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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2018-CP-07-00911
Appellant Case No. 2022-000016

Richard W. and Rebecca A. Dreier; Yolanda J. Dreier; Jacob R. and Carla Emerson; John B. and Lori Anne Gecy; Aaron M. and Stasha R. Grooms; AvaRae Hall; Michael B. and Cheyenne M. Johnson; Kenny Manuel Lopez and Kelsey Trudel Lopez; Dylan C. and Samantha Dawn Machado; Marvin K. and Maryalice Mamaril; Thomas R. and Melissa S. McFeely; Michael and Karen M. Rodriguez; Sarmed and Jessica M. Shafi; James J. Smith, III and Alayshia Smith and Nichole J. Verstegen; Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC f/k/a Advanced Flooring and Design, LLC; Americo Roofing Concepts, Inc.; Archer Exteriors, Inc.; Armor Building Solutions, LLC; Builders FirstSource-Southeast Group, LLC; Crossroads Enterprises, LLC; D.R. Horton, Inc.; Dean Custom Air, LLC; East Coast Construction Cleanup Corp. f/k/a S.C. Cleanup Co., Inc.; Freedom Homes, Inc. f/k/a Armor Building Solutions, Inc.; Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; Lather Construction, Inc.; Masco Cabinetry, LLC; ProBuild East, LLC; Professional Drywall & Paint Services, LLC; Professional Exteriors, II, LLC; Quality Electric of the Coastal Carolinas Incorporated; Superior Association Services, LLC; and Valim Construction, LLC, Defendants,

Of Whom Sarmed and Jessica M. Shafi, Lather Construction, Inc., Lather Construction SC, Inc., Hutton's Landscapes, Inc., and East Coast Construction Cleanup Corp. f/k/a S.C. Cleanup Co., Inc. are the Respondents,

And

D.R. Horton, Inc. is the Appellant.

**RECORD ON APPEAL
VOLUME III**

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Exhibit A

Contract

DR-HORTON
America's Builder

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Horton Landscapes, Inc. ("Contractor")
 Sole Proprietorship ☐ Partnership ☐ Corporation ☒ Other (ATTACH W-9)
 Social Security No. or Tax ID No. 58-2563184
 Name of Owner(s)/Officer(s): Phyllis Horton
 Division Name: Contract Care Area Name: Charlotte Assigned Vendor No. E25977-05
 Address for All Notices: 1326 Little Rock Rd Sublab-HH
 City: Savannah State: GA Zip Code: 31415
 Telephone: (903) 421-1144 Fax: (903) 774-0177 E-Mail Address: phyllis@hortonlandscapes.com
 Insurance Carrier: ATTACH INSURANCE CERTIFICATES, OR THESE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS
 This agreement (the "Agreement") is entered into on this 16 day of May, 2014, between
DR Horton, Inc. ("Owner") and Contractor,

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of this Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement shall include all work performed and materials supplied by Contractor directly or indirectly, to Owner, including but not limited to the labor, services and/or materials, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized by written purchase order or similar document by Owner's authorized field personnel (the "Work"). The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bill, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing shall not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work or specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to, or in place of, Contractor.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, method and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further shall provide written notification to all of its present and future employees of Contractor's provision for Workers Compensation Insurance. Any provision in this Agreement which appears to give Owner the right to direct Contractor as to the details of doing the Work or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall be solely responsible for and will pay all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Retail Certificate of 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 FUNDING UPON OWNERS UNTIL CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule implementing a price increase, the approved Pricing Schedule shall remain in effect for Purchase Orders, as defined herein, issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the end of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing from Owner to a purchaser of the house incorporating the Work. To the extent permitted by law, Contractor retains its right to payment for any Work not invoiced in a timely manner. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is not performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order, as defined herein.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-10 AND 29-6-20 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO CONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN. CONTRACTOR AGREES THAT OWNER DOES, AND WILL, NOT OWE INTEREST ON ANY TERM WHATSOEVER IN THE CASE OF ANY DELAYED PAYMENT.

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

Executed On 16 day of May, 2014

Owner: [Signature] Contractor: [Signature]
 By: Rob Barker By: Phyllis Horton
 Title: Assistant Vice President Title: Owner

INITIALS: OWNER [Initials] CONTRACTOR [Initials]

4.3 Contractor Payments. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Order, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work for which payment is being requested has been performed at a specific job location has been completed satisfactorily and that all material supplies, labor and subcontractors have been paid in full. In exchange for payment, Owner may require a partial release for the extent of all payments made) of all liens for materials furnished and labor performed by Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work as performed, and an affidavit that no person has a right to any lien for materials or labor. Unless otherwise agreed by Owner and Contractor, payment to Contractor shall be made by check. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties; and these joint payments shall satisfy amounts owed by Owner to Contractor, whether or not all parties endorse the checks.

4.4 Acceptance of Work. Acceptance by Contractor of the final payment of the contract price shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of or resulting from the Work and shall not release Contractor from any obligations under this Agreement, including but not limited to liability for warranties, warranty service, or any other liability for alleged defects to the Work. No certificate, invoice, or payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or customers or design shall constitute an acceptance of the Work or constitute non-compliance with this Agreement, or be used in any way as evidence of acceptance by Owner.

5. SCHEDULE OF WORK

5.1 Construction Schedule. Contractor acknowledges that TIME IS OF THE ESSENCE in the performance of all Work and obligations under this Agreement. Owner may alter the time, order and priority for performance of all components of the Work and all other matters relating to the timing and priority of the Work without liability for price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.2 Authorization and Commencement of the Work. Authorization for any Work shall be in writing, either pursuant to a written purchase order, work invoice, or similar document ("Purchase Order"). Contractor shall have no authority to commence the Work at any specific job location until Owner has issued instructions to proceed. Contractor shall commence the Work no later than three (3) days after notice is provided from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.3 Changes in Construction Schedule. Owner shall have the right to make changes to the schedule of Work at Owner's sole discretion, and Contractor shall comply with such changes. Contractor shall not be entitled to any additional compensation for such schedule changes.

6. PERFORMANCE OF THE WORK

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall conform to or exceed all applicable minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all applicable (statutory and common law), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements). In the event of conflicting provisions, specifications will take precedence over the drawings; the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive will take precedence over the less expensive; and the more recent will take precedence over the older provisions. Subcontractor shall immediately notify Contractor in writing of any allegedly conflicting provisions.

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall have authority to act, in all respects, on behalf of and for Contractor.

6.3 Contractor's Acknowledgment Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized employee of Owner and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, and that the plans and specifications are clear and unambiguous, and that Contractor has accepted and agreed to be bound by all applicable requirements.

6.4 Government Requirements. Contractor shall comply with all applicable federal, state and local laws and statutes, ordinances, rules, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.39 et seq., and the permit and posting of all required permits and notices (the "Requirements"). In addition to the obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of the Requirements, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses (including attorney's fees and costs incurred, judgments, settlements or awards of arbitration, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or in the direction of Contractor, regardless of any alleged fault of Owner. In addition, Contractor shall not discriminate directly or indirectly in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform warranty or repair work after a home is occupied.

6.5 Observation, Inspection and Testing. Owner and any government agency inspector ("Inspector") shall have the right, but not the obligation, to observe, inspect or test the Work at any time during or after construction, but that observation, inspection or testing is solely for the benefit of Owner and is not for Contractor's benefit. Contractor shall cooperate with Owner and Inspector during any such inspection. The failure by Owner or Inspector to note defects in the Work during an inspection shall not waive or vary any of Contractor's obligations, representations or warranties related to the Work.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractor's work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses, approvals, and submittal drawings necessary for, or applicable to, the performance of the Work. Contractor shall provide copies to Owner immediately upon receipt.

6.8 Change Orders. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any design 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 change. Contractor shall comply with any Change Order requested by Owner, without nullifying this Agreement, at a request in addition to, or in addition to, the pricing schedule.

6.9 Subdivision Rules. Contractor shall comply fully with all local regulations, and protective covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing use of materials on the job location; (iii) regulating trash pickup and waste collection at the job location; and (iv) Work site safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such

INITIALS: OWNER CONTRACTOR

rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Cleanup. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not limited to trash, unused building materials, packaging, refuse or rubbish ("Waste"), created by its operations and shall remove all of Contractor's materials at the conclusion of the Work. If materials are furnished by Owner, Contractor shall leave all waste materials at the conclusion of the Work as designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "factory clean" condition. Contractor shall dispose of all Waste properly, and may place in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon demand by Owner and only be deducted by Owner from any sums owed to Contractor.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm resulting from, 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 related regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times for safety of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age 18 (18) and all persons not involved in the Work.

7.2 Safety Laws. Contractor shall fully comply with all laws, codes, ordinances, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations ("Safety Law"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with, the Safety Law, and shall, to the fullest extent permitted by law, indemnify, defend, and HOLD HARMLESS Owner from and against any and all claims, demands, liability, losses, costs, damages or expenses (including attorney's fees and costs incurred, interest, actions, causes of action, judgments or settlements, or other litigation of every kind and nature) in any way incident to, in connection with, or arising out of any alleged violation or noncompliance by Contractor, its any individual or entity acting on behalf of or at the direction of Contractor, of the Safety Law, or safety statutes, regulations or any alleged right of Owner. Contractor shall provide written notice to Owner of this contract provision responsible for Contractor's safety compliance.

7.3 Hazardous Materials. Contractor shall not permit any Hazardous Substances, defined below, to be brought onto or stored on any job site or used in the construction of the Work, except for commonly used construction materials, provided, however, that all such materials shall be handled in full compliance with all laws, ordinances and regulations. All notices required to be given with respect to such products shall be given by Contractor. Contractor shall not release or dispose, nor allow any other person to release or dispose, of Hazardous Substances or waste at any job site or on the job, drain, surface or ground water, or air. "Hazardous Substance" means any substance or material which any state, federal or local governmental authority determines or designates as capable of posing a risk of injury to health, safety, property or the environment.

7.4 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, agents, subcontractors or suppliers at a job location, or performance of the Work by any person under the influence of alcohol or drugs. "Drugs" shall include any substance, whether or not illegal, which upon exposure, ingestion, inhalation, injection or by any other introduction, may impair one's ability to safely perform the Work.

B. CONTRACTOR'S WARRANTIES.

B.1 Against Defective Work. For the longer of ten years or the period of any applicable statute of limitations or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work shall conform to the specifications of this Agreement (including but not limited to the standards referenced in Subsection 6.1), shall be free from any defects or deficiencies in Workmanship or materials, shall comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, shall meet or exceed the ENR/NAVA minimum property standards, and shall comply with the Home Owners Warranty, defined below and its applicable warranty standards (which Contractor has read and understands). All Work not conforming to these requirements shall be considered to be defective. All materials shall be new and of best quality within the scope of the Pricing Schedule and Instructions. Contractor shall be liable to make good or promptly repair all Work not complying with the standards set forth in this Section at its own expense.

