appropriate time.

A. Grounds JLS Filed but Did Not Bring to the Court's Attention and Did Not Argue

JLS's written DV Motion filed on September 14th was never brought to the attention of Plaintiff or the Court. This undisclosed Motion had JLS's only argument relating to the SOR. JLS never alerted the Court to, or argued its SOR ground, at trial;[27] and JLS's failure to do so bars JLS from now arguing this ground to warrant JNOV.

[26] As an aside, the remaining Defendants' carriers also failed to assume the defense, which is a matter being addressed in a pending coverage action.

[27] It goes without saying that during trial, the Parties and the Court are working night and day on what is occurring in the Courtroom and are not necessarily monitoring online filings, especially with so many parties involved, motions to reconsideration and appeals getting filed, settlements getting filed, and so many parties and activities.

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B. This Court Never Ruled on JLS's Unargued *Stoneledge* Ground and This Ground Was Waived by the Agreed Upon Verdict Form

The only indemnification ground raised by JLS at trial was its motion to stay, not for a directed verdict. Its only relationship to JLS's JNOV i Ground No. 1 is that they both referenced "indemnity," but in different contexts. One referenced *Stoneledge*.[28] **The Court never ruled on the motion to stay the indemnity claim (and never ruled on the non-existent motion for a directed verdict based upon Stonelege)**.[29] In fact, JLS's counsel conceded this on the record:

> It's been brought to my attention, I think I may want to make some modifications or some suggested changes with – so there's – and this depends on your ruling on the Stoneledge issue. . .**Now, your Honor hasn't ruled**. . .

Trial Trans. 242:21-243:7 (emphasis added). The Court never ruled on the "*Stoneledge* issue" after this comment by JLS, and JLS failed to ask for a ruling during trial or to bring that to the Court's attention through a Rule 59(e) Motion.

To the extent this issue was even raised, an issue that is raised, but not ruled upon, is preserved **only** if the party raises the **same issue** in a Rule 59(e) Motion.[30] *Wilder Corp. v. Wilke*, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting that proper use of a Rule 59(e)

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[28] While JLS did once state ("[W]e would move, based on *Stoneledge*, to have all causes of action kicked out with the exception of indemnity. . . (Trial Trans. 241:18-23), it did so for a nano second in the middle of its SOL argument, and never made it clear, as required by Rule 50, SCRCP, that it was moving for a different directed verdict. This confusion of issues by JLS is confirmed by the Court's subsequent ruling: "Again, the Court has heard the statute of limitations argument, and I deny that motion…" (Trial Trans. 242:10-11).

[29] Prior to Phase II, JLS made a different indemnity-related Motion that is also unpreserved for many reasons. JLS asked the Court to proceed with equitable indemnity, but to stay contractual indemnity because of an appeal of an unrelated subcontract. Trial Trans 102:1-16. JLS's Motion to Stay is distinct from a Motion for DV, and JLS does not argue this stay ground mentioned at trial in its JNOV Motion. This Court also never ruled on its Motion to Stay and JLS never filed a Rule 59(e) Motion asking this Court to so rule. Plaintiff addresses the unpreserved status of this back up issue in an abundance of caution should JLS attempt to argue it.

[30] JLS's JNOV Motion is the only Motion pending and is based entirely on "Rule 50". JLS's JNOV Motion & Memo, p. 7.

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motion is to preserve issues raised to but not ruled upon by the trial court); *Walsh v. Woods*, 371 S.C. 319, 325, 638 S.E.2d 85, 88 (Ct. App. 2006) (finding issue on appeal was not preserved because the trial court did not rule on the issue and it was not raised in a Rule 59(e) motion).

JLS's inclusion of this unruled upon ground and other unraised grounds in its Motion is therefore improper and this Court is procedurally precluded from deciding these grounds now.

C. Grounds JLS Failed to Raise at All

JLS is equally barred from seeking JNOV as to seven other grounds it asserts in its JNOV Motion because JLS did not raise them at any time to the Court; and is barred from seeking JNOV based upon the Court's failure to decertify the Class because JLS failed to raise this issue at the close of evidence. *Roland v. Palmetto Hills*, 308 S.C. 283, 286-87, n. 2, 417 S.E.2d 626, 628, n. 2 (Ct. App. 1992) (stating "[a] motion for judgment notwithstanding the verdict is a renewal of the directed verdict motion and cannot raise grounds beyond those raised in the directed verdict" motion).[31]

The below-listed grounds set forth in JLS's JNOV Motion & Memo were not raised by JLS at trial:

- JLS Grounds 2- 3 concerning indemnification;
- JLS's Ground 4 concerning the comparison between JLS's subcontract and Galloway-Bell's subcontract;
- JLS's Ground 7 concerning the plan and specification deficiencies;
- JLS's Ground 9 concerning evidence of masonry and concrete failures;

[31] Rule 50(a), SCRCP ("A motion for a directed verdict shall state the specific grounds therefor."); *In re McCracken*, 346 S.C. 87, 93, 551 S.E.2d 235, 238 (2001) (finding JNOV claim unpreserved because counsel "made only a general directed verdict motion" without stating "specific grounds" supporting the motion); *see also RFT Mgmt.*, 399 S.C. at 331, 732 S.E.2d at 170-71 ("[O]nly the [specific] grounds raised in [a] directed verdict motion may properly be reasserted in a JNOV motion.").

- JLS's Ground 10 concerning a purported lack of standing; and,[32]
- JLS's Ground 13 regarding a set of plans that JLS entered into evidence**.**

None of these grounds set forth in JLS's post-trial JNOV Motion are procedurally valid. While Ground 11 concerning decertification was raised by JLS when Plaintiffs rested, it was not renewed at the close of evidence. Even if any of the foregoing exceptions were raised and preserved, each of the grounds fails on the merits as set forth in the sections below.

VI. All Procedurally Improper Grounds Fail on the Merits Anyway

Even if JLS had properly preserved these grounds, all of them fail on the merits as explained below:

A. Indemnity Ground 1 – *Stoneledge*

Any error this Court ***may*** have committed in failing to convert or collapse Horton's breach of implied warranty claim into indemnity, or vice versa, is harmless for three principal reasons. *State v. Byers*, 392 S.C. 438, 448, 710 S.E.2d 55, 60 (2011) ("Error is harmless when it could not reasonably have affected the result of trial"). First, as mentioned above, JLS failed to ask the Court to rule specifically on this issue after JLS raised it, and therefore, it is not preserved. Second, the issue of whether JLS was liable under a warranty and/**or** indemnity theory was tried by consent to the jury as evidenced by the un-excepted jury charges, which are now the law of the case[33], and

[32] JLS claims Plaintiff "had no standing to claim to bring a breach of implied warranty claim against JLS." South Carolina courts have recently held a party may not attempt to raise standing when the issue was not properly before, and ruled upon by, the trial court. *See James v. Anne's Inc*., 390 S.C. 188, 193, 701 S.E.2d 730, 732-33 (2010) ("However, when a party belatedly attempts to raise the issue of standing, our courts have applied error preservation principles and held that the matter was not preserved for review when the trial court was not given the first opportunity to rule on the issue."). Even assuming JLS can procedurally raise "standing", the result remains the same because, substantively, Horton's claims became Plaintiff's claims as Horton's assignee. *See infra* Section VI(G).

[33] "The failure to object to a jury instruction makes the charge the law of the case." *Hope Petty Motors of Columbia, Inc. v. Hyatt*, 310 S.C. 171, 175, 425 S.E.2d 786, 789 (Ct. App. 1992).

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the agreed upon verdict form. Third, this Court charged the jury as to both a general contractor's and subcontractor's liability for building code violations and ultimately the jury found JLS liable. *See* Trial Trans. 283:1-302:2 (Jury Charges).

Further, JLS is misinterpreting the *Stoneledge* decisions. *Stoneledge* does not stand for the proposition that a breach of implied warranty verdict, such as the one here, goes away entirely if the jury did not find the defendant also liable for indemnity. Rather, *Stoneledge* provides that the breach of implied warranty claim morphs into the indemnity claim such that a verdict rendered on either claim is the same thing – an indemnity verdict. *See, e.g.*, *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 636, 776 S.E.2d 434, 438 (Ct. App. 2015) (citing *South Carolina National Bank v. Stone*, 749 F.Supp. 1419, 1433 (D.S.C.1990)) (emphasis added) ("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.").

B. Indemnity Grounds 2 and 3 – *Concorde and Cumberland*/Anti-Indemnity

As previously briefed and argued by Horton, JLS's Subcontract violates neither *Concord & Cumberland* nor the Anti-Indemnity Statute because it specifically excludes losses caused by the sole negligence of Horton and it clearly sets for the indemnity applies to joint causation even when Horton is the contributing party.

In *Concord & Cumberland*,[34] the court of appeals considered a scenario where the general contractor, Superior Construction, sought indemnification from its window installation subcontractor, Muhler, against damages arising from both (a) the negligence of the subcontractor,

[34] *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018).

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and (b) the concurrent negligence of Superior (the general contractor) itself. The circuit court found that the indemnification provisions of the Subcontract Agreement were not sufficiently "clear and unequivocal" as to require Muhler to indemnify Superior for Superior's own negligence. However, the circuit court specifically determined that those indemnity provisions did in fact obligate the subcontractor, Muhler, to indemnify the general contractor, Superior, against claims and damages resulting from the work performed by Muhler.

The court of appeals affirmed the determination of the circuit court, finding that, although the indemnification provision of the relevant subcontract agreement was not sufficiently clear and unequivocal to require indemnification against the general contractor's own negligence, **such indemnification provision nonetheless obligated the subcontractor to indemnify the general contractor against liability for loss or damage caused by the negligent acts or omissions of the subcontractor**. The court stated specifically that the "indemnity obligation" of the indemnitor/subcontractor Muhler, "extends to losses Muhler only causes in part, but does not clearly and unambiguously require Muhler to indemnify for the negligence of others…"

The indemnity provision agreed to by the parties here provides for indemnification in favor of Horton, for damages caused solely by JLS or concurrently caused by JLS and Horton. JLS attempts to make the indemnity provisions appear more complicated than they are by separating them into five clauses and leaving out clarifying clauses which are averse to its argument. *See* JLS's Motion & Memo, pp. 3-4.

First, JLS cherry picked a line from paragraph 6.4 of the contract which read in full provides:

> 6.4 Indemnity. To the fullest extent allowed by the law, [JLS] will agree to indemnify, defend, and hold [Horton] harmless from all actions, claims, investigations, or other acts to enforce such laws or regulations, and further agrees to indemnify [Horton] from the payment of any fine, penalty or damages imposed,

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> levied, assessed, or found **as a result of the [JLS]'s failure** to comply with or adhere to the applicable laws and regulations, **or from [JLS]'s failure** to cause its employees or subcontractors to comply with such laws and regulations.

Pl. Ex. 1.8, JLS Subcontract ¶ 6.4 (emphasis added). Nowhere in this clause does it state JLS is responsible for indemnifying Horton for payment of damages because of **Horton's failure** – only because of JLS's failure.