B.2 Home Owners Warranty. In addition to the warranty in Subsection B.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the date of the date of occupancy by, or transfer of title from Owner to any initial bona fide purchaser of property subject to the Work: (i) for a period of ten (10) years all structural elements, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, posts (other than joist supporting members), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fixtures, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; and (iii) all other elements for a period of one (1) year but in no event shall a warranty period of 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 its own standing warranty or (3) residential warranty program from any residential warranty company for its residential warranty policy to be provided by Owner to any Homeowner, including but not limited to the Residential Warranty Corporation Program ("Home Owners Warranty"). Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Home Owners Warranty that is longer than the warranty period stated above; provided, however, failure to give that notice will not affect the extension of the warranty period to the applicable warranty period under the Home Owners Warranty.

B.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty herein is not affected by any repair or replacement of any part of the Work by Owner or any other third party will not affect, diminish, or in any way obstruct Contractor's warranty or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform warranty services hereunder.

B.4 Transfer of Manufacturer's Warranties. Contractor shall transfer, assign and assign all warranties, relevant product information, and guarantees by manufacturers to components of the Work, including any appliances and equipment, and shall furnish all certificates required by any third parties such as any municipality, the VA, or the FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and shall not limit or reduce any applicable statute of limitations.

B.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation into the construction or upon

INITIALS: OWNER *[Signature]* CONTRACTOR *[Signature]*

receipt of payment by Contractor which appears first, last and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. TO THE EXTENT PERMITTED BY LAW, CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS OR SIMILAR CLAIMS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days thereafter, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any sum any sum in accordance with the laws of the state in which the Work is located.

9.3 Lien Claim Indemnity. If any liens, attachments of claim, stop payment notices, or litigations arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such liens, attachments, stop payment notices, or litigations to be removed and released. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such liens, attachments, stop payment notices, or litigations, and Contractor agrees immediately upon Owner's request to (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge that lien, or (ii) pay to Owner all monies, including any individual judgment necessary to cover all attorney's fees, expenses and court costs paid by Owner or any bona fide purchaser in discharging the lien, and (iii) stop payment notices for the period which ever remedy Owner elects in its sole and absolute discretion. The provisions of this paragraph shall be in addition to any rights Owner may have under applicable law with respect to such liens, attachments, stop payment notices, or litigations.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF AND ATTORNEY'S FEES, WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TYPE), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (A) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (B) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR OR BY CONTRACTOR'S AGENTS OR EMPLOYEES, OR BY SUPPLIERS OR SUBCONTRACTORS OF ANY TYPE, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES; (C) ANY NEGLIGENCE OR INTENTIONAL ACT OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, OR SUBCONTRACTORS, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR (D) ANY NEGLIGENCE OR INTENTIONAL ACT OR OMISSION OF INDEMNITEE, RELATED IN ANY WAY TO THE WORK, EXCEPTING ONLY LIABILITY OR CLAIMS ARISING OUT OF BODILY INJURY TO PERSONS, DEATH, OR DAMAGE TO PROPERTY PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY INDEMNITEE AGAINST LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

10.3 NO BAILMENT. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, ALL SUBCONTRACTORS, AND SUPPLIERS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO (A) ANY LOSS OF SUCH TOOLS, MATERIALS, OR EQUIPMENT, OR (B) ANY DAMAGE TO SUCH TOOLS, MATERIALS OR EQUIPMENT.

10.4 Subcontractors and Suppliers Indemnity Obligation. Contractor shall require each of its subcontractors to agree to indemnify Indemnitee (to the same extent that Contractor is required to indemnify Indemnitee in this Agreement). Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth in Section 13 of this Agreement. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the acts and omissions of any subcontractor or supplier who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed also to be the obligations of the subcontractors or suppliers to Owner for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Basis (the "GL Policy") with products-completed operations coverage, which carries a per-occurrence limit of not less than Five Million Dollars (\$5,000,000), and an aggregate limit of not less than Two Million Dollars (\$2,000,000) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of (i) premises operations; (ii) products-completed operations including materials designed, furnished, stored

INITIALS: OWNER *M* CONTRACTOR *MH*

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) when applicable, property damage resulting from explosion, collapse, or interference (v, c, u) operations. The CGL Policy shall not exclude from coverage the type of, or cause of, the Work or limit the type of structure on which the Work is to be performed. The CGL policy shall not contain a deductible or self-insured retention of more than \$25,000.00. Contractor shall continuously maintain a CGL Policy covering productive completed operations for any applicable warranty period, claims notification, or status of repair, whichever is longer, for the filing or settling of claims, lawsuits or other actions arising out of or relating to the Work.

11.2 Other Insurance. Contractor agrees to carry (a) Workers Compensation Insurance that provides temporary benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law; (b) If Contractor's Work involves 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 judgments; and (c) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person for bodily injury and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, hired and non-owned autos".

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner as a named Additional Insured, specifically identifying Owner, on the CGL Policy and policies required above covering both ongoing operations and completed operations (equivalent in scope to form CG 2010 103 on, if unavailable, both forms CG 2010 1031 and CG 2031 (2011)). Coverage obtained by Contractor with Owner as an additional insured shall be primary, with any insurance of Owner being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be dated continuously from the date of commencement of the Work until expiration of any applicable warranty period, except in the event of a change of scope, which shall be subject to the filing or settling of claims; and (iii) provide for a waiver of subrogation (the obligation to recover against third parties) in the event that the Work is being performed; and (iv) be with a carrier licensed to do business by the jurisdiction of the Work with minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amount and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the required policies, as requested by Owner.

11.5 Requirement of Price For Non-Completion. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER BY OWNER POLICY WITH RESPECT TO PARTICULAR TRADE CATEGORIES IN ITS SOLE AND ABSOLUTE DISCRETION IN EFFECT AT THE TIME WORK IS PERFORMED) TO COMPENSATE OWNER REASONABLY FOR ANY ADDITIONAL COSTS OF ITS WORKERS COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OR CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS AGREEMENT, AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER, OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Owner as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

11.7 Subrogation. Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including but not limited to claims relating to deductible or self-insured retentions claims, indemnity of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Owner or any indemnitor, and agrees that subrogation, subrogee, agent, employee and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (A) would otherwise have a duty of indemnification, contractual or otherwise, (B) did not pay the insurance premium directly or indirectly, and (C) whether or not such individual or entity has been insured to the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or if another contractor's work, or other property, is damaged by an act or omission of Contractor, its employees, agents, suppliers, or subcontractors, Owner shall have the right to elect, at its sole discretion: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property (designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) direct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorney fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment where due Contractor and offset that payment against any damages or expenses incurred by Owner. If (a) Contractor does not make prompt and proper payment to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (b) claims or liens are filed against the job location as a result of Contractor's act or omission; (c) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (d) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, loss or legal order owed by Contractor under this Agreement; (e) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has expressly waived that insurance; (f) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (g) Contractor has not provided necessary or adequate logs, material, or equipment for, or cleaned up after, the Work; or (h) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate, without limiting the generality of the foregoing, Owner may offset from amounts due to Contractor hereunder any amounts owing by Contractor to Owner's parent company, any subsidiary or affiliate, under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations,

INITIALS: OWNER  CONTRACTOR  P.H.

rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other right or remedy of any other remedies allowed.

12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION

13.1 Disputes. All disputes, whether arising 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 use of any house or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations made by Contractor, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking other relief.

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract for the Agreement, the Dispute shall be subject to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("FAA"). All demands for arbitration shall be made within the expiration of the applicable statute of limitations or repose, except that any claim by Owner shall not be subject to any time limitation for claims until Owner has effected the filing or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified or corrected only as permitted by the FAA.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediator or arbitrator shall be administered and controlled by a mediator or arbitrator(s) mutually agreeable to the parties. Their neutral arbitrator shall be appointed if the Dispute is for less than \$1,000,000. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days of the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

13.5 Rules. To the extent not in conflict with the FAA, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow federal 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 to Section 13 in the contract, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) can be subject to resolution in a single forum in the most efficient proceeding. Contractor shall be bound by any arbitration procedures initiated by Owner. If multiple lawsuits or arbitrations are commenced, Owner in its sole discretion may consolidate these into a single proceeding. Notwithstanding any other provision of this Section 13, if Owner determines in its sole discretion that a subcontractor or material supplier of Contractor, in any other third party whose presence is required for a just adjudication of this Dispute, cannot be forced to mediate or arbitrate, Owner may elect unilaterally to waive mediation or arbitration and to litigate the Dispute in court with Contractor.

14. TERMINATION

14.1 Termination by Owner. This Agreement shall remain in full force and effect until terminated in writing by Owner by mailing notice to Contractor. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of this Agreement. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) days written notice to Owner before the effective date of any termination by Contractor, and shall perform fully under this Agreement during that notice period.

14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement; (ii) all corporate, partnership, or other valid entities for the due execution of this Agreement have been duly and effectively taken or shall be taken before the execution and delivery of this Agreement; (iii) this Agreement is or will be (when executed) a binding obligation of Contractor, enforceable in accordance with its terms; (iv) this Agreement and Contractor's performance, will be (when executed) a binding obligation of Contractor, enforceable in accordance with its terms; or any contract, agreement, or governmental does not and will not violate any provisions of Contractor's commitment to organizational responsibility; (v) Contractor has, and each Contractor's employees, agents or subcontractors shall have, the requisite skills, expertise, experience, license, 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 obligations of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to cancel and supersede all prior independent Contractor Agreements (other than any Master National Independent Contractor Agreement) or other prior understandings or written or oral agreements, specifically including but not limited to all prior pre-printed standard contractor/subcontractor agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods or services or both by Contractor relating to the subject matter herein. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work and shall be deemed subject to the terms of this Agreement. Any future Pricing Schedules or Purchase Orders entered into hereafter shall also be deemed subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices and quantities of materials only. Nothing in any subsequent agreement or document, before or after the execution of this Agreement, shall alter the terms set forth in this Agreement. To the extent possible, this Agreement shall be deemed to supplement the terms of any other agreement or document, unless a new independent Contractor Agreement, in the event of any conflict between this Agreement and other such documents, this Agreement shall prevail and binding unless in conflict and prevail. Except as otherwise provided in this Agreement, no amendment or supplement to this Agreement shall be valid or binding unless in writing and signed by both Owner and Contractor. Notwithstanding anything in this Agreement to the contrary, this Agreement shall be deemed to supersede any Master National Independent Contractor Agreement, but shall supplement its terms in the event of a conflict, to the extent permitted by

INITIALS: OWNER Wm CONTRACTOR PH

law, the Master National Independent Contractor Agreement shall control.

15.3 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

15.4 Assignability. Contractor's rights, responsibilities, and obligations under this Agreement are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Any attempted assignment shall be null and void. This restriction includes, without limitation, the delegation or subcontracting of any Work or any amounts which may become due to Contractor as a result of the Work. Contractor shall remain fully liable under this Agreement regardless of any consent by Owner to any assignment or delegation or duties by Contractor, including but not limited to any work by a subcontractor. Contractor shall ensure that any subcontractor receives a copy of this Agreement and agrees in writing to be fully responsible for all obligations of Contractor under this Agreement, including but not limited to the payment and indemnity provisions. Contractor shall also ensure that Owner is included as a party-beneficiary of any subcontractor agreement by including a specific provision to that effect. Contractor shall be responsible for ensuring any warranties given by its subcontractors, suppliers or manufacturers, nothing contained herein, however, shall create any contractual relationship between Owner and any subcontractor, supplier or manufacturer. Notwithstanding, any obligation on the part of Owner to make payment of any sums to any subcontractor, subject to the restrictions and conditions of assignment set forth in this Subsection, the terms of this Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns. Owner may freely assign this Agreement, in whole or in part.

15.5 Conflicts with Purchase Order 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.

15.6 Waiver. No act or conduct other than a specific, written waiver of a right shall be deemed a waiver by Owner. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

15.7 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 this Work relates, and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

18. NOTICES. All notices required or permitted pursuant to this Agreement or otherwise shall be in writing and shall be delivered as follows: to Contractor at Contractor's business address as shown on page one (1) of this Agreement; to Owner through Owner's official Registered Agent for service of legal process in the state where the Work is performed at that Registered Agent's registered office. Notices may be given by personal delivery, first-class, commercial overnight delivery service, padded delivery or registered mail and shall be deemed to be received, three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, first-class delivery by first-class by commercial overnight delivery service, and upon confirmation of receipt by first-class transmission or by personal delivery. Rejection, refusal to accept or the inability to deliver because of changed address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Unless the context requires a contrary construction, this singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All regulations and rules filed in this jurisdiction are intended solely for convenience of reference and shall not change, limit, or otherwise affect that which is set forth in payment of the foregoing, actions of subcontractors.

SOUTH CAROLINA VERSION (REV. 12 APRIL 2019)

INITIALS: OWNER ME CONTRACTOR MT



Exhibit "A" Part I-Scope Of Work-General

1. This document defines both Owner and Contractor responsibilities in the stated phase of construction. In the event of any conflict between this scope of work and the Independent Contractor Agreement, the Independent Contract Agreement shall be deemed to control and prevail. It is intended as a checklist that will define the Owner's standard of quality and professionalism. The Contractor's work will not be considered complete until all specifications herein contained are fully met.
2. The work in this bid and agreement shall be installed per plans, specifications and all applicable local, state, and federal codes. All work will be inspected and certified as complete by the Contractor. Payment release does not constitute final acceptance from Owner.
3. The work shall be performed to Owner's standards of quality. If any part of the work is found to be incorrect or causes damage to other work, the Contractor will be responsible for all costs to repair, whether prior to or after payment release.
4. All trash, debris, and scraps shall be removed on a daily basis and deposited in a designated area per job superintendent and the home is to be broom swept daily. There is no parking on any law, driveways, or sidewalks. Access to the house will be designated by an Owner representative. Violators will be subject to a minimum fine of \$500. Under no circumstance will vehicles be allowed to park blocking occupied driveways, their will be parking designated on one side of the street. Violators will be fined \$75 and could incur additional fines from local municipalities.
4. All good materials left on the job site shall be maintained in neat order and in a location that does not hamper another Contractor's ability to perform his/her work. The superintendent will designate the location. The home WILL be swept daily, and upon completion of work. Also, upon completion of work, a representative of Owner will walk the job. If it is found to be unorganized and dirty, Owner will have the house cleaned and swept and the Contractor will receive a \$75.00 minimum charge.
5. All left over good materials on the job site must be removed within 48 hours of the completion of the work. Failure to remove these materials will result in Owner removing them at the Contractor's expense and will also result in a fine of \$100.00 per day until the materials are removed by either the Contractor or Owner.
6. Owner shall issue authorization (either pursuant to a written purchase order or work order (hereinafter the "Purchase Order")) to commence the work, and Contractor shall not commence the work at a job location until Contractor has received instructions to begin work at a specific job location. Contractor shall commence the work within three (3) days of notice to proceed from Owner, and if such work is interrupted at the direction of Owner, Contractor shall resume such work within two (2) working days from Owner's direction to resume. Notice to proceed will be provided by both Owner's current On-Line Scheduling System and confirmation of the schedule for the work on Owner's current On-Line Scheduling System with the superintendent. It is understood and agreed that the construction start date given to the Contractor by Owner at the beginning of the job is approximate. The dates indicated are only intended to give the Contractor a general idea of the approximate start date. All superintendents will have current schedules. A Owner supervisor will advise Contractor or supplier of schedule changes either by voice or electronic notification. All work must be confirmed with the superintendent prior to start. Failure to commence the work within the time frames listed above will result in a Scope of Work Violation in the amount of \$100.00 per day. In addition, the schedule for the work as provided in Owner's current On-Line Scheduling System must be maintained by the Contractor until the work is completed and approved as completed by the superintendent. A Failure to complete the work in the time frame allowed from commencement to approved completion will result in a Scope of Work Violation in the amount of \$100.00 per day. The Scope of Work Violations will be issued in the form of a back charge to the Contractor. These back charges will be in the form of an offset to any unpaid balances.

Initials: Contractor jhj

Owner [Signature]
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BERNARDTON
America's Builders

7. All work shall be performed in a safe and professional manner. It is the Contractor's responsibility to comply with all OSHA requirements. The superintendent will issue a warning to workers on site of violations seen. If after a warning the workers are not in compliance they will be asked to leave the site and no payment will be issued for work completed. All workers must wear hard hats on all job sites at all times. The Owner representative may issue a written warning to workers on site of violations seen. If after a warning the workers are not in compliance, they will be asked to leave the site. Additionally, fines may increase as follows: 1st offense-a written warning and/or a \$100.00 fine, 2nd offense-\$250.00 fine and a mandatory appearance before safety committee, 3rd offense-\$500.00 fine, and 4th offense-termination. Removal of safety rails will result in a \$300.00 fine. In addition, Contractor will be responsible for all costs incurred from missing rail parts. All workers must wear hard hats on all job sites at all times.
8. The Contractor shall respect the work of the other crafts at all times and take necessary precautions in order to avoid damaging such work. If the Contractor damages such work, repairs shall be made at the Contractor's expense.
9. Any and all damages or defective workmanship must be reported to the superintendent. If a Contractor is found to have covered or hidden damages or defective workmanship, then that Contractor will incur all repair cost.
10. It is the responsibility of all Contractors to obtain current product and work specification sheets that are applicable to each and every, all and singular, series, model or plan which Owner builds. This specification sheet will provide the Contractor with special conditions, types, brands, methods, colors and manufacturers that are the express responsibility of each and every Contractor.
11. Owner paperwork hierarchy is as follows: 1. Contractor Selection Sheets 2. Community Specifications 3. Scope of Work 4. Plans #1 overrides everything. Field Superintendents are not authorized to make changes to any of the above. If you are asked to do something that does not follow the above paperwork hierarchy please contact the Construction Area Manager or the Purchasing Manager immediately. In addition, if you find something within our documents that do not comply with industry standards, is costing you or Owner additional money, or could be done more efficiently, please bring to our attention immediately. If you do not follow the proper paperwork hierarchy or make changes without written approval, Owner will not absorb the additional costs.
12. Contractors are not permitted to eat or smoke in an Owner home. No drinking of alcoholic beverages is allowed on any Owner job site. No uncovered shoes are permitted in a carpeted home.
13. No work should be considered complete until all errors are corrected and all applicable inspections have been passed.
14. All punch out list generated by the Owner superintendent will be complete before payment will be made. The Contractor understands that the deliveries are sometimes delayed and that Owner has little control over material delivery. In the event delivery delays slow down work, the Contractor will not be due payment of the job until the job is complete and punched out.
15. Contractors are responsible for reimbursing Owner the cost of municipal re-inspection fees directly related to their work. Any re-inspections or engineering costs as a result of poor workmanship are to be paid by the Contractor. If Owner pays for these costs, the Contractor will be charged the cost and Owner will offset any unpaid balances to Contractor to recover these costs.
16. In the event a worker is injured on a job site, please follow these steps:
 - A. Verify the injury.
 - B. Contact the office so that we may document the incident.
 - C. The superintendent should fill out an "Accident Report" and return to the office within 48 hours.
17. Owner strictly forbids the subletting of work by any Contractor. Owner will terminate

Initials: Contractor 7997

Owner 7997
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12/19/2013

DRH-001685



any Contractor found to be subletting work and Owner has no responsibility of payment to anyone whom has sublet from the Contractor. This agreement is between Owner and the listed Contractor only.

18. Payment is not due until the Contractor has completed all punch list to Owner, Inc.'s expectations. Do not turn in purchase orders for a house that is not punched out and verified by an Owner representative.
19. No extras will be paid for without written approval from Owner's superintendent and Owner's Purchasing. All extra work must be submitted to superintendent prior to Owner management's approval for payment. Acceptance will be verified with a PO being issued.
20. Most of Owner's jobs are paid by an auto pay system. The Contractor will be issued a P.O. prior to performing work. Once the work is complete, the job superintendent will progress Owner's current On-Line Scheduling System which will release the Contractor's payment. Do not submit invoices for auto pay work. The Contractor's check will itemize each job task being paid using the P.O. number. It is the Contractor's responsibility to properly keep track of their receivables by cross referencing the P.O. numbers. If for some reason the Contractor feels that payment for a job that is complete has not occurred, the Contractor is to contact the Purchasing Department and provide the needed details. The Purchasing Department will research the situation and provide instruction to the Contractor.
21. Contractor shall comply with all insurance requirements including the Contractor agreement before setting foot on any Owner site. If insurance lapses, Contractor will be required to leave the site until they are in full compliance. If insurance cannot be reinstated they will be terminated.
22. All materials shall be installed per local, state, and federal codes. Installation of all products shall follow manufacturers' instructions. Any discrepancies between Owner's requirements and code/manufacturers' should be reported to Owner Construction and Purchasing Department in writing.
23. No invoices over 90 days from the date work was completed will be paid.
24. Contractor shall provide qualified supervision on all job sites to monitor work. This person shall be competent and able to make decisions on behalf of the Contractor's company. Each Contractor will have a qualified English speaking job supervisor on the job site. Each Contractor is to furnish a representative for Contractor meetings as scheduled by Owner.
25. Contractors shall not discuss pricing or any agreements w/Owner with any other Contractors. Violation of this policy will result in termination of Contractor.
26. Contractor shall supply an OSHA compliant safety plan to Owner prior to starting work. It is the responsibility of the Contractor to maintain the safety plan and update Owner with all revisions. Upon request, Contractor shall supply Owner with MSDS sheets.
27. Once the doors or 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 home.
28. The following trades must provide a 24 hr emergency warranty phone number and contact. Any phone number or contact information changes must be reported to the Construction Department and Purchasing Department immediately.
Electrician Plumber Gas HVAC Roofer
29. Contractor is responsible for obtaining and forwarding a working email address to Owner. This account must be monitored at least once each working day. High Speed Internet access is not required but is highly recommended.
30. In the event of a violation of any of these General Scopes of Work or in the event of a violation of a Contractor's Specific Scope of Work for their particular trade, a Scope of Work Violation will be issued in the form of a back charge to the Contractor. These back charges will be in the form of an offset to any unpaid balances.