Next, the "competing clauses" that JLS maintains are in its contract are found within one paragraph that collectively provides:

> **10.1 GENERALLY . . . ANY AND ALL DEMANDS, CLAIMS, ACTIONS, CAUSES OF ACTION, . . . 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 [HORTON].* SUCH LOSES SPECIFICALLY INCLUDE, BUT ARE IN NO WAY LIMITED TO LOSSES ARISING OUT OF OR ATTRIBUTABLE TO: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, CONVENANTS OR OBLIGATIONS *OF [JLS]* SET FORTH THEREIN; (2) THE WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED *BY AGENTS AND EMPLOYEES, AND/OR ALL OTHER ENTITIES OVER WHOM [JLS] MAY EXERCISE CONTROL* (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "[JLS]'S AGENTS"); (3) ANY NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION *OF [JLS] AND/OR [JLS]'S AGENTS*; OR (4) ANY NELIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF [HORTON] *RELATED IN ANY WAY TO THE WORK. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE INDEMNITY FOR LOSSES CAUSED SOLELY BY FAULT OR NEGLIGENCE OF [HORTON].***

Pl. Ex. 1.8, JLS Subcontract ¶ 10.1 (bold and capitalization in original) (italics and underline emphasis added).

The first emphasized portion of this paragraph includes the language that JLS will indemnify Horton for damages "regardless of whether or not caused **in part** by [Horton]". This can **only** be read to mean: JLS will indemnify for losses related to JLS's work caused by (1) JLS alone, or (2) both JLS and Horton.

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The last portion of this paragraph (which JLS chose not to mention) states: **"NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE INDEMNITY FOR LOSSES CAUSED *SOLELY BY FAULT OR NEGLIGENCE OF [HORTON]."*** *Id.* (emphasis added). This indemnity paragraph clearly excludes claims arising out of Horton's sole negligence and therefore does not violate either *Concord & Cumberland* or the Anti-Indemnity Statute[35] and is distinguishable from the provisions at issue in former Horton cases such as *D.R. Horton, Inc v. Builders FirstSource-Se. Grp., LLC*, 422 S.C. 144, 810 S.E.2d 41, (2018).[36]

C. Indemnity Ground 4 – Galloway-Bell

This Court already explained why JLS's indemnity ground based on the Galloway-Bell ruling is improper and misguided. The circumstances surrounding Galloway-Bell's dismissal are distinguishable from JLS's:

> Now, however, the Court would note the following, summary judgment was granted in this case because the only issue between the defendant and these third-party defendants [including Galloway-Bell] was that of contractual indemnity. It

[35] 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.

S.C. Code § 32-2-10 (emphasis added).

[36] In this case, the provision at issue provided that the subcontractor was to indemnify Horton for claims "related in any way to the work, even when the loss is caused by the fault or negligence of the indemnitee." *D.R. Horton, Inc v. Builders FirstSource-Se. Grp., LLC*, 422 S.C. at 148, 810 S.E.2d at 45 (emphasis added).

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> was a provision in the contract in which the defendant alleges the third-party defendant is bound to indemnify them for the sole negligence of the defendant because **there simply was no evidence in the record of any defective or negligent work by any of these defendants --** these third-party defendants. **That was conceded at the hearing by the defense**. There simply was no evidence . . .
>
> These third-party defendants are not similarly situated to the other third-party defendants **in that there is some evidence in the record of negligent work or defective work by these other parties. That's a jury question**. And it also changes the nature of the indemnification issue, so they are not similarly situated.

Pre-Trial Hearing Trans. 25:16-26:10 (emphasis added).

D. JLS's SOR Argument (Ground 6) Fails Because It Did Not Argue Its SOR Ground; JLS Contractually Extended the SOR for 10 Years; JLS Failed to Meet its SOR Evidentiary Burden; and Exceptions Bar the Applicability of the SOR

The word "repose" does not appear on the transcript once during the two days of trial that JLS actively participated in. The only time the SOR ground was raised was in JLS's written September 14, 2023 DV Motion – which was never brought to the attention of the Court or ruled upon. JLS cannot properly raise this argument now. Plaintiff nevertheless addresses why JLS's SOR[37] argument also fails on the merits below.

1. JLS Contractually Extended the SOR by Virtue of Its Contract with Horton

[37] The applicable SOR in this case provides:

> No actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than eight years after substantial completion of the improvement. . . .
>
> . . .
>
> Nothing in this section prohibits a person from entering into a contractual agreement prior to the substantial completion of the improvement which extends any guarantee of a structure or component being free from defective or unsafe conditions beyond eight years after substantial completion of the improvement or component.

S.C. Code § 15–3–640 (emphasis added).

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As discussed above in the SOL context, JLS contractually agreed to extend the warranty obligations it owed to Horton for **ten (10) years** and also agreed that "**all express and *implied* warranties** shall remain in full force and effect **for so long as** [Horton] is obligated to warrant the Work pursuant to applicable law. . ." Pl. Ex. 1.8 (emphasis added).

JLS therefore extended any SOR applicable to Horton's breach of implied warranty claim against JLS here. *See supra* Section IV(A)(1); *see also* S.C. Code § 15–3–640 ("Nothing in this section prohibits a person from entering into a contractual agreement prior to the substantial completion of the improvement which extends any guarantee of a structure or component being free from defective or unsafe conditions beyond eight years after substantial completion of the improvement or component.") (emphasis added); *In re Bldg. Materials Corp. of Am. Asphalt Roofing Shingle Prods. Liab. Litig.*, No. 3:11-CV-02784 JMC, 2013 WL 1316562, at *4 (plaintiff's negligence and breach of express and implied warranty claims survived defendant's SOR defense because the parties contractually extended the SOR).

Accordingly, JLS remains liable to Horton for breach of implied warranty for ten years from the applicable date of completion. The earliest certificate of occupancy that is in evidence in this case is dated July 7, 2013. *See* Pl. Ex. 49, 104 Sturbridge CO. Thus, ten years from the earliest substantial completion date is July 7, 2023, meaning all warranty claims against JLS were brought well within the ten-year period, whether this Court uses the Complaint date, September 25, 2019, or the JLS Answer date, March 9, 2022.

2. JLS Does Not Challenge the Exclusion of Its "Vendor Spend Summary"

Although the foregoing proves dispositive, JLS has failed to present any evidence actually showing that these homes were "completed" more than eight years before this lawsuit was filed.

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The only evidence JLS proffered on this point was a "Vendor Spend Summary" its Counsel created that purportedly included JLS's "last payment dates". *See* JLS's JNOV Motion & Memo, Ex. D. This Summary, however, **was never entered into evidence and JLS does not challenge its exclusion**.[38]

3. The Stipulated Vendor Spend Does Not Show JLS's Completed Work Date

JLS's SOR argument still fails considering only the stipulated Vendor Spend. Pl. Ex. 247. JLS tries to equate the "final payment date" listed on this Vendor Spend with "JLS' completion of work"; however, the testimony provided at trial by Horton superintendent, Keith Waddell, indicated that the time Horton "finally paid" its subcontractors varied drastically depending on the subcontractors' warranty obligations. JLS therefore cannot rely on the Stipulated Vendor Spend or last payment dates to meet its burden to show when it "completed its work".

4. The Certificates of Occupancy and Warranty Agreements in Evidence Show Work was "Completed" within Eight Years of These Claims

JLS's argument further fails considering the certificates of occupancy and warranty agreements related to four homes that are in evidence.

Three of these homes were issued certificates of occupancy on the following dates:

- 204 Marshfield – 11/17/2016 (Pl. Ex. 7.2);
- 8 Duxbury – 12/11/2014 (Pl. Ex. 7.5); and,
- 107 Sturbridge – 3/17/2017 (Pl. Ex. 7.6).

[38] Even if JLS could rely on its own Summary now, it is inaccurate and unverified. For example, the "last payment date" listed for 28 Duxbury is 8/9/2012; however, the actual last payment date clearly listed on the Vendor Spend is 6/20/13. *See* JLS's JNOV Motion & Memo, Ex. C, D.

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JLS admittedly answered Horton's Complaint within eight (8) years of these dates. *See* JLS's JNOV Motion & Memo, p. 5 (admitting that JLS answered Horton's Complaint on March 9, 2022).

While the last home (Natalie Zitek's) was issued a certificate of occupancy in 2013, JLS repaired her home after this date. S.C. Code Ann. § 15-3-640 ("[A] certificate of occupancy issued by a county or municipality . . . shall constitute proof of substantial completion of the improvement under the provisions of Section 15-3-630, unless the contractor and owner, by written agreement, establish a different date of substantial completion.") (emphasis added). In this case, Horton and JLS agreed to a different date of completion based upon a Work Order between Horton and JLS that is in evidence showing a "Complete Date" of **June 1, 2014,** for repairs done at "104 Sturbridge." *See* Pl. Ex. 11.6, JLS Warranty Orders. JLS admittedly answered Horton's Complaint within eight (8) years of this date. *See* JLS's JNOV Motion & Memo, p. 5.[39]

5. The Evidence Showed That the Gross Negligence and Other Exceptions Applied to Bar the Application of the SOR

i. Gross Negligence Exception

The Gross Negligence or Reckless Exception provides that the SOR cannot be asserted by "any person" who is grossly negligent or reckless:

> The limitations provided by Sections 15-3-640 through 15-3-660 are not available as a defense to a person guilty of fraud, gross negligence, or recklessness in providing components, in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, planning, supervision, testing or observation of construction, construction of, or land surveying, in connection with such an improvement. . .

[39] This Court, however, need not get into the minutiae of these closing files and warranty records for SOR purposes because all four homeowners are original purchasers of their homes; and, JLS warranted that its work for original purchasers would remain defect free for ten (10) years. Pl. Ex. 1.8.

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S.C. Code § 15–3–670(A) (emphasis added). This exception further provides: "[T]he violation of a building code. . .may be admissible as evidence of fraud, negligence, gross negligence, or recklessness." S.C. Code § 15–3–670(B) (emphasis added) *See, e.g., Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 71, 651 S.E.2d 305, 309 (2007) *quoting Steinke v. S.C. Dep't of Labor, Licensing & Reg.*, 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999) ("Gross negligence is defined as the failure to exercise slight care. It has also been defined as 'the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.").

Here, JLS's own expert admitted that many building code violations exist in the masonry work JLS performed at these homes. Trial Trans. 132:1-4 (JLS's expert conceding that all stone veneer needed to be removed and replaced due to its defective condition). This admission, alone, is proof of gross negligence by JLS, barring JLS from using the SOR defense for any claims.

ii. Latent Damage Exception

The Latent Damage Exception provides that the SOR does not apply to "actions for property damage" in instances, like here, where the property damage is latent and the result of repeated exposure to an injury-producing substance:

> The limitation provided by Section 15-3-640 may not be asserted as a defense to an action for personal injury, including a personal injury resulting in death, or property damage which is:
>
> (1) by its nature not discoverable in the exercise of reasonable diligence at the time of its occurrence; and
>
> (2) the result of ingestion of or exposure to some toxic or harmful or injury producing substance, element, or particle, including radiation, over a period of time as opposed to resulting from a sudden and fortuitous trauma.