Initials: Contractor

Owner
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12/18/2021

DRH-001686



**Exhibit "A" Part II-Scope Of Work Customer Service
Center-(CSC)**

1. Contractor to warrant all work from date of the transfer of the property from Owner to the homeowner for workmanship and materials where applicable. Contractor hereby agrees to repair, replace, or pay the expense of repair / replacement as determined by Owner. The cost of repair/replacement shall include any and all collateral remediation.
2. Contractor will respond within 48 hours to all work order requests from Owner CSC personnel, 24 hours on emergencies. Failure to respond within 48 hours will result in Owner to have corrections made, and back charge Contractor for all associated costs. Missed appointments will result in a \$50 back charge per incident. These back charges will be in the form of an offset to any unpaid balances.
3. Contractor must respond to CSC via fax once a work order is received and an appointment is made with the homeowner to correct warranty work within 48 hours of receipt of work order.
4. Contractor must obtain homeowner signatures on all work orders upon completion of warranty work. Homeowner must sign off on all work as being completed and satisfied.
5. Contractor to fax the signed / dated work order from the Homeowner to the CSC. It is the responsibility of the Contractor to inform the CSC of each completed work order. All work orders must be faxed to the CSC as completed. Work orders will be considered "open" if not faxed and received by the CSC.
6. Bi-monthly Vendor reports will be faxed to Contractor. Report will indicate warranty work that is outstanding. Upon receipt Contractor to review all open work orders and note next to each item the work orders that are completed and if not the scheduled appointment date and time. Once reviewed, Contractor to fax report to CSC for updating. Report is to assist Contractors in managing warranty work load. Not maintaining a good standing in completing work orders may result in delay in payments.
7. Contractor's payments for all work will be placed on hold if any warranty work order remains open for 30 days or more. The payments will remain on hold until all of Contractor's open warranty work orders of 30 days or more are closed. Owner may cause the warranty work to be completed at the Contractor's expense.

Contact: Melissa Horton
Phone#: 912-427-1555

Contractor

Horton Landscapes
Company Name

Matt Horton
Representative Name

[Signature]
Representative Signature

CEO
Title

5/16/14
Date

Initials: Contractor MH

Owner

D. R. Horton, Inc

Ron Bonner
Representative Name

[Signature]
Representative Signature

Assistant Vice-President
Title

5/27/14
Date

Owner [Signature]
Page 4 of 4

12/15/2013

DRH-001687

DRH-001688
Amended Bidder

Exhibit "A" -Scope of Work- Rough Grade

I. Scope Policies

This scope of work outlines specifications as required by Owner. This scope of work is in addition to the General Scope of Work. In the event of any conflict between this scope of work and the Independent Contractor Agreement, the Independent Contractor Agreement shall be deemed to control and prevail. The specifications and standards outlined below may be modified at the discretion of Owner. In the instance that any changes are made to the scope, contractor will be notified and required to resign a scope within 2 business days. This scope of work shall apply to all Owner communities. In addition, this scope of work shall override all previous signed scopes of work for the construction phase listed above.

II. General Requirements

Contractor will supply all material, equipment, and labor necessary to complete the rough grade phase of construction. All work shall conform to all building codes, Owner's standards, plans/details, community specs, and industry standards. Prior to starting any job, contractor shall meet with Field Manager to review all plot plan, landscape plan, options, and pending inspections. All work shall be completed per the schedule set forth by the Field Manager. Vendor shall provide unit pricing to Owner's purchasing for standard, and any unexpected costs.

III. Bids Requirements

Contractor must provide a material and labor breakdown for all bids. All bids must include the wording "all applicable taxes included". All bids shall be returned to the office by the required deadline. All bids must be accompanied with the following paperwork:

- Signed Scope of Work
- Signed Community Specifications
- Signed Copy of Owner Bid Sheet

IV. Material Specifications

Note: This section outlines general material requirements/manufacturers. This list does not represent all material to be supplied by contractor. Contractor must supply all materials listed throughout the scope of work U.N.O.

V. Scope

A. General

- Daily Log-In to Current Owner's On-Line Scheduling System.
- Remove all excess materials at the end of each day.
- Repair any deficiencies from inspection/QC/Homeowner/Field Manager check within 24 hrs.
- Replace any displaced silt fence, orange fencing, downed signage and permit box as needed.
- Clean the streets of any dirt, mud, nails, screws, aluminum, etc. generated during material delivery and installation.
- Contractor will be required to meet scheduled start dates with no less than (3) working days of advance notice by the Field Manager.
- Rough grade is defined as a "fine" grade suitable for the final installation of sod, seed and/or all other landscape materials.

Initials: Contractor CMH

Owner [Signature]

DRH-001688



B. Rough Grade

- "Slo" "Pine" grade must be completed within 48 hours of slab pour and form strip;
- Review Plot Plan, Property Pins and drainage pattern with Field Manager prior to starting work. Mark up plot plan outlining all final drainage patterns.
- Call no dots prior to starting. Contractor is responsible for any utility damage.
- Inspect foundation and existing flatwork prior to grading. Notify Field Manager of any cracks, chips, etc. Rough grade contractor is responsible for any damage if Field Manager is not notified prior to start of work. Entire lot is to be finished and free of all waste/debris.
- "Fine" grade shall include back of curb to rear lot pins and between pins as disturbed. 10'-0" perimeter of slab and all existing flatwork shall be hand raked to include all utility pedestals, transformers etc. Curb and all existing flatwork to be cut 1 1/2" below grade. All boxes etc. to be set at grade and backfilled.
- Remove all trash, rocks, dirt clumps and debris from site generated from this phase of construction. Do not pile on patio, driveway, or at the curb. Do not place on any adjacent Owner's community lots. DO NOT BRAG WASTE TO EDGE OF LOT / LANDSCAPE PARAMETERS AND LEAVE. REMOVE FROM JOB SITE.
- All swales, front, rear and side, are to be cut and defined with all final dirt movement and removal as needed to establish final positive drainage. Standing water should not exceed 48 hours in swale and 24 hours otherwise. Confirm positive drainage beneath all decks and attached structures.
- Remove/Haul-in dirt as necessary to accomplish proper drainage. Directed in excess of 1 inch deep to be additional. Confirm with Field Manager and receipt of P.O. prior to starting work. The addition or removal of dirt beyond this phase of construction will be at Contractor's cost.
- Fine grade to be a minimum of 8" below top of foundation. There is to be a minimum of 6" of fill in 10' around the foundation. Leave enough soil to create a plank bed a minimum of 3" wide 8" tall around the front of the home. If the foundation is a monolithic slab, the plank bed shall be located no closer than 18" to the face of the foundation.
- Underbrush all natural material less than 3" inches in diameter and remove debris and dead limbs up to 6" high. Entire lot is to be "Finished" as defined by property pin location. Logs in excess of 12" in diameter to be removed at additional cost. Meet with Field Manager to agree upon price in advance.
- Re-work grade as necessary to compensate for disturbances from underground utilities, deck, and flatwork installation.
- Turn in drawing of lot showing drainage patterns to Field Manager.
- Broom sweep all flatwork i.e. drives, walks, patios, porches etc. to include curb and adjacent lots as needed.
- Repair all grading deficiencies as noted by municipal inspectors within 24 hours.
- Verify operation of drain(s) and downspout drain(s). Clean-out and re-stake daylight end(s) if necessary.
- Re-set permit box if necessary. Remove and replace all fence as needed in order to complete job.
- Clean job site.

VI. Payment

All Invoices / P.O.'s shall not be issued in and approved for payment until phase complete and all deficiencies are remedied. Owner reserves the right to make the final decision in determining the correct scope of work for any and all repairs. No Extras will be paid unless negotiated prior to performing any work and an approved P.O. is issued.

VII. Warranty

- Contractor shall warrant all work per Owner's contract. All warranty work must be completed within 72 hours of scheduled date and time.

Initials: Contractor

Owner

DRH-001689



Contractor

Horton's Landscapes
Company Name

[Signature]
By:

Mark Horton
Name:

CEO
Title:

5/27/14
Date:

Owner

D.R. Horton, Inc.

[Signature]
By:

Ron Bonner
Name:

Assistant Vice Pres.
Title:

5/27/14
Date:

Initials: Contractor [Signature]

Owner [Signature]

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Exhibit "A"
-Scope of Work-
Final Grade

I. Scope Policies

This scope of work outlines specifications as required by Owner. This scope of work is in addition to the General Scope of Work. In the event of any conflict between this scope of work and the Independent Contractor Agreement, the Independent Contractor Agreement shall be deemed to control and prevail. The specifications and standards outlined below may be modified at the discretion of Owner. In the instance that any changes are made to this scope, contractor will be notified and required to resign it's scope within 2 business days. This scope of work shall apply to all Owner communities. In addition, this scope of work shall overlap all previous signed scopes of work for the construction phase listed above.

II. General Requirements

Contractor will supply all material, equipment, and labor necessary to complete the final grade phase of construction. All work shall conform to all building codes, Owner's standards, plans/details, continuity specs, and industry standards. Prior to starting any job, contractor shall meet with Field Manager to review all plot plans, options, and pending inspections. All work shall be completed per the schedule set forth by the Field Manager. Contractor shall provide unit pricing for Owner's purchasing for standard, and any unexpected costs.

III. Bids Requirements

Contractor must provide a material and labor breakdown for all bids. All bids must include the wording "all applicable taxes included". All bids shall be returned to the office by the required deadline. All bids must be accompanied with the following paperwork:

- Signed Scope of Work
- Signed Community Specifications
- Signed Copy of Owner's bid Sheet

IV. Material Specifications

Note: This equipment list is general material required by manufacturers. This list does not represent all material to be supplied by contractor. Contractor must supply all materials listed throughout the scope of work U.N.C.

V. Scope

A. General

- * Daily Log-In to Current Owner's On-Line Scheduling System;
- * Remove all excess materials at the end of each day.
- * Repair any deficiencies from inspection/QC/Homeowner/Field manager check within 24 hrs.
- * Replace any displaced sign fence, orange fencing, downed signage and permit box as needed.
- * Clean the streets of any dirt, mud, nails, screws, aluminum, etc. generated during material delivery and installation.
- * Contractor will be required to meet scheduled start dates with no less than (3) working days of advance notice by the Field Manager.