S.C. Code § 15–3–670(C) (emphasis added).

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Here, there is evidence in the record that radon gas, the leading environmental cause of cancer, is potentially intruding into the interior of these homes. *See* Nat'l. Ctr. for Envtl. Health, *Radon and Your Health*, cdc.gov (Jan. 4, 2023). Plaintiff's expert, Dr. Whitlock, testified that radon could enter the homes through the cracks in concrete foundations that JLS improperly installed, and this was particularly problematic in this case because Anderson County is a radon "hot bed". *See also* Pl. Exs. 25.17, 25.19, 25.28, 243 (Whitlock concrete/foundation crack photos). In fact, Dr. Whitlock was so concerned that he issued a Life Safety letter alerting the homeowners of the Radon risk in their homes.

Radon is "invisible"[40] and, as a carcinogen, it qualifies as an "injury producing substance, element, or particle, including radiation" based on the plain language of the statute. The damage caused by Radon exposure also occurs "over a period of time as opposed to resulting from a sudden and fortuitous trauma" as required by the statute. *See id.* ("[W]hen you breathe in radon gas, radioactive particles can get trapped in your lungs. Over time, these radioactive particles increase the risk of lung cancer. It may take years before health problems appear.").

The Latet Damage exception therefore bars JLS from asserting the SOR as a defense.

6. JLS Failed to Assert the SOR to the Court or the Jury and Failed to Submit a Special SOR Interrogatory After Verdict

Not only did JLS fail to move for a direct verdict on the statute of repose, it also failed to request a jury charge on it or ask the jury to consider it or rule upon it. This results in a complete waiver or abandonment.

E. The Jury Decided JLS's Liability Based on the Evidence as a Whole – Not Just the Plans and Specifications (Ground 7)

[40] *See Radon and Your Health* ("Radon is an odorless, invisible, radioactive gas").

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JLS's argument that it is not responsible for defects in the plans and specifications is also without merit. The jury was presented with evidence regarding which defects were installation defects, design defects, or both; and the jury ultimately concluded, after consideration of any design issues/Horton liability, that JLS was still liable for $4,000,000.

This evidence, for example, included Horton's expert, Steve Moore, who testified that the plans and specifications provided to the subcontractors were "adequate" and that subcontractors had a duty to follow up with Horton if they had any questions or concerns. The evidence also included JLS's own admissions such as:

- JLS "assumed the plans were correct" and "wouldn't say anything" if they were not. (De La Torre Depo. Trans. 75:9-76:9);
- JLS "did not know" applicable codes for brick height, flashing, and movement joints. (De La Torre Depo. Trans. 76:25-77:3; 86:9-21; 115:2-11);
- JLS "did not measure" any brick ties. (De La Torre Depo. Trans. 80:17-18); and
- JLS conceding that excessive mortar slop, improper lintel bearings, flashing that does not run to daylight, and stone adhered to brick are all defective conditions that exist at Rose Hill. (De La Torre Depo. Trans. 112:8-21; 113:1-11; 120:25-121:5; 131:11-17).

The evidence further included JLS's subcontract which states:

> **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 standards, **and warrants that the Work will meet or exceed…all laws (statutory or common) and regulations, and any applicable building code requirements.**

Pl. Ex. 1.8 (emphasis added).

The evidence also included Dr. Whitlock's testimony regarding the Horton-JLS dual responsibility for most masonry defects.

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There is **no** evidence suggesting that "JLS is not responsible for the consequences" of its **admitted** failure to meet these building code requirements. JLS's JNOV Motion & Memo, p. 5. In fact, Dr. Whitlock testified, and Mr. Hodgin conceded, that the building code provides that each person and contractor and subcontractor on site is individually responsible for complying with the code. And this building code provision was charged to the jury and is the law of the case. The fact that Horton violated the building code does not relieve JLS of its responsibility for installing its trade in violation of code. Trial Trans. 143:3-6. JNOV is therefore improper on this ground.

F. Concrete Claims (Grounds 9 and 13)

All of JLS's arguments challenging evidence or testimony, including Grounds 9 and 13, fail because JLS failed to raise these grounds in any DV Motion, *see supra* Sections I and V, and also failed to challenge the relevant evidence and testimony at trial. JLS belatedly alleges JNOV should be granted as to concrete claims because of a lack of "testimony that any cracks exceed the industry standards or that any of the cracks were caused by any defect in the installation." JLS's JNOV Motion & Memo, p. 6. JLS goes on to allege that Plaintiff's only "criticism of the concrete cracks is that they are allowing radon into homes." *Id.* JLS then boldly claims that "the only testimony on this issue is that the radon was supposed to be handled by a sheet of vinyl installed under the concrete, but not by the concrete installer." *Id.*

JLS is grossly mischaracterizing the testimony and evidence that was presented at trial regarding the concrete cracks. During Dr. Whitlock's multiple days of testimony, he testified that the cracks in the concrete allow radon to enter the homes, rending the radon systems ineffective. He further testified that the EPA recommends these cracks be sealed to prevent radon infiltration. Plaintiff entered hundreds of photos into evidence of concrete cracks. *See, e.g.*, Pl. Exs. 25.17, 25.19, 25.28, 243 (Whitlock concrete/foundation crack photos).

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Regarding Ground 13, Dr. Whitlock did not contradict "this Court's order to not base his concrete criticisms on plans" because Dr. Whitlock avoided the topic until JLS entered the 2018 plans detailing radon system installation and reopened the door for his testimony. *See* Pl. Ex. 15.3. JLS opened the door on this issue, and this precludes JNOV in JLS's favor. Not surprisingly, the 2018 Horton plans entered into evidence by JLS confirm that the concrete cracks must be sealed for an effective radon control system – echoing Dr. Whitlock's testimony.

G. Standing (Ground 10)

JLS's "standing" argument is nothing more than another "indemnity" argument and should be rejected for the reasons outlined previously. *See supra* Section VI(A)-(C). Substantively, Horton has standing to sue JLS for breach of warranty because it is hornbook law that **any** contractor who performs work impliedly warrants that work to be merchantable, fit, and workmanlike. *See, e.g.*, *Kennedy v. Columbia Lumber and Mfg. Co., Inc*., 299 S.C. 335, 344, 384 S.E.2d 730, 736 (1989) ("[A] builder who contracts to construct a dwelling impliedly warrants that the work undertaken will be performed in a careful, diligent, workmanlike manner."). Additionally, Plaintiff was assigned all of Horton's claims against JLS, thus standing exists by virtue of that assignment. *Fowler v. Hunter*, 380 S.C. 121, 126-27, 668 S.E.2d 803, 806-07 (Ct. App. 2008) (finding that it was erroneous to dismiss a claim on the basis that the claim was assigned by virtue of a settlement agreement).

JLS's new focus on constitutional standing, and specifically, its "redressable" prong is equally misplaced.[41] First, JLS never raised this issue in any DV Motion. Trial Trans. 101-108:21; 238:2-15; 240:5-20; 241:14-23. Second, JLS cites no authority supporting its argument. JLS's

[41] JLS maintains that because Horton does not own these homes and cannot force the homeowners to fix their homes that Horton does not have standing to sue JLS for breach of implied warranty. JLS's JNOV Motion & Memo, p. 7.

JNOV Motion & Memo, pp. 6-7. Third, JLS is wrong that "redressability" somehow requires proof that Horton can fix these homes for it to have standing to bring a breach of warranty claim against JLS. *Id.* at p. 7. The only thing that Horton must prove is that the injury suffered will "likely be redressed by a favorable decision". *Joseph v. S.C. Dep't of Labor, Licensing & Regulation*, 417 S.C. 436, 449, 790 S.E.2d 763, 770 (2016) (plurality opinion) (quoting *Sea Pines Ass'n for Prot. Of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001)) (to satisfy redressability, "it must be likely, as opposed to merely speculative, that the injury will be 'redressed by a favorable decision.'"). The jury's verdict finding JLS liable for $4,000,000 is a favorable decision "redressing" some of Horton's $15,000,000 injury. *See* 9/15/23 Verdict Form.[42]

Of course, the entirety of this JLS argument ignores that Horton was only granted a covenant, and it suffered a substantial verdict. Of course, Horton had standing, and it legitimately assigned its claims to Plaintiffs.

8. Decertification (Ground 11)

JLS's decertification argument in its JNOV Motion is different than its one-line argument made repeatedly throughout this trial. These new and different grounds are precluded from this Court's consideration because they were never argued before by JLS. *See supra* Section V(C). The only decertification argument that JLS argued prior to the end of the case, concerned a portion of Natalie Zitek's testimony where she stated "she could not speak for the class" as to their homes' Zillow value (and/or similar). JLS claimed that somehow makes her an inadequate representative.

[42] JLS's argument incorrectly couches "redressability" in the context of the homeowners' injury as opposed to Horton's injury. Regardless, this result remains the same even if one analyzes redressability based on the homeowners' injury. There is a $15,000,000 unchallenged verdict which is a favorable decision "redressing" the homeowners $20,000,000 damage total requested during the JLS Phase of the trial.

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However, this Court rejected this argument many times and correctly clarified that JLS was taking the class representative's testimony out of context. Trial Trans. 86:21-87:11.

Finally, and as an additional sustaining ground, certification and decertification Motions are governed by Rule 23, SCRCP, not Rule 50, SCRCP. JLS's JNOV Motion is based solely on Rule 50, SCRCP and JLS failed to file a Rule 59(e) Motion relating to this Court's decertification denial within ten days of judgment.

VII. JLS Cannot Challenge the Jury's Verdict With its Motion for a New Trial for Similar Reasons as Above and Because the Verdict Falls Within the Damage Range Established by the Evidence

JLS's New Trial Motion is also substantively without merit for the same reasons as the JNOV Motion and because the jury's verdict is neither grossly excessive nor influenced by matters outside of what was presented during trial. JLS offers no "compelling reasons" as to why the Court should disturb the jury's verdict and therefore has not met its burden to show a new trial is warranted. *Chapman v. Upstate RV & Marine*, 364 S.C. 82, 89, 610 S.E.2d 852, 856 (Ct. App. 2005) ("Compelling reasons, however, must be given to justify invading the jury's province in this manner.").

JLS cannot meet its burden because the evidence, stipulated to by JLS, provided the jury with a total "damage range" between $1,700,000 and $20,000,000, and 46% of the work being performed by JLS. The jury's $15,000,000 verdict against Horton and $4,000,000 verdict against JLS both fall well within this range, and thus, are not "excessive". *Wright*, 372 S.C. at 36, 640 S.E.2d at 505 ("When a verdict falls within the range of the evidence, the courts will not disturb it on the ground of excessiveness."); *Collins Music*, 332 S.C. at 148, 503 S.E.2d at 482 (refusing to alter an award because the verdict was within the range of amounts given during testimony at trial); *Hawkins*, 328 S.C. at 601, 493 S.E.2d at 883 (finding damages award was proper because it was

within range of evidence presented during trial). As such, this Court should uphold the jury's verdict to effectuate the jury's express intentions.