Initials: Contractor

Cygnus



B. Final Grade

- Final grade is defined as a fine, hand raked grade suitable for the final installation of sod, seed and/or all other landscape materials to include plants and plant beds.
- Contractor will be required to meet scheduled start dates with no less than (3) working days of advance notice by the Field Manager.
- Review Plot Plan, Property Plots and drainage patterns with Field Manager prior to starting work. Mark-up plot plan outlining all final drainage patterns.
- Call up cuts prior to starting. Contractor is responsible for any utility damage.
- Inspect foundation and existing flatwork prior to grading. Notify Field Manager of any cracks, chips, etc. Final grade contractor is responsible for any damage. Field Manager is not notified prior to start of work. Entire lot is to be GRADED, EXCLUDING NATURAL AREAS, FINISHED AND FREE OF ALL WASTE/DEBRIS.
- Final grade shall include back of curb to rear lot plus area between plots as disturbed to include all utility pedestals, transformers etc. Curb and all existing flatwork to be cut 1 1/2" below grade. All "boxes" to be set at grade and backfilled.
- Remove all trash, rocks, waste, dirt ramps and debris from site generated from this phase of construction. Do not pile on path, driveway, or at the curb. Do not damage any adjacent owner's community lots. **DO NOT DRAG WASTE TO EDGE OF LOT / LANDSCAPE PARAMETERS AND LEAVE. REMOVE FROM JOB SITE.**
- All stoops, front, rear and side, are to be cut and dressed with all final dirt movement/removal as needed to establish final/positive drainage. Standing water should not exceed 48 hours in swales and 24 hours otherwise. Confirm positive drainage beneath all decks and attached structures.
- Final grade is to be a minimum of 8" below top of foundation. There is to be a minimum of 6" of fall in 10' around the foundation. All plant beds shall be raised to 2" above existing grade. In the case of monolithic slab foundations, the plant beds should be located 18" minimum off the face of the foundation for code regulations on exposure requirements. If any plant beds are created in the yard, contractor will leave 4" of soil to raise those beds as well, as long as there are no native trees that the extra soil will cause harm to the tree root system.
- Underbrush all natural material less than 3" inches in diameter and remove debris and dead limbs to 8" off the ground. Entire lot is to be "finished" as defined by property plot location. Logs in excess of 42" in diameter to be removed at additional cost. Meet with Field Manager to agree upon price in advance.
- Re-work grade as necessary to compensate for disturbances from underground utilities, deck, and flatwork installation.
- Turn in diagram of lot showing final drainage patterns to Field Manager.
- Broom sweep all flatwork to drives, walks, patios, porches etc. to include curb and adjacent lots as needed.
- Repair all grading deficiencies as noted by municipal inspectors within 24 hours.
- Verify operation of crawl drain(s) and downspout drain(s). Clear out and re-stake daylight end(s) if necessary.
- Re-set permit box. Remove and replace site fence as needed in order to accomplish / complete job as defined above.
- Move port-a-john to nearest vacant lot. Clean job site.

VI. Payment

All invoices / P.O.'s shall not be turned in and approved for payment until phase complete and all deficiencies are remedied. Owner reserves the right to make the final decision in determining the correct course of action for any and all repairs. No Extras will be paid unless negotiated prior to performing any work and an approved P.O. is issued.

Initials: Contractor

Owner

DRH-001692

Director of Public Works



VII. Warranty

- Contractor shall warrant all work per Owner's contract. All warranty work must be completed within 72 hours of scheduled date and time.

Contractor

Horton's Landscapes Inc
Company Name

[Signature]
By:

Matt Horton
Name:

CEO
Title:

5/27/14
Date:

Owner

D.R. Horton, Inc.

[Signature]
By:

Ron Bunker
Name:

Assistant Vice President
Title:

5/27/14
Date:

Initials: Contractor

[Signature]

Owner

[Signature]

DRH-001693



Exhibit "A"

-Scope of Work-

Landscape Turnkey

I. Scope Policies

This scope of work outlines specifications as required by Owner. This scope of work is in addition to the General Scope of Work. In the event of any conflict between this scope of work and the Independent Contractor Agreement, the Independent Contractor Agreement shall be deemed to control and prevail. The specifications and standards outlined below may be modified at the discretion of Owner. In the instance that any changes are made to the scope, contractor will be notified and required to resubmit a scope within 2 business days. This scope of work shall apply to all Owner communities. In addition, this scope of work shall override all previous signed scopes of work for the construction phase listed above.

II. General Requirements

Contractor will supply all material, equipment, and labor necessary to complete the Landscape Turnkey phase of construction. All work shall conform to all building codes, Owner's standards, plans/details, community specs, and industry standards. Prior to starting any job, subcontractor shall meet with Field Manager to review all plot plan, landscape plan, options, and pending inspections. All work shall be completed per the schedule set forth by the Field Manager. Vendor shall provide unit pricing to Owner's purchasing for standard, and any unexpected costs.

III. Bids Requirements

Contractor must provide a material and labor breakdown for all bids. All bids must include the wording "all applicable taxes included". All bids shall be returned to the office by the required deadline. All bids must be accompanied with the following paperwork:

- Signed Scope of Work
- Signed Community Specifications
- Signed Copy of Owner's bid Sheet

IV. Material Specifications

Note: This section outlines general material requirements/manufacturers. This list does not represent all material to be supplied by contractor. Contractor must supply all materials listed throughout the scope of work U.N.O.

- Sod per community specs (type and areas to be added)
- All mulch is pine straw U.N.O on community specs
- Plants and Trees per Community specs

V. Scope

A. General

- Daily Log-In to Current Owner's On-Line Scheduling System.
- Remove all excess materials at the end of each day.
- Repair any deficiencies from inspection/QC/Homeowner/Field manager check within 24 hrs.
- Replace any displaced silt fences, orange fencing, downed signage and permit box as needed.
- Clean the streets of any dirt, mud, nails, screws, aluminum, etc. generated during material delivery and installation.
- Contractor will be required to meet scheduled start dates with no less than (3) working days of advance notice by the Field Manager.

Initials: Contractor

Owner

DRH-001694



B. Landscaping

- Install quality plant material per specifications
- Plants to be installed per A/LA planting instructions.
- Shrub type, height and diameter are designated by Owner's subdivision specifications. Judgement of nonconformance in plant type is at the sole discretion of the Owner's representative.
- Do not plant shrubbery too close to the foundation-min. 3' from foundation
- All plant beds shall maintain proper fall from foundation per local building codes.
- Plant beds to be raised 2" above grade areas. Plant beds on impervious slab footings should be located no closer than 18" from the face of the foundation.
- All depressions/settlement to be filled to grade, tamped and compacted, to prevent future settlement i.e. sewer and water lines, attachments, clean-outs, shut-offs, meters, etc.
- Plant beds shall be trenched and hand raked of all construction debris, rocks, dirt clods etc. prior to and after plant installation. Plant beds created in the yard shall be 3" above the existing grade so long as there are not active trees that the additional soil will harm the tree's root system.
- Water all material on day of installation.
- Contractor responsible for watering/maintaining all Landscape Material, including sod, up to COE in all communities currently not receiving irrigation. Additional pricing to be agreed upon.
- Ensure positive drainage under decks. Rake and install pine straw under all decks.
- Install pine straw along the natural edge to grassed yard 18" to 2' into natural area if one exists.
- Install 5" corrugated black pipe I.D. splash blocks on all downspouts as required by municipality. Pipe should be connected to downspout with one footway.
- Install concrete sewer clean-out "ring" as required by municipality.
- All flatwork, walks, patios, porches, adjacent curbing to be broom swept and blown free of debris. Hose down if necessary.
- Clean jobsite.
- Clean streets of any mud generated as a result of delivery or installation.
- Remove and re-install permit box and all fences as needed in order to insure proper completion of work as described.

C. Sod/Seed

- NO OVERSEEDED SOD TO BE INSTALLED AT ANY TIME YEAR ROUND, BY REQUEST ONLY. IF DONE SO TO BE REPLACED BY CONTRACTOR AT THEIR EXPENSE.
- All yards are to be plowed, pulverized and hand raked. "YARD" is defined as all areas disturbed within the property as noted by pin placement to include "right-of-way."
- Hand raked areas to be free of rocks and debris.
- Ensure proper grading at curbs, driveways, patios, and A/C pads. Areas to be cut 1/2" to accommodate seed placement.
- Ensure proper drainage away from the home. Landscaping Contractor is responsible for drainage pattern on lot.
- Clearly mark positive drain lines (stakes and paint) prior to laying sod/seed. Make sure they are in working condition.
- Ensure all construction debris has been removed from the yard. Rake out all rocks. Cut any exposed roots, bands below grade and fill over. All construction debris to be removed from Community.
- Ensure finished grade (with material on top of sod, pine straw, etc.) is a minimum of eight inches from siding to the ground and fall 1/8" in 10'.
- Sod material should be green, if not dormant, and of high quality. Sod that does not meet this criteria, we have removed/replaced at Contractor's cost.
- Sod should be installed so there is a smooth transition over property lines.
- Ensure sod is installed in a manner that allows water to drain from seeded areas. There shall be a smooth transition from seed to sod areas.
- Do not install Sod / Seed unless water is available on the lot.
- Thoroughly water and roll all sod on day of installation

Initials: Contractor 

Owner 

DRH-001695



- * Sod should be installed from front corners to the street. On corner lots, sod should be installed to the rear corners. See community specs for additional requirements.
- * Sod shall be stapled in deep swales
- * Seed and wheat straw all disturbed areas not receiving sod or pine straw.
- * All flatwork and decks should be swept clean. Hose down if necessary
- * Immediately remove all sod pallets from Owner's Community after completion.
- * Clean streets of any mud generated as a result of delivery or installation.
- * Clean jobsite. Move port-a-john and trash container to nearest vacant lot or location approved by superintendent.
- * Contractor, at their cost, is responsible for re-seeding high germinated areas and repairing erosion (1) time within (6) months of closing.
- * Sod to be Warranted by Contractor through the completion of (1) "growing" season.

D. Trees

- * Install trees per specs and municipality requirements
- * Trees to meet Nursery "Grade A" standards upon installation and installed per ALA planting instructions.
- * Tree type, height and diameter are designated by Owner's subdivision specifications. Judgement of non-conformance of tree material is at the sole discretion of the Owner's representative.
- * Stake all trees with 2x2 stakes and wire. Wire shall have a piece of hose to protect the tree. Minimum of 3 stakes per tree.
- * If trees are added after sod/seed is installed, hand rake all disturbed areas as a result of installation.
- * Clean streets of any mud generated as a result of delivery or installation.
- * Clean job site

E. Backfill Foundations/Crawl Spaces

- * Supply all materials such as stone, sand, to backfill the crawl spaces and take level.
- * Ensure the crawl space is clean of any debris and take out level.
- * Clean job site

VI. Payment

All invoices / P.O.'s shall not be turned in and approved for payment until phase complete and all deficiencies are remedied. Owner reserves the right to make the final decision in determining the correct course of action for any and all repairs. No Extras will be paid unless negotiated prior to performing any work and an approved P.O. is issued.

VII. Warranty

- * Contractor shall warrant all work per Owner's contract. All warranty work must be completed within 72 hours of scheduled date and time.

Initials: Contractor

Owner



Contractor

Horton's Landscapes Inc
Company Name

[Signature]
By:

Matt Horton
Name:

CEO
Title:

5/27/14
Date:

Owner

D.R. Horton, Inc.

[Signature]
By:

Ron Burrow
Name:

Assistant Vice-President
Title:

5/27/14
Date:

Initials: Contractor

[Signature]

Owner

[Signature]

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DRH-001697



Exhibit "A"

-Scope of Work-

Flatwork Labor Turnkey

I. Scope Policies

This scope of work outlines specifications as required by Owner. This scope of work is in addition to the General Scope of Work. In the event of any conflict between this scope of work and the Independent Contractor Agreement, the Independent Contractor Agreement shall be deemed to control and prevail. The specifications and standards outlined below may be modified at the discretion of Owner. In the instance that any changes are made to the scope, contractor will be notified and required to resign a scope within 2 business days. This scope of work shall apply to all Owner communities. In addition, this scope of work shall override all previous signed scopes of work for the construction phase listed above.