It is apparent that the jury's verdict is not only within the damage range, but also reasonable based upon the law and evidence presented at trial. Further, there is no prejudicial error in the admission of any evidence and no prejudicial error in the un-excepted law charged to the jury. *See, e.g.*, Rule 51, SCRCP ("No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds for his objection."); *Dalon v. Golden Lanes*, 320 S.C. 534, 540, 466 S.E.2d 368, 372 (Ct. App. 1996) ("In order to warrant reversal for failure to give a requested charge, the refusal must be both erroneous and prejudicial.").

CONCLUSION

Based upon the foregoing, this Court should deny JLS's Motion for JNOV and/or New Trial.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

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November 2, 2023
Mount Pleasant, South Carolina

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

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

Plaintiff,

v.

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

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

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

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

JLS MASONRY, INC.'S NOTICE OF MOTION, MOTION TO RECONSIDER, AND MEMORANDUM IN SUPPORT THEREOF

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

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Third-Party Defendant JLS Masonry, Inc. ("JLS") moves this Court to reconsider its November 8, 2023, Order Denying JLS' Motion for Judgment Notwithstanding the Verdict (the "Order").

STANDARD OF REVIEW

Rule 59(e) of the South Carolina Rules of Civil Procedure exists to permit requests that a judge "reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). A party may file a Rule 59(e) motion when the party believes the court misunderstood, failed to fully consider, or failed to rule on an argument or issue. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004)

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ARGUMENT

I. The Order did not address JLS' arguments relating to *Stoneledge*,[1] D.R. Horton's standing to bring a claim for breach of implied warranties against a subcontractor,[2] *Concord & Cumberland*,[3] the South Carolina Anti-Indemnity Statute,[4] the Statute of Limitations,[5] the Statute of Repose,[6] that the settlement agreement's terms should have been disclosed to the jury,[7] or that DR Horton's claims were improperly treated as a de-facto class action claim against JLS.

a. D.R. Horton's claim for breach of implied warranty is conditioned solely on its potential liability for damages to Plaintiff, Natalie Zitek et al., making its implied warranty claims are merely disguised claims for indemnity.

In *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp., LLC*, 413 S.C. 615, 639, 776 S.E.2d 426, 439 (Ct. App. 2015), and *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Construction, Inc.*, 413 S.C. 615, 624, 776 S.E.2d 426, 431 (Ct. App. 2015), the Court of Appeals held a contractor cannot sue its subcontractor for a cause of action that is merely a disguised indemnification claim. To determine whether D.R. Horton, Inc.'s ("DR Horton") claims are disguised indemnity claims, the court must examine whether DR Horton's claims hinge on its liability to the plaintiff and whether DR Horton can demonstrate damages other than its potential liability to the plaintiff or costs to defend itself in the litigation. *Builders*

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[1] *Stoneledge at Lake Keowee Owners' Ass'n. Inc. v. Clear View Construction, Inc.*, 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015) and *Stoneledge at Lake Keowee Owners' Ass'n. Inc. v. Builders First Source-Se. Grp.*, 413 S.C. 630, 776 S.E.2d 434 (Ct. App. 2015).

[2] *Pres. Soc'y of Charleston v. S.C. Dep't of Health & Env't Control*, 430 S.C. 200, 210, 845 S.E.2d 481, 486 (2020); *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013).

[3] *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018), reh'g denied (Oct. 19, 2018).

[4] S.C. Code Ann. § 32-2-10 (2007).

[5] S.C. Code Ann. § 15-3-530; *Dean v. Ruscon*, 321 S.C. 360, 366, 468 S.E.2d 645, 648 (1996).

[6] S.C. Code Ann. § 15-3-640; *Lawrence v. General Panel Corp*., 425 S.C. 398, 405, 822 S.E.2d 800, 803; *see also Ocean Winds Corp. v. Lane Drywall and Plastering*, 347 S.C. 416, 419, 556 S.E.2d 377, (2001).

[7] *Poston v. Barnes*, 294 S.C. 261, 265, 363 S.E.2d 888, (1987).

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FirstSource-Se, 413 S.C. at 635–36, 776 S.E.2d at 437–38; *Clear View Construction*, 413 S.C. at 621, 776 S.E.2d at 429.

In its third-party complaint, DR Horton's breach of implied warranties claim relies on its liability to the plaintiffs. Third-Party Compl. at ¶¶ 121–124. Horton's allegations all begin with the plaintiffs' allegations against DR Horton—defective construction. DR Horton has not made and cannot show any separate or different claims of defective construction against JLS. Therefore, DR Horton's claims against JLS fail to demonstrate any liability other than DR Horton's own liability arising out of the Plaintiff's claims against it.

This Court must also examine whether DR Horton's alleged damages stem from its liability to the plaintiff. *See Builders FirstSource-Se*, 413 S.C. at 635–36, 776 S.E.2d at 437–38; *Clear View Construction*, 413 S.C at 622, 776 S.E.2d at 430. DR Horton has not and cannot demonstrate any damages other than its own liability to the plaintiffs. Third-Party Compl. at ¶ 124. DR Horton only pleaded it was "entitled to judgment against [JLS] for breach of express (sic.) warranties, along with costs, expenses, attorneys' fees, and other damages set forth above." Third-Party Compl. at ¶ 124. DR Horton did not even make a token attempt to claim damage to harm and reputation in its pleading, and DR Horton has failed to produce any evidence detailing any damage or harm in any way related to any breach of implied warranties other than its own liability to plaintiffs, and attorneys' fees and costs defending the action.

Therefore, DR Horton's claim for breach of implied warranty is improper under the *Stoneledge* cases.

b. DR Horton lacks standing to bring a claim for breach of implied warranties against its subcontractor.

A party must have standing to bring a claim. *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013). Standing requires a concrete and particularized injury,

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traceable to the allegedly unlawful actions of the opposing party, and that is redressable by a favorable judicial decision. *Pres. Soc'y of Charleston v. S.C. Dep't of Health & Env't Control*, 430 S.C. 200, 210, 845 S.E.2d 481, 486 (2020) (setting forth the three elements of constitutional standing).

DR Horton's claim for breach of implied warranties against JLS fails because DR Horton is not the party with a concrete and particularized injury causally connected to JLS that may be redressed by court decision. *See Youngblood*, 402 S.C. at 317, 741 S.E.2d at 518; *Pres. Soc'y of Charleston*, 430 S.C. at 210, 845 S.E.2d at 486. DR Horton does not own the homes at issue and cannot have any injury that is redressable by a favorable judicial decision—the injury was to the homeowners, not DR Horton. *See Youngblood*, 402 S.C. at 317, 741 S.E.2d at 518; *Pres. Soc'y of Charleston*, 430 S.C. at 210, 845 S.E.2d at 486. DR Horton cannot force the homes to be fixed, and monies awarded to DR Horton under this theory do not remedy any harm caused by the alleged conduct, JLS' defective work on the homes. *See Youngblood*, 402 S.C. at 317, 741 S.E.2d at 518; *Pres. Soc'y of Charleston*, 430 S.C. at 210, 845 S.E.2d at 486. The breach of implied warranty cause of action rests solely with the homeowners—not DR Horton—and DR Horton cannot properly bring that cause of action against JLS.

c. DR Horton's contractual indemnity provision is unenforceable under *Concord & Cumberland* and the South Carolina Anti-Indemnity Statute.

S.C. Code Ann. § 32-2-10 does not allow for the indemnification of the indemnitee's sole negligence. When a contract purports to indemnify the indemnitee for its concurrent negligence, it must be "clear and unequivocal" that the parties intended the indemnification of the concurrent negligence of the indemnitee. *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018).

JLS' contract with DR Horton contains indemnity provisions throughout the contract. The

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provisions set forth multiple confusing and contradictory positions, none of which meet the "clearly and unequivocally" standard to require JLS to indemnify DR Horton for its concurrent negligence. Moreover, those provisions impermissibly require indemnification for DR Horton's sole negligence as well. *See Concord & Cumberland*, 424 S.C. at 650, 819 S.E.2d at 172. The contract purports to require indemnification for "**all** actions, claims, investigations or other acts to enforce such laws or regulations . . . any and all demands, claims, actions, causes of action … 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] . . . any negligent, grossly negligent, and/or **intentional act** and/or omission of [DRH] related in any way to the work . . . [but] [n]otwithstanding the foregoing, nothing herein shall require indemnity for the losses caused **solely** by the fault or negligence of [DRH]." JLS Contract at ¶ 6.4 & ¶ 10.1. However, "[DRH] shall have the right, at its discretion and choosing, to defend **any and all claims** which may be asserted against, and contractor agrees to reimburse [DRH] for any and all expenditures which indemnitee may make or incur on account of **any** such claim." JLS Contract at ¶ 10.2.[8]

DR Horton's contractual indemnity claim fails to meet the "clear and unequivocal" standard set forth under *Concord & Cumberland* and requires indemnification for its sole negligence in violation of the anti-indemnity statute. *See id.*

d. DR Horton's claims are barred by the Statute of Limitations and/or the Statute of Repose.

[8] This Court previously determined that identical language contained in DR Horton's contract with another subcontractor, Galloway-Bell, did not meet the clear and unequivocal standard set forth in *Concord & Cumberland*. While this Court has made the distinction that there was no alleged wrong-doing on the part of Galloway-Bell, that consideration has no bearing whatsoever on the determination of the enforceability of a contractual indemnification provision purporting to indemnify an indemnitee for its own wrongdoing.

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The statute of limitations runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from wrongful conduct. S.C. Code Ann. § 15-3-530; *Dean v. Ruscon*, 321 S.C. 360, 366, 468 S.E.2d 645, 648 (1996). Furthermore, the statute of repose for substantial completion dates after July 1, 2005, requires claims to be brought within eight years of the date of substantial completion. S.C. Code Ann. § 15-3-640; *Lawrence v. General Panel Corp*., 425 S.C. 398, 405, 822 S.E.2d 800, 803; *see also Ocean Winds Corp. v. Lane Drywall and Plastering*, 347 S.C. 416, 419, 556 S.E.2d 377, 379 (2001) (holding the substantial completion date for the window installer was the day of the installation of windows was completed).

There is no affidavit of service filed with the Court for JLS; however, JLS filed its answer on March 9, 2022. Natalie Zitek testified that DR Horton attempted multiple repairs to her home's brick, starting as early as 2014. At that time, DR Horton was aware or should have been aware of a potential cause of action regarding its subcontractors who installed brick and stone at Rose Hill, including JLS. *See* S.C. Code Ann. § 15-3-530; *Dean*, 321 S.C. at 366, 468 S.E.2d at 648. March 9, 2022, is over three years from when DR Horton knew or should have known of a potential cause of action against JLS for its work at Rose Hill, and its claims should be barred by the statute of limitations.

As to the statute of repose, eight years prior to the filing of JLS' answer is March 9, 2014, thus setting the lower bound. The following homes have final payments issued to JLS before March 9, 2014:[9]

Duxbury Lane: 10, 18, 20, 22, 24, 26, 28, 29, 30, 32,

[9] These dates are pulled from the DR Horton Vendor Spend which was admitted into evidence at trial and stipulated to be true and accurate reflection of information contained therein. It is axiomatic that the payment to JLS follows performance of JLS' work at the house to which payment was issued for.

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Yount Court: 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111

Harwick Court: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16

Berwick Court: 101, 103, 105, 106, 107, 114, 116, 118, 120, 121, 122, 123, 124, 125, 126, 127, 128, 130, 132, 134, 136, 138, 140, 142

Chatham Court: 1, 3, 5, 6, 7, 8, 9, 11

Sturbridge Court: 101, 104

Kettering Court: 17, 2, 4, 6, 7, 8, 9, 11, 15,16, 19

Dartford Court: 2, 4, 6, 8, 9

Thus, similar to the window installer in *Ocean Winds*, JLS' work on these homes was substantially completed before May 9, 2014, and claims related to these homes are barred by the statute of repose. *See* S.C. Code Ann. § 15-3-640; *Lawrence v. General Panel Corp*., 425 S.C. at 405, 822 S.E.2d at 803; *see also Ocean Winds Corp. v. Lane Drywall and Plastering*, 347 S.C. at 419, 556 S.E.2d at 379.

e. The settlement agreement between Plaintiff and DR Horton should have been disclosed to the jury.

In *Poston v. Barnes*, 294 S.C. 261, 265, 363 S.E.2d 888, 890 (1987), the Supreme Court of South Carolina held that the settlement agreement between Poston and Barnes "should have been allowed into evidence to ensure that an equitable verdict was reached." In *Poston*, the plaintiff was involved in a three-vehicle accident. *Id.* at 262, 363 S.E.2d at 889. Prior to trial, the plaintiff and one defendant, Barnes, executed a covenant not to execute or proceed, which was not disclosed to the jury over the objection of the second defendant. *Id.* This agreement provided payment of $180,000 over a period of years, and required Barnes to remain a party to the action with the agreement that no judgment would be executed against Barnes for any amount over $500 the agreed upon settlement amount. *Id.* The Court held the agreement should have been *entered into*

evidence. *Id.* at 265, 363 S.E.2d at 890. The Court relied on a Florida case, where the Florida Supreme Court stated that "[t]he search for truth, in order to give justice to the litigants, is the primary duty of the courts. Secret agreements between plaintiffs and one or more of several multiple defendants can tend to mislead judges and juries, and border on collusion." *Id.* at 264, 363 S.E.2d at 890 (*citing Ward v. Ochoa*, 284 So. 2d 385, 387 (Fla. 1973)). The Court held that the agreement should have been allowed into evidence to "ensure that an equitable verdict was reached." *Id.*

Similar to the agreement in *Poston*, the agreement between Plaintiff and DR Horton, including the terms of such agreement, should have been allowed into evidence. The only way to ensure that a fair verdict was reached was for the jury to know the details of the agreement, including the amount paid by DR Horton to Plaintiff and other terms therein. *See id.* at 264, 363 S.E.2d at 890.

f. The Court improperly treated DR Horton's claims against JLS as a de-facto class action.

This Court certified the class action as to Plaintiff's claims against DR Horton and those claims alone but allowed DR Horton to present its case against JLS in a de-facto class action manner. DR Horton, relying on Plaintiff's expert witness Dr. Rhett Whitlock, could only establish damage existing at a handful of the homes—the homes that Dr. Whitlock specifically examined. DR Horton is not entitled to rely on the same presentation of damages as Plaintiff, wherein Plaintiff could extrapolate damages to the class by examination of only a sample of those houses. Dr. Whitlock specifically testified that he was unable to say what houses JLS worked on and the alleged damage at each of those houses. DR Horton failed to establish JLS' defective work at a majority of the homes throughout the Rose Hill community.

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II. The jury's verdict was unduly liberal or excessive and/or so grossly excessive that the amount awarded indicated the jury was moved by passion, caprice, prejudice, or other consideration not in evidence and the class should have been decertified.

a. The jury's verdict was unduly liberal or excessive and/or so grossly excessive that the amount awarded indicated that the jury was moved by passion, caprice, prejudice, or other consideration not in evidence.

When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial court alone has the power to reduce the verdict by the granting of a new trial nisi. *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 531, 431 S.E.2d 557, 558 (1993). Where the verdict is so grossly excessive or inadequate that the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other consideration not found in the evidence, it is the trial court's duty to set aside the verdict absolutely. *Id.* at 531, 431 S.E.2d at 558.

The jury awarded $4,000,000 to DR Horton against JLS. DR Horton failed to prove the existence of damage to the homes at Rose Hill. Instead, it improperly treated its claims as a de-facto class action against JLS. During cross examination, Dr. Whitlock testified he *did not know what homes JLS worked on*. T. Vol. II at p. 848:4–5.[10] Dr. Whitlock further testified that he could not say which homes that JLS worked on were basic, moderate, or complex. T. Vol. II at p. 850. Dr. Whitlock could not tell the jury how much his estimate was to fix 101 Sturbridge unless *it happened to be one of the thirty-two he specifically did cost estimates on*. T. Vol. II at p. 848:11–17. Dr. Whitlock was unable to tell the jury what the repairs to JLS' homes would cost. T. Vol. II at pp. 850:11–853:5.

[10] For ease of reference, Transcript Vol. II includes days five through nine of the trial (September 11, 12, 13, 14, and 15, 2023), whereas Transcript Vol. I would include to days one through four of the trial (September 5, 6, 7, and 8, 2023).

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The jury had no basis to find any damages against JLS because DR Horton fundamentally failed to meet its burden of proof against JLS—it failed to establish the damages it sustained from the homes JLS performed work on. Therefore, the jury's verdict was grossly excessive, and/or so shockingly disproportionate as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in evidence. *Id.* at 531, 431 S.E.2d at 558.

b. The class should have been decertified.

While no class existed against JLS, to the extent that claims were treated as a class against JLS, the class should have been decertified. The houses at Rose Hill are all subject to different defenses—including, without limitation, the statute of repose and statute of limitations—with different contractors performing work at each house. The houses at Rose Hill feature different alleged damage, and are dissimilar to other houses in the neighborhood, including the class representative's house. The class had fatal defects in its commonality, typicality, and adequacy of representation by the class representative—the alleged defects in the homes, the causation of those defects, and the damages/repairs were not uniform among the homes at Rose Hill. *See Gardner v. S.C. Dept. Rev.*, 353 S.C. 1, 20-21, 577 S.E.2d 190, 200 (2003). Furthermore, the class representative was not properly able to represent the class. *See id.* Finally, the statute of limitations and statute of repose defense are intensely fact-specific and are not uniform among the homes at Rose Hill. *See id.* Therefore, the class failed to meet the requirements for a claim to be class action, and therefore, the class should have been decertified.

CONCLUSION

Accordingly, for the reasons set forth above, the Court should reconsider the Order and grant judgment notwithstanding the verdict and/or a new trial and/or a new trial *nisi* to JLS.

(Signature Page to Follow)

Respectfully submitted,

ROSS & CRISTALDI, LLC

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Mt. Pleasant, South Carolina

November 20, 2023

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D·R HORTON America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR JCS MASONRY, INC ("Contractor")

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

Social Security No. or Tax ID No. 56-2131549

Name of Owner(s)/Officer(s): JOSE LUIS SANCHEZ

Division Name _____ Area Name _____ Assigned Vendor No. 1195192

Address for All Notices PO Box 78410

City CHARLOTTE State NC Zip Code: 28271

Telephone 704 624-7471 Fax 704 248-7469 E-Mail Address jlsmasonryinc@hotmail.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 FEB, 2010, between D R HORTON INC. JCS MASONRY, 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 this 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: D.R. HORTON, INC
By _____
Name: EDMOND G JEANFREAU, JR
Title PURCHASE Division President

Contractor
By _____
Name: CHRISTOPHER DE LA TORRE
Title GENERAL MANAGER

INITIALS OWNER _____ CONTRACTOR JDLT

SF = 1392311 MF = 1392312 MACON = 1392313
GREENVILLE = 1392314

PLAINTIFF'S EXHIBIT 1.8

ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO SUBCONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN AND THAT OWNER DOES NOT AGREE TO PAY TO SUBCONTRACTOR INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF DELAYED PAYMENTS.

4.2 Payment to Subcontractors. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed from Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties, and these joint payments shall satisfy amounts owed by Owner to Contractor, notwithstanding the fact that the third parties may not endorse the checks. In any instance where Owner receives written notice from one of Contractor's sub-contractors, whereby the subcontractor claims a failure to be paid for the Work, Owner reserves the right to pay the subcontractor directly or to make payment payable to both the Contractor and its subcontractor.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the Contract Price shall waive and release all claims against Owner and the property under this Agreement, but shall not waive any claims of Owner arising out of Work later found to be defective and shall not release Contractor from liability for warranties and warranty service and/or defective Work. Contractor shall remedy any defects and pay for any damage resulting from any defects in or caused by the Work or as required by any other contracts between Owner and Contractor or by law or customary practice. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or assigns is an acceptance of the Work or materials not in compliance with this Agreement.

5. SCHEDULE OF WORK.

5.1 Time is of the Essence. Contractor acknowledges that TIME IS OF THE ESSENCE in the performance of all Work.

5.2 Construction Schedule. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.3 Commencement of the Work. Owner shall issue an authorization (either pursuant to a written purchase order, payment schedule, or work invoice ("Purchase Order") or verbal instructions from an authorized Owner representative) to commence the Work and Contractor shall not commence the Work at a job location until Contractor has received instructions to begin Work at a specific job location. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.4 Changes in Construction Schedule. Contractor agrees that Owner shall have the right to make changes to the schedule of Work at Owner's discretion and agrees to comply with such changes.

6. PERFORMANCE STANDARDS.

6.1 Applicable Standards. Contractor shall perform all Work in a good and workmanlike manner, in accordance with the plans and specifications of Owner, according to industry standard practices, and warrants that the Work will meet or exceed FHA minimum property standards, VA requirements, all laws (statutory or common) and regulations, and any applicable building code requirements.

6.2 Contractors' Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized Owner's employee and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications as the plans and specifications affect the Work and materials incorporated in the Work, and that the plans and specifications are clear and unambiguous, and has accepted and agreed to be bound by all such requirements.

6.3 Government Requirements. Contractor will comply with all applicable federal, state, local, and county statutes, ordinances, regulations, codes, licensing requirements and standards, and the requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 as amended, as well as the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., or similar laws or regulations, and the rules, regulations, or orders of all public authorities relating to performance of the Work, including without limitation, the procurement and posting of all required permits and notices. In addition, Contractor will not discriminate in its hiring or employment and will follow all state and federal employment laws or regulations. Contractor shall perform background checks and use only appropriate employees to perform warranty or repair work after a house is occupied.

6.4 Indemnity. To the fullest extent allowed by law, Contractor will agree to indemnify, defend, and hold Owner harmless from all actions, claims, investigations or other acts to enforce such laws or regulations, and further agrees to indemnify Owner from the payment of any fine, penalty or damages imposed, levied, assessed, or found as a result of the Contractor's failure to comply with or adhere to the applicable laws and regulations, or from Contractor's failure to cause its employees or subcontractors to comply with such laws and regulations.