II. General Requirements

Contractor will supply all material, equipment, and labor necessary to complete the flatwork labor turnkey phase of construction. All work shall conform to all building codes, Owner's standards, plans/details, community specs, and industry standards. Prior to starting any job, Contractor shall meet with Field Manager to review all plot plans, options, and pending inspections. All work shall be completed per the schedule set forth by the Field Manager. Vendor shall provide unit pricing to Owner's purchasing for standard and any unexpected costs.

III. Bids Requirements

Contractor must provide a material and labor breakdown for all bids. All bids must include the wording "all applicable taxes included". All bids shall be returned to the office by the required deadline. All bids must be accompanied with the following paperwork:

- Bid Set of Plans (may not be required for all jobs)
- Signed Scope of Work
- Signed Community Specifications
- Signed Copy of Owner's bid Sheet

IV. Material Specifications

Note: This section outlines general material requirements/manufacturers. This list does not represent all material to be supplied by contractor. Contractor must supply all materials listed throughout the scope of work U.S.G.

Concrete-3000psi, 4" slump, no fiber mesh

V. Scope

A. General

- Daily Log-in to Current Owner's On-Line Scheduling System.
- Remove all excess materials at the end of each day.
- Broom sweep house every day at the end of work.
- Repair any deficiencies from inspection/OS/Owner's field manager check within 24 hrs.
- Replace any displaced sill bolts, change fencing, downed signs and permit box as needed.
- Clean the streets of any dirt, mud, nails, screws, aluminum, etc. generated during material delivery and installation.
- Contractor will be required to meet scheduled start dates with no less than (3) working days of advance notice by the Field Manager.

Initials: Contractor

Owner

DRH-001698

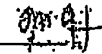


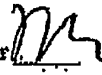
B. Forming

- Prior to forming drive, sidewalk and patio, ensure that sewer inspection has been installed and inspection has passed. Also, ensure electrical and gas undergrounds have been installed. Verify the location and size of driveway and patio with SQS, county utility space and Superintendent.
- **IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO INSURE THAT VEHICLES WILL NOT SCRATCH ON DRIVE WHEN COMPLETE. CONTRACTOR WILL REMOVE AND REPAIR AT THEIR COST IF THIS REQUIREMENT IS NOT MET.**
- Cut driveway, sidewalk and patio establishing a grade that will allow for proper drainage. All flatwork shall drain away from the house. If you are unsure of any drainage patterns, consult superintendent immediately.
- Supply and install all formwork and "bleeding" for irrigation, etc. as required by Superintendent.
- Install expansion joint at the garage and connection of all sidewalks as necessary.
- All sidewalks (with the exception of city sidewalk, unless required) shall be padding, not square.
- Supply and install 4" corrugated pipe under sidewalk for drainage of downspouts if required.
- Sleeve driveway 10" behind the curb and at any sidewalk where a planting bed is surrounded by concrete or other structure with a 4" sleeve. Concrete supplier to supply material for sleeves.
- Form all city sidewalks, as required by municipality when forming drive.
- All form work to be straight and square (where applicable).
- Install cast iron cleanout for sewer if required. This will be supplied by plumbing contractor.
- Grade Right-of-Way to proper municipality requirements.
- If required, supply and install stone to obtain a suitable driveway base. This service will be provided for an additional charge listed below, and must have prior approval. In the event stone is required, contractor must supply superintendent with all stone tickets. Contractor is responsible for removing any extra material from jobsite.
- Inform Superintendent when job is ready for inspection. Call for inspection. Drive shall be inspected within 24 hrs. from the time forms are complete.
- Knock down all dirt piles generated as a result of drive cut. **DON'T** spread gravel out front drive over yard. Consult superintendent for location to pile gravel to be hauled off.

C. Pouring

- Ensure all required inspections have passed. This should include stop inspection on crawl homes.
- Double check all formwork.
- Install 3000 psi concrete minimum of 4" thick. Concrete shall be installed per industry accepted practices. Do not add more than 1.5 gallons of water, or any other additives, per yard without written approval by Owner's representative. Concrete shall not be poured unless the temperature is 40° F and rising.
- Protect all pours from weather. Provide plastic and straw blankets as needed.
- Pour all stoops on crawl homes. Stoops are to be placed with full 1 1/2" ft. and shall not hold water. Stoops are to be broom finished no picture frame.
- Ensure that there are no cold joints.
- Finish to be neat and have a consistent appearance and professional look.
- Ensure there are no humps or low areas which will hold water.
- Clean excess concrete from foundation walls immediately. Clean brick/block as required.
- All control joints to be sealed, not saw out. Control joints shall be installed per industry standards. All driveways over 12' wide will have a centerline control joint. Subsequent control joints shall be installed at all sidewalk radius areas.
- Expansion joints or scores every 4' on walks. Expansion joints to be placed in driveways as closely to square as possible, not to exceed every 10'. All flatwork should be arranged with expansion joints in squares. Minimum 1" fall on public walk from the high side to the low side (even across driveway). Expansion joints **MUST** be the black asphalt (bituminous) type expansion joint material and must be installed level with or below concrete level. **NOTE:** if the scoring method is used the scores must be a minimum of 3/4" deep.

Initials: Contractor 

Owner 

DRH-001699



- Expansion joints to be placed at inside corner of all steps or scored a minimum of 3/4" deep.
- Expansion joints are required where flatwork is poured against existing concrete. These **MUST** be the black asphalt (bituminous) type expansion joint material. Avoid the temptation to use wood.
- Expansion joints against the home. Nails should be put through the expansion joint to hold it down. Expansion joints **must** be placed where sidewalks intersect or join driveways.
- Patio dropped 3 1/2" and sloped for proper drainage, must have fall away from home 1/4" per foot.
- Use 6" x 6" wire mesh or install rebar on chairs in accordance with structural drawings and local and state building codes. Rebar to be overlapped as per structural drawings and local and state building codes. Bending rebar into footing during pour is not permitted.
- Trowel finish, edge, lightly broom, and picture frame flatwork as specified per Community.
- Clean excess concrete/splatter as needed. Wash down any brickwork, siding, doors, foundation, sprinklers and over pour immediately.
- Notify concrete supplier of proper wash-out area. See Superintendent if you are unaware of concrete wash-out area. Excessive waste in the wash-out area will be backcharged.
Note: Contractor is responsible for cost to set up / establish wash-out area and is responsible for cleaning and maintaining concrete wash-out area in accordance with Owner and State / Local Environmental Standards.
- Remove any over pours from site immediately.

D. Stripping Forms

- Strip all forms and remove all stakes within 24 hrs of pour.
- Pick-up and install "No Parking" barricade from construction trailer. "No Parking" barricade to be supplied by Owner.
- Remove all form boards from jobsite.
- Verify slab is level and there are no dips or humps. Any deficiencies need to be corrected within 24 hrs.

VI. Payment

All Invoices / P.O.'s shall not be turned in and approved for payment until phase complete and all deficiencies are remedied. Owner reserves the right to make the final decision in determining the correct course of action for any and all repairs. No Extras will be paid unless negotiated prior to performing any work and an approved P.O. is issued.

1. All Driveway Flatwork
2. Stoop Flatwork on Crawl and Basement Homes, Patio Flatwork on Slab Homes

VII. Warranty

- Contractor shall warrant all work per Owner's contract. All warranty work must be completed within 72 hours of scheduled date and time.

Initials: Contractor

Owner

D.R. HORTON
America's Builder

Contractor

Hortons Landscapes Inc
Company Name

[Signature]
By:

Mary Horton
Name:

C.E.G.
Title:

5/27/14
Date

Owner

D.R. Horton, Inc.

[Signature]
By:

Ron Bonnor
Name:

Assistant Vice-President
Title:

5/27/14
Date

Initials: Contractor [Signature]

Owner [Signature]



Exhibit "A"

"Scope of Work- Slab Backfill"

I. Scope Policies

This scope of work outlines specifications as required by Owner. This scope of work is in addition to the General Scope of Work. In the event of any conflict between this scope of work and the Independent Contractor Agreement, the Independent Contract Agreement shall be deemed to control and prevail. The specifications and standards outlined below may be modified at the discretion of Owner. In the instance that any changes are made to the scope, Contractor will be notified and required to resubmit a scope within 2 business days. This scope of work shall apply to all Owner communities. In addition, this scope of work shall override all previous signed scopes of work for the construction phase listed above.

II. General Requirements

Contractor will supply all material, equipment, and labor necessary to complete the slab backfill phase of construction. All work shall conform to all building codes, Owner's standards, plans/details, community specs, and industry standards. Prior to starting any job, Contractor shall meet with Field Manager to review all plan, options, and pending inspections. All work shall be completed per the schedule set forth by the Field Manager. Vendor shall provide unit pricing to Owner's purchasing for standard and any unexpected costs.

III. Bids Requirements

Contractor must provide material and labor breakdown for all bids. All bids must include the wording "all applicable taxes included". All bids shall be returned to the office by the required deadline. All bids must be accompanied with the following paperwork:

- * Bid Set of Plans
- * Signed Scope of Work
- * Signed Community Specifications
- * Signed Copy of Owner's Bid Sheet

IV. Material Specifications

Notes: This section outlines general material requirements/manufacturers. This list does not represent all materials to be supplied by Contractor. Contractor must supply all materials listed throughout the scope of work U.N.C.

As Requested Only, ...
Sand / Select-Fill Materials

V. Scope

A. General

- * Daily Log-in to Current Owner's On-Line Scheduling System.
- * Remove all excess materials at the end of each day.
- * Broom sweep house every day at the end of work.
- * Repair any deficiencies from inspection/QC/Owner/Field manager check within 24 hrs.
- * Replace any displaced all fence, grange fencing, downed signage and name box as needed.
- * Clear the streets of any dirt, mud, nails, screws, aluminum, etc. generated during material delivery and installation.
- * Contractor will be required to meet scheduled start dates with no less than (3) working days of advance notice by the Field Manager.

Initials: Contractor

Owner

DRH-001702

Delaware, DEU

**B. Slab Backfill**

- * Walk the foundation to check for damage. Report damage immediately to the Superintendent before proceeding with work. You will be responsible for any damage to the foundation found after the slab backfill phase.
- * Remove any loose dirt and organic material from slab area, including garage.
- * Meet with Superintendent to determine garage slab height.
- * Dump backfill material in driveway area only. Do not dump in the front yard. If driveway is inaccessible, consult Superintendent.
- * In garage, grade the backfill material to allow for 3" of fall from back to front of garage.
- * Fill creep with backfill material 4" from top of backfill material to top of foundation.
- * Sweep debris and backfill material from top of foundation.
- * All load supporting fill must be installed in a manner to achieve a 2,500 psi soil bearing capacity.
- * All fill must be compacted to achieve a density of 95% of the Standard Proctor Density for the fill used.
- * Spread or remove excess backfill material from site.
- * In the case of a Raised Monolithic Slab or a Block Stem Wall Slab foundation, there will be 2 parts of fill material. These 2 parts consist of the main house pad (subpad) and the fill material which is contained within the foundation walls themselves (backfill). The following additional scopes will be required:

1) Block Stem Wall Slab.