6.5 Observation and Testing by Owner and Repair by Contractor. Owner shall have the right to observe or test the Work at any time during or after construction, but that observation or testing is solely for the benefit of Owner's and is not for Contractor's benefit. Owner's failure to note defects in the Work during an inspection will not waive any of Contractor's obligations, representations or warranties related to the Work. Notwithstanding anything contained in this Agreement to the contrary, all Work shall be performed and any defects shall be corrected timely and in accordance with this Agreement to the satisfaction of Owner.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work, and shall report in writing to Owner any defects prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractor's work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses and approvals necessary for or applicable to the performance of the Work.

6.8 Change Orders. The Contractor shall furnish the materials for and to make all changes requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed;

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(ii) governing storage of materials on the job location, (iii) regulating trash pick-up and waste collection at the job location, and (iv) work site safety requirements.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste materials or rubbish caused by its operations and shall remove all of Contractor's materials, and if materials are furnished by Owner, Contractor shall move all usable materials provided by Owner to a location designated by Owner. Contractor shall sweep out any waste material from inside the home under construction upon completion of its operation. All refuse shall be placed in receptacles provided or at locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up activities and collect a one hundred dollar ($100.00) fine from Contractor for each incident. The cost of such clean-up and the aforementioned fine shall be deducted from any sums owed by Owner to Contractor, or shall be immediately payable by Contractor upon demand therefore by Owner.

7. SAFETY

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from or in any way related to the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Owner reserves the right to set minimum standards or rules relating to Work on its site. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OWNERS MINIMUM REQUIREMENTS. THE OWNER ASSUMES NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe condition or practice observed on the Work Site. Further, Contractor shall immediately notify Owner of any accidents or injuries on the Work Site. Contractor shall have an ongoing safety program and conduct inspections to determine that safe working conditions and equipment exist and safe practices are observed. Contractor shall prohibit and prevent the presence of children under age eighteen (18) from the Work Site.

7.1 Safety Laws and Indemnity Agreement. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards, statutes, and industry best practices concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations. Contractor shall provide Owner with written verification of its compliance with all applicable safety and health standards and regulations, including but not limited to OSHA's Hazard Communication Standard for the Construction Industry, 29 C.F.R. §1926.59 et seq., and provide written notice to Owner of the contact person responsible for Contractor's compliance with all safety and health standards and regulations. To the fullest extent allowed by law, Contractor agrees to indemnify, defend, and hold Owner harmless from all actions prosecuted to enforce and the payment of any fine or penalty imposed under such safety laws and regulations and shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work.

7.2 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, permitted subcontractors or suppliers at a job location or performance of the Work by any person under the influence of alcohol or drugs.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate corporations, and successors and assigns, that all labor performed and materials furnished by Contractor shall conform to the specifications of this Agreement, shall be free from any defects or deficiencies in workmanship or materials, and will comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, will meet or exceed the FHA/VA minimum property standards, and will comply with the Residential Warranty Corporation ("RWC") Program and the applicable limited warranty standards, which Contractor has read and understands and to which Contractor agrees to be bound. All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects for purposes of Contractor's obligations under this Contract. Contractor shall make good and promptly repair all Work not complying with the standards set forth in this section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Paragraph 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, the initial homeowner of the property on that is the subject of the Work. (i) for a period of ten (10) years all structural elements, including, but not limited to, roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems, (ii) for a period of two (2) years all. (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, conveators 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.

PERFORMANCE REQUIREMENTS AND SPECIFICATIONS
Exhibit "A"

DESCRIPTION: MASONRY

PERFORMANCE REQUIREMENTS
All masonry shall be installed in a uniform manner. All walls will be plumb and level. Mortar joints shall not be larger than 1/2". Mortar cracks are not to exceed 1/8". Weep holes are to be properly installed per Masonry Institute specifications. All necessary flashing will be properly installed to prevent leaks. An unobstructed gap of 1" shall separate the masonry from the framed wall. All areas of workmanship will remain defect free and maintain their structural integrity for a minimum of ten (10) years.

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 subcontractor will repair and/or replace any defects resulting from work not meeting the performance requirements. All repairs include labor and material. D.R. Horton, Inc. will make the final determination on any remedial action

SPECIFICATIONS AND SCOPE OF WORK

1. The Subcontractor shall furnish all necessary labor, tools, equipment, scaffolding, and incidentals to install masonry per plans and specifications.
2. Leave one (1) inch air space between brick and sheathing.
3. Laid in running bond, anchored with ties minimum 22 gauge, 7/8" wide, corrugated, corrosion resistant, imbedded at least two (2) inches in mortar and nailed with #8 nails.
4. Install ties two (2) feet O.C. horizontally and every fifth course vertically.
5. Mortar joints tooled and brushed, not to exceed 1/2". Type of joint to be concave or rodded (or from written specification change by Builder).
6. Mortar mix to be uniform in color and selected by D.R. Horton, Inc (Buff is standard).
7. Brick sills below windows and doors on brick elevations per drawings with pitch of 1/4" for run off.
8. Brick mason is responsible to replace any faulty brickwork, and will properly blend random mixtures to achieve uniformity per manufacturer's specs.
9. Mortar mixture shall adhere to Portland Cement Association specifications per applicable job.
10. All brick walls are to be plumb and level and mortar joints over 1/2" will not be accepted.
11. Provide protection so that mortar does not get any other building products. Damage to any other products caused by mortar spillage will be the responsibility of the mason contractor.
12. No brick wall will be laid when the temperature is thirty-two (32) degrees Fahrenheit or lower.
13. Brick mason will install all lintels and flashing per CABO specifications. See Builder for specifications (Bolted with carriage bolts)
14. Mason to hard rake excess mortar @ base of brick.
15. Subcontractor is to place all debris caused by his operation in designated areas.

Contractor agrees to comply with all applicable building codes, ordinances and OSHA regulations

ACKNOWLEDGMENT

These specifications are a part of the subcontract 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 subcontractor as soon as any change is initiated.

Contractor: JLS MASONRY, INC
By: C.L.O. Li
Date: 02/17/10

Builder:
D.R. Horton, Inc
By: EDMOND G. JEANFREAU JR
Date: 2/23/10

PERFORMANCE REQUIREMENTS AND SPECIFICATIONS
Exhibit "A"

DESCRIPTION FRAMING LABOR

PERFORMANCE REQUIREMENTS
The framing structure and components shall be assembled according to plans, specifications, and details provided with the plans and are plumb, level, and square. Bearing connections shall be tight and bearing members (posts) continuous from the top of its bearing point to the bottom of the foundation. Frame assembly must meet the applicable codes for the area and use approved fasteners and connectors. Equipment used to transport framing members shall not adversely affect the design characteristics of the framing members. Floors shall not squeak nor have noticeable crowns, ridges, or dips. Exterior trim member shall be tight, free of gaps, uniform in appearance, and be properly flashed or sealed. Structural elements are warranted for ten (10) years. Non-structural elements are warranted for one (1) year. All subcontractors must wear hard hats on the job site at all times

Hard hats and appropriate safety equipment are to be worn at all times while on D.R. Horton property. Each crew leader must have scaffolding, fall protection and PPE "Competent Person" training.

NON-PERFORMANCE REMEDY
The Contractor shall repair any defective workmanship, shrinkage gaps greater than 3/8", or areas not plumb or square (1/4" in 32") prior to the home being occupied. Stress caused by normal settlement or movement in the structure is not the responsibility of the Contractor. *Exterior trim* that is loose, shows gaps, or deteriorates because of inappropriate sealing or flashing, shall be repaired or replaced during the one year(1) of occupancy. Final determination for remedial action shall be made by D R. Horton, Inc.

SPECIFICATIONS AND SCOPE OF WORK
1. All walls, openings, and floors to be framed level, square, and plumb.
2. Contractor is to check all foundations prior to framing for correct measurements, square, and level [all basement studs will be cut if necessary to level the *first* floor]. This includes slab and poured walls.
3. All exterior plates on slab or poured walls to be caulked, glued, or sill sealer used.
4. Furr-downs, fire blocking, barge rafters, and punch-out to be done before beginning another unit.
5. Stairs to be set as per D.R. Horton specifications, nailing every stud with 2" shims with even margins nailed at underside of stairs through carriage. Provide OSHA approved fall protection devices at all appropriate areas.
6. All windows installed square and level with even margins, to be shimmed and caulked as required by manufacturer's specifications.
7. All fire stops, water heater platforms and blocking for sheetrock, closet shelves, ext. soffit blocking for flood lights, and cabinets are contractor's responsibility and must be completed before starting another unit.
8. All overhangs for soffits to be of uniform distance.
9. All jobsites are to be broom swept daily to remove all construction debris caused by his operation with usable material stacked in garage and trash placed in the designated areas.
10. All insulated sheathing to be nailed properly with 1 1/4" button cap nails All blown off or weather damaged sheathing will be the responsibility of the contractor to replace.
11. Framing punch out must be completed within 24 hours.
12. All load bearing walls to be 16" o.c. and non-load bearing 24" o.c. (See Builder)
13. All door jacks to be cut out of lineal (not studs) - 14' stock.
14. All joist hangers installed same time as floor system
15. Contractor is responsible for damage or misused material.
16. Stairs damaged by weather are the responsibility of the contractor.
17. H-spacer ply clips will be used on all roofs decking (when trusses are 24" center to center).
18. All sub-flooring is to be glued using an appropriate caulk gun and nailed, per code.
19. All framing to be in accordance with the attached D.R. Horton, Inc. framing checklist.
20. Final payment is to be made upon completion of the signed-off framing inspection
21. Permit boards, driveway barricades and walk boards (adequate to reach street) to be built by framing contractor.
22. Framer to follow engineered truss plan.

23. All gable ends to have horizontal cat walk bracing installed per truss manufacturers specs

SPECIFICATIONS AND SCOPE OF WORK

24 All floor and roof trusses to be braced in accordance to manufacturers specs.
25 All ext. doors, normally front and rear French or sliding to be installed, square, and level with even margin shimmed and sealed with silicone sealant or its equivalent, on top, two sides, and bottom.
26. All framing to pass County Inspection prior to final labor payment to contractor. All county required changes remain the responsibility of the contractor at no additional cost to builder.
27. All framing to be done using "ladder" type framing.
28. All fall protection to be secured to floor independent of wall framing.

Contractor agrees to comply with all applicable building codes, ordinances and OSHA regulations.

ACKNOWLEDGMENT

These specifications are a part of contract identified above. D R. Horton, Inc. reserves the right to amend or modify any of the above general specifications at any time, and will notify the contractor as soon as any change is initiated.

Contractor: C L O. L. F

By: GENERAL MANAGER

Date: 02/17/10

Builder:

D R Horton, Inc.

By: EDMOND G. JEANFREAU, JR

Date: 2/23/10

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

Purchase Agreement:

1.0 Description of Goods/Services:
Seller shall furnish required goods, materials, and or supplies (herin after: "Goods") identified herin or, if applicable, the "Pricing Document" as set forth in Buyer's Purchase orders.

2.0 Term of Agreement:
The term of this Purchase Contract shall be for a period of 2010.

3.0 Pricing:
Prices charged for goods under this purchase contract shall be as per pricing formally agreed to between Buyer & Seller and set forth in a separate "Pricing Document," which is attached hereto and made a part hereof by reference.

The pricing in the pricing document shall be firm, not subject to adjustment, for the period of time set forth in the section headed as Term of Agreement.

In the event Seller's written quotation is incorporated as a Pricing Document, Seller understands and agrees that it is included only for pricing purposes and that any Seller Terms and Conditions contained therein are null, void and superseded in their entirety by the term of this purchase contract unless otherwise indicated and approved by buyer's Purchasing Representative.

4.0 Purchase Order Pricing:
Prices set forth in Buyers purchase order(s) shall be those that inn effect at the time the purchase order is issued. In the event that a pricing increase occurs between the date of the purchase order and Buyer's Notice to Proceed, Seller shall honor said pricing for a period of time not less than thirty (30) days from the date of the purchase order. After that time, the then current pricing shall be in effect and the purchase order(s) will be revised as necessary. In the event that a pricing decrease occurs between date of the purchase order and the buyer's notice to proceed, Seller agrees to reduce the pricing on the Buyer's purchase order to reflect the reduction in cost of goods or services.

5.0 Releases:
Seller understands and agrees that under no circumstances is Seller to ship any goods set forth in the purchase order(s) until released to do so by buyer's Authorized On-Site or Purchasing Representative(s) via a verbal or written notice or release to proceed, r similar such notification. Seller further understands and agrees that Buyer's authorized

PLAINTIFF'S EXHIBIT 1.9

representative may release the purchase order(s) in whole or in part and Seller will deliver goods accordingly.

6.0 Promised Delivery:
Seller requires 14 days "Lead Time" or advance notice prior to shipment. Delivery/installation shall be made within 2 days after receipt of buyer's notice to proceed.

7.0 Reports:
Seller shall submit usage reports to the attention of D.R. Horton Inc. purchasing Department if such reports are deemed necessary.

8.0 Payment:
Payment procedure is outlined in Section: 4. invoices and payment contained in D.R. Horton Inc. independent Contractor Agreement.

9.0 Marketing and Technical Support:
Seller shall provide at no further expense to Buyer unless otherwise established in the pricing document of this agreement any and all marketing collaterals, technical support and training as deemed necessary by buyer.
Seller shall also allow the use of Industry Trademarks and or images without further expense to buyer, unless otherwise established in a separate agreement attached to or elsewhere in this document.

10.0 Model Homes:
Model homes shall be executed as referenced to on the document labeled "Model Home Discount Program".

Please indicate your acceptance by signing below:

JCS MASONRY, INC
Company Name **Vendor Number**

JOSE LUIS SANCHEZ
Officer Printed Name

Officer Signature

EDMOND G. JEANFREAU, JR
D.R. Horton Inc. Representative Printed Name

D.R. Horton Inc. Representative Signature

2/23/10
Date

2/20/20072:01:25 PM CT

SPECIFICATION AND QUALITY REQUIREMENTS

GENERAL SPECIFICATIONS FOR ALL CONTRACTORS AND SUPPLIERS

1. **SCHEDULING**- The Schedule is part of each contractor's and supplier's contract.
   a. D.R. Horton expects each contractor to arrange to have necessary manpower available to meet the schedule and to make up weather delay days.
   b. It is each contractor's obligation to check each job to see that the necessary materials to perform his work are on the job site. Contractor will assume full responsibility for all materials whether supplied by D.R. Horton or by the contractor until they are installed. Upon entering the house, all damage and/or vandalism found must be brought to the attention of a D.R. Horton Representative before commencing work.
   c. Each contractor must staff each D.R. Horton job site he contracts for, with a qualify representative to coordinate priorities resulting from delays in the schedule, provide lists of damaged materials supplied by D.R. Horton prior to starting work, and to schedule work regarding repairs and rework. Scheduling the completion of the Customer Orientation Lists, within the time specified, with the Quality Control Manager will also be the responsibility of the contractor's qualified representative.

2. **CLEAN UP**

   TRASH CAN DEBRIS → FINE $50.00 (minimum) DUMPSTER DEBRIS → FINE $250.00

   a. Waste containers will be provided for the use of all contractors in designated areas. All debris shall be compacted before putting it into containers.
   b. EACH CONTRACTOR MUST CLEAN UP ALL OF HIS DEBRIS PRIOR TO LEAVING THE UNIT EACH DAY.
   c. Houses are to be BROOM SWEPT DAILY to remove construction debris caused by the operation of each trade.
   d. The interior and exterior of all units shall be kept clean at all times in order to allow each trade to do their work efficiently. All contractors will maintain a neat and clean construction environment.
   e. Each contractor is to leave the job site in a clean and orderly manner at all times.
   f. Each contractor's qualified representative is to notify D.R. Horton of any existing violations regarding clean up before commencing work or he will risk being held accountable for refuse left by others.
   g. Each contractor will be responsible for disposing of hazardous waste in the proper manner.
   h. Burning of trash is prohibited.

3. **INSPECTION OF WORK AND QUALITY WORKMANSHIP**

   ALL RE-INSPECTION FEES WILL BE PAID BY D.R. HORTON WITH BACK CHARGE TO THE CONTRACTOR OF CAUSE.
   FAILED INSPECTIONS WILL BE BACK CHARGED $ FOR $

   a. It is the responsibility of each contractor to properly inspect his own work for QUALITY and completeness and to notify D.R. Horton that the work is ready for inspection. The contractor will walk the work with a D.R. Horton Representative. D.R. Horton Homes will be notified again upon completion of all construction deficiencies before submitting invoices for payment.
   b. All work is to be performed in a workmanship like manner in accordance with D.R. Horton specifications and QUALITY requirements.
   c. All trades will respect the materials and workmanship of other trades.
   d. Each contractor's qualified representative will be present when requested at scheduled inspections by county and/or municipal officials for their respective trades.
   e. It is the contractor's responsibility to schedule all necessary inspections relative to his own work and perform any tests needed to receive approval. All tests performed by the contractor at the request of D.R. Horton or requests made by inspectors will be at the expense of the contractor. All re-inspection fees will be paid by D.R. Horton with back charge to the contractor of cause.

4. **WARRANTY WORK**
   a. All contractors and suppliers will respond to all warranty requests within 24 hour and complete the work per warranty schedule.
   b. Every contractor will have his qualified representative pick up all warranty orders and/or necessary information for completion of warranty work daily.
   c. If a customer is not at home, the contractor will leave a "We stopped by, no one was here" ticket. A copy shall be turned into the Quality Control Manager. Sufficient tickets will be in the contractor's possession at all times.
   d. Each trade shall supply a professional representative who looks and acts like a qualified Tradesman for all contact with Homeowners. All tradesmen are instructed not to offer personal opinions and suggestions which, in

WARRANTY WORK (continued)

any way, relate to the warranty work being performed. No contractor shall comment on other contractor's work or supplier's materials to any homeowner.

e. All warranty requests must be signed by the person who completes the work and a copy must be turned in to the warranty department.
f. All warranty work completed in an occupied house must have two(2) signatures to show that the work was completed:
    1. Signature of person doing work
    2. Signature of Homeowner
g. Contractors and suppliers will provide D.R. Horton Warranty Staff with any necessary materials to complete warranty work per warranty staff schedule at no cost to D.R. Horton, Inc.
h. Contractors shall provide D.R. Horton Warranty Staff with emergency phone numbers per the guidelines for emergency service of the Warranty Department.
i. All homeowner appointments should be met. If an appointment needs to be rescheduled, the Homeowner must be notified one (1) day in advance of the schedule date.
j. Failure to meet any or all performance requirements will result in a $50.00 minimum fine per day per instance.
k. All invoices must be accompanied by a Warranty Purchase Order before payment will be initiated.

5. BUILDING LOCK UP

a. It is the obligation of each trade to lock the building, and turn out all lights, after the completion of their job function each day. This will include all exterior doors, patio doors and windows.
b. Once doors and windows have been installed, it is the responsibility of each contractor to close them during inclement weather in an effort to minimize damage to the house.

6. GENERAL JOB PROCEDURE

a. It is the obligation of each trade to protect the material and/or work of all other trades preceding him and their work from damage by others and adverse weather conditions.
b. Each Contractor must have a qualified representative on the job that is responsible for the work done by employees of that contractor.
c. All contractors are to provide heat, electrical power and water if not available, as designated by a D.R. Horton Representative.
d. Each contractor will be responsible for complying with all Federal and State Safety Laws when in the employment of D.R. Horton. Each contractor *will be familiar, personally, with OSHA and MSDS guidelines* (available at the construction office) and will comply with any requests made by D.R. Horton regarding said guidelines.
e. All work shall comply with applicable building Codes and must meet FHA/VA Regulations.
f. Under no circumstances will flammable material be stored in any unit under construction.
g. The contractor's storage area will be kept clean, neat and orderly at all times.
h. Each contractor will perform all water pumping necessary to complete his work as scheduled.
i. All construction will be per models *and per prints. Any changes must* be approved in writing by a D.R. Horton Builder or be on a new set of prints.
j. All contractors will receive, unload, and inspect all products pertinent to their trade, whether supplied by the contractor or by D.R. Horton.
k. Before starting each job, it is the contractor's responsibility to check his schedule to ensure that the correct material and color selections are being used, and that all the options for that specific unit are installed.
l. Each contractor and supplier will furnish a qualified representative for weekly contractor and supplier meetings.
m. It is the responsibility of each contractor's qualified representative to police the area for food wrappers and containers left by employees of contractors. Under no circumstances is lunch to be eaten in the units after trim carpentry is completed. Trash from lunches, prior to trim stage, is to be removed daily from the units along with the other trash generated by his operation.
n. Alcohol and illegal-drugs are prohibited on any D.R. Horton job site at all times. Anyone found in violation is subject to immediate termination.
o. All parking is to be restricted to one side of the street or designated parking area. Parking or driving on graded lots or driveways will not be permitted.
p. Tub liners and fireplace covers carry the same responsibility for each contractor as does clean up. The contractor must notify D.R. Horton when either is missing or risk being held accountable for replacement prior to submitting invoices for payment.
q. All invoices must be submitted within thirty (30) days of completion of work in order to be honored.
r. Toll calls will not be allowed from any construction office or model home telephone.
s. Vehicle speed limit on the construction site is 15 mph.

Initials DLS

t. Minors and children are not allowed on job sites in accordance with U.S. Department of Labor Child Law.
u. Contractors shall have at least one 10 hour OSHA trained individual and each crew leader will have an **GENERAL JOB PROCEDURE (continued)**
appropriate "Competent Person" training course.
v. Pets are not allowed on D.R. Horton job-sites.
w. D.R. Horton reserves the right to issue a joint check to supplier and contractor.
x. All contractors and suppliers shall use job site toilets exclusively (Porta John, or other portable facility, as furnished). Any person using the house as a toilet will be dismissed.
y. For any work to be performed beyond the scope of the contract there *must* be an extra work order signed by the Builder with a fixed dollar amount before any work can commence. Material orders over contract amounts must have a purchase order signed by the Builder.
z. Any violations or non-conformance to the above regulations may result in additional cost and/or termination or contractor/supplier.