- a) Sub-pad area to be excavated and filled per engineering report recommendations.
- b) Sub-pad to be filled in 12" lifts with each lift being compacted to achieve a density of 95% of the Standard Proctor Density for the fill used.
- c) Sub-pad to be filled to a height to be equal to the height of the final finish grade.
- d) Backfill to be filled in 12" lifts and each lift is required to be compacted to achieve a density of 95% of the Standard Proctor Density for the fill used.
- e) Backfill final height should be 4" lower than final slab height. This measure is to take into account the fill excavated from footings and plumbing excavations. Contractor is responsible for balancing this excavated material to where fill will not be required to be hauled away.
- f) Sub-pad requires an engineering compaction density report ordered by the builder.
- g) Backfill requires an engineering compaction density report ordered by the builder.
- h) Footings require an Engineering Penetrometer report ordered by the builder.

2) Raised Monolithic Slab Backfill prior to form boards installation

- a) Sub-pad area to be excavated and filled per engineering report recommendations.
- b) Sub-pad to be filled in 12" lifts with each lift being compacted to achieve a density of 95% of the Standard Proctor Density for the fill used.
- c) Sub-pad to be filled to a height to be equal to the height of the final finish grade.
- d) Backfill to be filled in 12" lifts and each lift is required to be compacted to achieve a density of 95% of the Standard Proctor Density for the fill used.
- e) Backfill final height should be 4" lower than final slab height. This measure is to take into account the fill excavated from footings and plumbing excavations. Contractor is responsible for balancing this excavated material to where fill will not be required to be hauled away.
- f) Backfill to be filled as close to the exterior face of the foundation as to minimize the amount of cut required to dig footings and set form boards.
- g) Sub-pad requires an engineering compaction density report ordered by the builder.
- h) Backfill requires an engineering compaction density report ordered by the builder.
- i) Footings require an Engineering Penetrometer report ordered by the builder.

Initials: Contractor

Owner

DRH-001703

Date of entry DRH

D.R. HORTON
America's Builder

- 3) Raised Monolithic Slab Backfill after form board installation
- Sub-pad area to be excavated and filled per engineering report recommendations.
 - Sub-pad to be filled in 12" lifts with each lift being compacted to achieve a density of 95% of the Standard Proctor Density for the fill used.
 - Sub-pad to be filled to a height to be equal to the height of the final finish grade.
 - Backfill to be filled in 12" lifts and each lift is required to be compacted to achieve a density of 95% of the Standard Proctor Density for the fill used.
 - Backfill final height should be 4" lower than final slab height. This measure is to take into account the fill excavated from footings and plumbing excavations. Contractor is responsible for balancing this excavated material to where fill will not be required to be hauled away.
 - Additional care shall be used to ensure that the compaction is consistent across the entire extent of the Backfill and up against form hoards.
 - Sub-pad requires an engineering compaction density report ordered by the builder.
 - Backfill requires an engineering compaction density report ordered by the builder.
 - Footings require an Engineering Penetration report ordered by the builder.

VI. Payment

All invoices / PO's shall not be turned in and approved for payment until phase complete and all deficiencies are remedied. Owner reserves the right to make the final decision in determining the correct course of action for any and all repairs. No Extras will be paid unless negotiated prior to performing any work and an approved P.O. is issued.

VII. Warranty

- Contractor shall warrant all work per Owner's contract. All warranty work must be completed within 72 hours of scheduled date and time.

Contractor

Horton's Landscapes Inc
Company Name

Matt Horton
By:

Matt Horton
Name:

0200
Title:

5/22/14
Date:

Initials: Contractor MH

Owner

D.R. Horton Inc.

Ron Bunner
By:

Ron Bunner
Name:

Assistant Vice-President
Title:

5/27/14
Date:

Initials: Owner RB

D. R. HORN
American Publication

Exhibit "A"

Scope of Work

House Slab Turnkey (Monolithic)

I. Scope Policies

This scope of work outlines specifications as required by Owner. This scope of work is in addition to the General Scope of Work. In the event of any conflict between this scope of work and the Independent Contractor Agreement, the Independent Contractor Agreement shall be deemed to control and prevail. The specifications and standards outlined below may be modified at the discretion of Owner. In the instance that any changes are made to the scope, contractor will be notified and required to resign a scope within 2 business days. This scope of work shall apply to all Owner continuities. In addition, this scope of work shall override all previous signed scopes of work for the construction phase listed above.

II. General Requirements

Contractor will supply all material, equipment, and labor necessary to complete the house slab turnkey phase of construction. All work shall conform to all building codes, Owner's standards, plans/details, community specs, and industry standards. Prior to starting any job, subcontractor shall meet with Field Manager to review all plot plans, options, and pending inspections. All work shall be completed per the schedule set forth by the Field Manager. Vendor shall provide unit pricing to Owner's purchasing for standard, and any unexpected costs.

III. Bids Requirements

Contractor must provide a material and labor breakdown for all bids. All bids must include the wording "All applicable taxes included". All bids shall be returned to the office by the required deadline. All bids must be accompanied with the following paper work:

- Signed Scope of Work
- Signed Community Specifications
- Signed Copy of Owner's Bid Sheet

IV. Material Specifications

Note: This section outlines general material requirements/instructions. This list does not represent all materials to be supplied by contractor. Contractor must supply all materials listed throughout the scope of work U.N.O.

Concrete-3000psi, 4" slump
 Stone-#67 washed stone
 6 mil visqueen
 1/2" anchor bolts, and/or additional anchoring hardware as required.
 #6@10/10 welded wire mesh
 Insulation (Dow Corning Styrofoam)
 1/4" rebar, and/or additional as required. Specifications shall meet local codes.
 Slab work must be within 1/4" for every 10' finished.

Initials: Contractor



Owner





V. Scope

A. General

- Daily Log-In to Current Owner's On-Line Scheduling System.
- Remove all excess materials at the end of each day.
- Broom sweep house every day at the end of work.
- Repair any deficiencies from inspection/Customer/Field Manager check within 24 hrs.
- Replace any damaged site fence, orange flagging, downed signage and permit box as needed.
- Clean the streets of any dirt, sand, nails, screws, aluminum, etc. generated during material delivery and installation.
- Contractor will be required to meet scheduled start dates with no less than (3) working days of advance notice by the Field Manager.

B. Forming

- Meet with Superintendent to review plans and options prior to forming.
- Provide all necessary form board (gutter, stakes, welded wire mesh, vapor barrier (6 mil Visqueen), reinforcement steel, chairs for steel and wire mesh, Mid-Sill Straps per plan and local code.
- Prior to setting forms, ensure that pad is level. If pad is out of level, stop and inform Superintendent immediately.
- Set all formwork per structural drawings, plans and details.
- Ensure all brick ledges are formed per slab and framing plan.
- Ensure all forms are square. Maximum allowable deviation of squariness from square shall be 1/4" as measured diagonally.
- Leave unexposed paint for the plaster.
- Place all debris in trash bin at curb or area designated by superintendent. Remove any unused form material from site.

C. Backfill/Prep

- Prior to backfill, ensure that plumbing inspection, and if applicable, underground electrical inspection have passed.
- See Exhibit "A" Scope of Work Slab Backfill for additional scopes.
- Dig and clean all footings of any organic material/unusable soils.
- Be responsible for any damage caused to underground plumbing pipes.
- Garage shall have a minimum of 2" fill in the garage; a maximum of 3".
- Install a 1" weather lip 8" inside the garage wall from inside to inside edge of the exterior wall. Ensure there is proper fill from the weather lip to future drive.
- Contractor is ultimately responsible for figuring the installation of floor outlet conduit, which is supplied by Electrical Contractor. (Electrical Contractor is the primary source of installations).
- Form walls as required by plans and specifications.
- Install 6x6 10/10 welded wire mesh over slab area. WWM should be installed on chairs or pulled into the center of the slab while pouring.
- Install rebar in all footings on chairs, as per structural drawings and state and local building codes.
Note: (2) #4 rebar on rebar chairs is the minimum specified by Owner. Engineer's requirements may exceed this - verify with plans.
- Install foam insulation as required.
- Install 6 mil poly over slab area.
- Verify all slab dimensions, brick ledges patios, etc. Ensure all are square.
- Notify Superintendent for inspection.
- Contractor to bring line slab so inspector/superintendent can verify depth of concrete.

Initials: Contractor

Owner

DRH-001706

Dr. et al v. DRH



D. Pouring

- * Ensure all required inspections have passed.
- * Concrete pumping, when required, shall not commence until approved by Owner's representative and a Purchase Order is received.
- * Slab work must be within 1/4" for every 10' finished.
- * Check all forms for level, plumb, and square.
- * Install 1000 psi concrete. Concrete shall be installed per industry accepted practices. Do not add more than 1 gallon of water, or any other additive, per yard without written approval by Owner's representative. Concrete is to be shipped from the Batch Plant with a 4" - 5" slump. Concrete shall not be poured unless the temperature is 40° F and rising.
- * Protect all pours from weather. Provide plastic and straw blankets as needed.
- * Use grade stakes when pouring.
- * W.W.M. should be installed on chairs, or pilled into the center of the slab while pouring.
- * Install hold downs (i.e. bolts, strips, etc...) as per structural drawings and state and local building codes. Ensure that no hold downs are installed in door openings. Extra hold downs may be required on short walls and wing walls. Install per requirements.
- * Take special care when finishing around plumbing pipes.
- * Pour all patios and stoops.
- * Ensure that there are no cold joints.
- * Ensure slab surface finish is smooth and level and free of crowling marks.
- * Ensure all brick ledges are level.
- * Concrete slabs should be constructed with control joints having a depth of at least 1/4" the slab thickness.
- * Trowel garage control joints. Joints should be trowled. Two equal sections in 2 car, four equal sections on 2 car garage, six sections on 3 car garage.
- * Broad Finish and picture frame all patios and entry stoops.
- * Notify concrete supplier of proper washout area. See Superintendent if you are unaware of concrete washout area. Excessive waste in the washout area will be back charged.
- * Concrete vendor is responsible for cost to establish concrete washout area and is responsible for cost to clean out/maintain concrete washout area in accordance with Owner and State / Local environmental standards.
- * Remove any over pours from site immediately.
- * Provide the Superintendent with all concrete tickets with the appropriate job lot and address within 24 hrs of pour.

E. Stripping Forms

- * Forms shall be stripped on the same day having weather conditions. All forms shall be stripped within 24 hrs of pour.
- * Purge all honeycombs and plumbing pipes protruding out of slab as needed.
- * Remove all form boards from jobsite.
- * Clean job site.
- * Verify slab is level and there are no dips or humps. Any deficiencies need to be corrected within 24 hrs.
- * Grade out any dirt piles that may have been created during slab installation.