7. **BACK CHARGE POLICY**—Only applies when repair or completion work is done by someone other than contractor of install.
Timeframe: D.R. Horton agrees to contact subcontractor/vendor's scheduler to give verbal notice of needed correction with next business day required correction or subcontractor/vendor agrees to accept back charge for repair.
No Show/No Call: Results in automatic acceptance of the back charge.
Reasonableness: Cost break down given by material/labor/mobilization fees.
Explanation: D.R. Horton will provide a brief but descriptive explanation of site condition &/or repair required on the back charge form.
Documentation of Charge: Back charge form will be sent to subcontractor/vendor when correcting vendor's bill is received.

8. **ADDITIONAL NOTES AND COMMENTS**
a. Contractor and suppliers agree to supply all labor, equipment, materials, and necessary permits and obtain necessary inspections required to complete the work, unless otherwise noted on his contract.
b. These specifications and quality requirements are part and party of your contract and are in force at all times while working for D.R. Horton.
c. It is the responsibility of the owner and representatives of all contractors and supplier to make sure that anyone working on a job site has a copy of these specifications and requirements.
d. Lost working days will be made up by the contractor to meet the schedule, at no cost to D.R. Horton.
e. Friday afternoon material deliveries will not be allowed unless Saturday work has been authorized.
f. After carpet installation, all shoes must be removed outside the entry and left outside.
g. All working drawings are protected by the federal copyright laws under the heading of "Technical drawing and architectural work". Any misuse or improper distribution is prohibited by D.R. Horton. D.R. Horton requires a minimum of ninety (90) days advance written notice of price increases before any such requests will be allowed to be submitted.
h. All workers on D.R. Horton job sites are expected to wear hard hats and appropriate safety equipment at all times while on D.R. Horton property.

Contractor agrees to comply with all applicable building codes, ordinances and OSHA regulations.

ACKNOWLEDGMENT

These specifications are a part of Performance Requirements of the contract identified above. D.R. Horton 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: JLS MASONRY, INC
By: Jose Sanchez
Date: 02/11/2010

BUILDER:
D.R. Horton, Inc.
By: Edmond D. Beaufrea IV
Date: 2/23/10

PERFORMANCE REQUIREMENTS AND SPECIFICATIONS

DESCRIPTION: Warranty work – Applicable to all activities

PERFORMANCE REQUIREMENTS

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.

SPECIFICATIONS AND SCOPE OF WORK

1. All Suppliers and Contractors are to warrant their workmanship and materials per D.R. Horton Homes Protection Plan. Warranties begin and end in conjunction with the customer's closing date. Any discrepancy in warranty time period is to be resolved through D.R. Horton's determination. Code violations to be corrected upon notice.
2. D.R. Horton reserves the right to retain monies from contract work to cover warranty work.
3. Suppliers and Contractors are to be staffed with trained Customer Service Personnel to receive and provide customer communication, and are to professionally execute warranty repairs per D.R. Horton's schedule. Customer service personnel must have a company logo shirt, vehicle or company issued identification badge.
4. Cleanup and trash removal is to be done on a daily basis as warranty work progresses. The following is our policy for not leaving a clean environment for our homeowners:

   FINE POLICY:
   - $50.00 minimum for Trash Can Debris
   - $250.00 minimum for Dumpster Debris

5. All houses, rooms, and lots are to be left clean and habitable at the close of each day's business.
6. Technicians and Contractor's representative are to be groomed and clothed in a non-offensive manner. A professional appearance is required.
7. The customer's property including furniture, appliances, clothing and belongings of any kind are to be protected by covering or by moving same out of immediate work area, by homeowner. Drop cloths, plastic and cardboard coverings are required.
8. Workers are to conduct assigned activity with all necessary tools, equipment, and materials to do a 100% complete job. Should a second trip be required to complete the work, the Contractor is to communicate this to the Homeowner and to D.R. Horton's Customer Service.
9. Accidents and secondary damages must be reported to a D.R. Horton Warranty Technician.
10. Technicians and Representatives are to be cordial, respectful, polite and considerate. Communication with customer is to be limited to specific warranty tasks being addressed. Guesses, opinions, and personal feelings are not to be shared with the customer.
11. Emergency situations require one hour response.
12. All routine warranty work requires 24 hrs response to customer and completion of work within 7 days.
13. **Failure to meet any or all performance requirements will result in a $50.00 minimum fine per day per instance.**

CONTRACTOR AGREES TO COMPLY WITH ALL APPLICABLE BUILDING CODES, ORDINANCES AND OSHA REGULATIONS.

ACKNOWLEDGMENT

These specifications are a part of Performance Requirements of the contract identified above. D.R. Horton 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 Warranty Purchase Order before payment will be initiated.

CONTRACTOR:

JLS MASONRY, INC
BY: Jose Sanchez
DATE: 02/11/2010

BUILDER:

D.R. Horton, Inc.
BY: Edmond S Jean-Francois Jr
DATE: 2/23/10

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DHI VENDOR REMINDER (SEPTEMBER 2006)

Use of Utilities

Horton provides temporary power poles at a number of its construction sites. If a temporary power pole is not provided, the vendor is responsible for supplying and using a generator for its power source (partial reimbursements are provided by Horton).

Please remember that the utilities of private residences and amenity areas are not available for your use.

We appreciate your continued cooperation and appreciate your work as a vendor for D.R. Horton, Inc.

D·R·HORTON NYSE
America's Builder

Model Home Discount Program:

Listed below is the outline for any and all discounts for model homes as agreed to by contractor and or agent acting on behalf of contractor and D.R. Horton Inc.:

100% Discount For all Materials and or Labor associated with the construction of the model and or models.

Model homes typically average 1 in 50 homes constructed. Larger communities will have multiple models.

Model home discounts will be taken upon initial payment for construction, delivery and or installation of goods and services.

Models will be audited and reconciled as deemed necessary to correct any miscalculations in accounting. Corrections will be made through adjustments in future payments due to contractor and or vendor associated with this agreement.

Please indicate your acceptance by signing below:

JLS MASONRY INC
Company Name **Vendor Number (Print Clearly)**

JOSE LUIS SANCHEZ PRESIDENT EDMOND G. JEANFREAU, JR
Officer Printed Name **Title (Print Clearly)** **D.R. Horton Inc. Rep. Printed Name**

Jose sanchez 02/11/2010 Edmond G. Jeanfreau, Jr.
Officer Signature **Date Signed** **D.R. Horton Inc. Signature** **Date Signed**

D. R. Horton, Inc. Drug, Alcohol and Inhalant Policy

Illegal drug, alcohol, illegal inhalant use or improper use of legal drugs may impair the ability to perform responsibilities satisfactorily. It is D. R. Horton, Inc.'s desire to provide a drug-free, healthful, and safe workplace and to observe the requirements of the Drug- Free Workplace Act of 1988. To promote this goal contractors are required to report in an appropriate mental and physical condition to perform the job in a satisfactory manner.

The use of illegal drugs, alcohol or inhalants or improper use of legal drugs which impairs a contractor's ability to perform his or her duties is strictly prohibited. It is a violation of D. R. Horton, Inc. company policy to possess illegal drugs; including possessing illegal drugs in one's body in detectible amounts.

While on D. R. Horton, Inc. premises no contractor may use, possess, manufacture, store, distribute, sell or be under the influence of illegal drugs or narcotics.

The legal use of prescribed drugs is permitted on the job if it does not impair the contractor's ability to perform the essential functions of the job effectively and in a safe manner that does not endanger other individuals in the workplace. Improper use of legal drugs refers to the use of prescription medication not prescribed for current personal treatment by a licensed medical professional or the use of prescription or non-prescription medication to an extent which impairs a contractor's job performance.

A contractor for D. R. Horton, Inc. who is unable to satisfactorily perform the work assignment as a result of drugs, alcohol or inhalant use will not be permitted to work or remain on D. R. Horton, Inc. premises. Violation of this policy may lead to termination of the agreement between D. R. Horton, Inc. and Contractor. Violations of this policy may also have legal consequences.

By signature below I acknowledge and agree to abide by the D. R. Horton, Inc. Drug, Alcohol and Inhalant Policy.

By: Jose Sanchez

For: JLS MASONRY, INC

Date: 02/11/2010

D. R. Horton, Inc. Policy on Sexual and Other Harassment

D. R. Horton, Inc. is committed to providing a professional business environment and workplace that is free from all forms of discrimination and conduct that can be considered harassing, intimidating, coercive, or disruptive, including sexual harassment. Actions, words, jokes, or comments based on an individual's sex, race, color, national origin, age religion, disability, sexual orientation, or any other legal protected characteristic are illegal and will not be tolerated.

Each contractor has the responsibility for maintaining acceptable standards of personal behavior and for assuring that others have the opportunity to carry out their work assignments in a professional business atmosphere.

Sexual harassment is defined as unwelcome sexual advances, or visual, verbal, or physical conduct of a sexual nature. This definition includes many forms of offensive behavior and includes gender-based harassment of a person of the same sex as the harasser. The following is a partial list of sexual harassment examples:

(1) Unwelcome sexual advances.
(2) Offering benefits in exchange for sexual favors.
(3) Making or threatening reprisals after a negative response to sexual advances.
(4) Visual conduct that includes leering, making sexual gestures, or displaying of sexually suggestive objects or pictures, cartoons, or posters.
(5) Verbal conduct that includes making or using derogatory comments, epithets, slurs or jokes.
(6) Verbal sexual advances or propositions.
(7) Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, or suggestive or obscene letters, notes, or invitations.
(8) Physical conduct that includes touching, assaulting, or impeding or blocking movements.

Unwelcome sexual advances (either verbal or physical), requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of employment.
(2) submission or rejection of the conduct is used as a basis for making employment decisions
(3) the conduct has the purpose or effect of interfering with work performance or creating an intimidating, hostile, or offensive work environment.

Harassment based on race, national origin, color, age, disability, religion, or veteran status exists when:

(1) the conduct had the purpose or effect of creating an intimidating, hostile or offensive working environment;
(2) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or

(3) the conduct otherwise adversely affects an individual's employment opportunities.

In the event a situation involving harassment occurs, the affected individual should immediately tell the harasser that the harassment is unwelcome. Also, the affected individual should bring the matter immediately to the attention of D. R. Horton, Inc.-Human Resources. D. R. Horton, Inc. will assure that the matter will be handled in a confidential and professional manner which will be respectful of the rights and privileges of all parties involved. Retaliation against anyone making a harassment complaint is prohibited and may result in the termination of the agreement between D. R. Horton, Inc and Contractor.

Contractor may voice concerns and make reports without fear of reprisal or retaliation.

By signature below I acknowledge and agree to abide by the D. R. Horton, Inc. Policy on Sexual and Other Harassment

By: Jose Sanchez

For: JLS MASONRY, INC

Date: 02/11/2010