VI. Payment

All invoices/P.O.'s shall not be signed or approved for payment until phase complete and all deficiencies are remedied. Owner reserves the right to make the final decision in determining the correct course of action for pay and all repairs. No Extras will be paid unless negotiated prior to performing any work and an approved P.O. is issued.

Initials: Contractor

Owner



VII. Warranty

- Contractors shall warrant all work per Owner's contract. All warranty work must be completed within 72 hours of scheduled date and time.

Contractor

Waters Landscapes Inc
Company Name

[Signature]
By:

MATT HANSEN
Name:

CEO
Title:

5/27/14
Date:

Owner

D.R. Horton, Inc.

[Signature]
By:

Ron Bunker
Name:

Assistant Vice President
Title:

5/27/14
Date:

Initials: Contractor

[Signature]

Owner

[Signature]

DRH-001708

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	C.A. No.: 2018-CP-07-00911
Richard W. and Rebecca A. Drier; <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
Americo Roofing, Inc. <i>et al.</i> ;	)	
	)	
Defendants,	)	
	)	
Builders FirstSource-Southeast Group, LLC)	)	
and ProBuild Company, LLC,	)	
	)	
Third Party Plaintiff,	)	
	)	
v.	)	
	)	
Blue Mesa Construction, Inc.,	)	
	)	
Third Party Defendant)	)	

AFFIDAVIT OF RONALD K. BUNNER

I, Ron Bunner, having been duly sworn, hereby depose and state the following:

1. I am over the age of 18 and competent to give this Affidavit. All information contained herein is based upon my personal knowledge.
2. I am employed by D.R. Horton, Inc. ("DRH") as a Vice-President of Operations in the Charleston Division, and I have been employed in this capacity at all times relevant to the subject matter of this affidavit.
3. On September 23, 2021, I was deposed in the above-referenced matter as DRH's 30(b)(6) company witness.

4. In the deposition, I was presented with the "Contract and Specifications for Tidewater Creek," ("the Contract") but it was an incomplete copy which did not contain the specifications. The full version of the Contract is attached hereto as **Exhibit A**.

5. Regarding the Contract, I testified that it is a contract with Lather Construction ("Lather") and DRH for the site development of Tidewater Creek ("the Project"), which specifically governs the scope of work and pricing for the Project.

6. My testimony remains accurate. The Contract was prepared by the site development engineer, Carolina Engineering Consultants, Inc. ("Carolina Engineering") and provides detail and information surrounding each parties' scope of work and responsibility for the site development of this particular Project.

7. However, at the deposition, I was not presented with the Independent Contractor Agreement ("ICA") between Lather and DRH (**Exhibit B**).

8. The ICA governed the relationship between Lather and DRH at the time Lather commenced its work as the general contractor for the site development work at the Project, whereas the Contract prepared by Carolina Engineering provided more framework concerning Lather's scope of work specific to the Project. Both contracts are valid and govern the relationship between Lather and DRH related to the Project in certain respects.

9. Prior to signing this Affidavit, I was provided with a full opportunity to review it and make corrections.

10. The statements made herein are based on my personal knowledge and/or my review of DRH's business records, which are kept in the ordinary course of business.

[Signature lines appearing on the following page]

Executed on October 25th 2021.

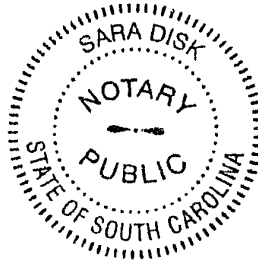


RONALD K. BUNNER

SWORN TO and subscribed before me
this 25th day of January, 2021.

Sara Disk
Notary Public for South Carolina

My Commission Expires: 12-19-2024



49021118.1



Exhibit "A" Part I-General Scope Of Work

General & Miscellaneous

- Mobilization
- Layout and staking
- Build construction entrance
- Asbuilts
- Installation of stop and street signs
- Installation of conduit

Clearing and Demolition

- Clear and grub site

Drainage

- Installation of RCP
- Insulation of HDPE
- Install catch basins, curb inlets, and junction boxes

Erosion Control

- Tree protection
- Temporary gravel
- Silt fence
- Seeding and sod
- Rip-rap sediment basin

Earthwork

- Strip/respreads topsoil
- Off-site fill
- Demucking and backfill
- Rough grade

Initials: Owner:

Contractor:

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Grading

- Fine grade for curb and base
- Fine grade shoulders and easements

Asphalt Paving & Pavement Marking

- Asphalt surface and binder

Concrete

- Concrete curb
- Installation of handicap ramps

Utilities

- Utility layout and record drawings

Sanitary Sewer

- Installation of sewer
- Pump stations

Water Distribution

- Installation of water

Owner:

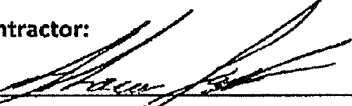
By: 

Name: Ron Bunner

Title: Assistant Vice-President

Date: 12/21/13

Contractor:

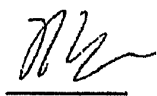
By: 

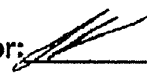
Name: Shaun Lether

Title: Owner

Date: 11-26-13

Initials:

Owner: 

Contractor: 

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Affidavit
Ronald K Bunner
Exhibit B



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR igthe Construction ("Contractor")
 Sole Proprietorship ☐ Partnership ☐ ☒ Corporation ☐ LLC ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No.: 46-4003042
 Name of Owner(s)/Officer(s): Shawn D. Lathur
 Division Name: Capital Carolina Area Name: Hilton Head/Sea Assigned Vendor No.: 1100967
 Address for All Notices: 1 East River Dr
 City: Beaufort State: SC Zip Code: 29907
 Telephone: (813) 247-3687 Fax: () E-Mail Address: Shawn.D.Lathur@igtheconstruction.com
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 2nd day of December, 2013, between DR Horton, Inc ("Owner") and Contractor.

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of this Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement shall include all work performed and materials supplied by Contractor, directly or indirectly, to Owner, including but not limited to the labor, services and/or materials, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized by written purchase order, or similar document by Owner's authorized field personnel (the "Work"). The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing shall not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to, or in place of, Contractor.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, method and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further shall provide written notification to all of its present and future employees of Contractor's provision for Workers Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall be solely responsible for and will pay all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNTIL CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule implementing a price increase, the superseded Pricing Schedule shall remain in effect for Purchase Orders, as defined herein, issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing from Owner to a purchaser of the house incorporating the Work. To the extent permitted by law, Contractor waives its right to payment for any Work not invoiced in a timely manner. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order, as defined herein.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO CONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN. CONTRACTOR AGREES THAT OWNER DOES, AND WILL, NOT OWE INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF ANY DELAYED PAYMENT.

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

Executed this 2nd day of December, 2013.

Owner: [Signature]
 By: RON BONNEL
 Name: Assistant Vice-President
 Title: Assistant Vice-President

Contractor: [Signature]
 By: Shawn D. Lathur
 Name: Shawn D. Lathur
 Title: Owner

INITIALS: OWNER [Signature] CONTRACTOR [Signature]

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4.2 Contractor Payments. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed by Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Unless otherwise agreed by Owner and Contractor, payment to Contractor shall be made by check. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties; and these joint payments shall satisfy amounts owed by Owner to Contractor, whether or not all parties endorse the checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the contract price shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of or resulting from the Work and shall not release Contractor from any obligations under this Agreement, including but not limited to liability for warranties, warranty service, or any other liability for alleged defects in the Work. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or customers or assigns shall constitute an acceptance of the Work or materials not in compliance with this Agreement, or be used in any way as evidence of acceptance by Owner.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.2 Authorization and Commencement of the Work. Authorization for any Work shall be in writing, either pursuant to a written purchase order, work invoice, or similar document ("Purchase Order"). Contractor shall have no authority to commence the Work at any specific job location until Owner has issued instructions to proceed. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.3 Changes in Construction Schedule. Owner shall have the right to make changes to the schedule of Work at Owner's sole discretion, and Contractor shall comply with such changes. Contractor shall not be entitled to any additional compensation for such schedule changes.

6. PERFORMANCE OF THE WORK.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FHA minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all laws (statutory and common law), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements). In the event of conflicting provisions, specifications will take precedence over the drawings; the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive; later modifications or changes will supersede or take precedence over earlier provisions. Subcontractor shall immediately notify Contractor in writing of any allegedly conflicting provisions.

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall have absolute authority to act, in all respects, on behalf of and for Contractor.

6.3 Contractors' Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized employee of Owner and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, and that the plans and specifications are clear and unambiguous, and that Contractor has accepted and agreed to be bound by all such requirements.

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, rules, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "Requirements"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, regardless of any alleged fault of Owner. In addition, Contractor shall not discriminate (illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform warranty or repair work after a house is occupied.

6.5 Observation, Inspection and Testing. Owner and any government agency inspector ("Inspector") shall have the right, but not the obligation, to observe, inspect or test the Work at any time during or after construction, but that observation, inspection or testing is solely for the benefit of Owner and is not for Contractor's benefit. Contractor shall cooperate with Owner and Inspector during any such inspection. The failure by Owner or Inspector to note defects in the Work during an inspection shall not waive or vary any of Contractor's obligations, representations or warranties related to the Work.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any Work. or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses, approvals, and as-built drawings necessary for, or applicable to, the performance of the Work. Contractor shall provide copies to Owner immediately upon request.

6.8 Change Orders. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes. Contractor shall comply with any Change Order requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such

INITIALS: OWNER WJW, CONTRACTOR [Signature]

receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. TO THE EXTENT PERMITTED BY LAW, CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS OR SIMILAR CLAIMS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Work is located.

9.3 Lien Claims Indemnity. If any liens, affidavits of claim, stop payment notices, or lis pendens arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such lien, affidavit, stop payment notice, or lis pendens to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such lien, affidavit, stop payment notice, or lis pendens, and further agrees immediately upon Owners' request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge that lien, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any home purchaser in discharging the lien, affidavit, stop payment notice, or lis pendens which remedy Owner elects in its sole and absolute discretion. The provisions of this paragraph shall be in addition to any rights Owner may have under applicable law with respect to such liens, affidavits, stop payment notices, or lis pendens.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF AND ATTORNEYS' FEES), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (2) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR OR BY CONTRACTOR'S AGENTS OR EMPLOYEES, OR BY SUPPLIERS OR SUBCONTRACTORS OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES; (3) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, OR SUBCONTRACTORS, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE, OR (4) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF INDEMNITEE, RELATED IN ANY WAY TO THE WORK, EXCEPTING ONLY LIABILITY OR CLAIMS ARISING OUT OF BODILY INJURY TO PERSONS, DEATH, OR DAMAGE TO PROPERTY PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY INDEMNITEE AGAINST LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

10.3 NO BAILMENT. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, ALL SUBCONTRACTORS, AND SUPPLIERS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS, MATERIALS, OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS, MATERIALS OR EQUIPMENT.

10.4 Subcontractors and Suppliers Indemnity Obligations. Contractor shall require each of its subcontractors to agree to indemnify Indemnitor to the same extent that Contractor is required to indemnify Indemnitor in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitor to the extent required and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitor from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth in Section 13 of this Agreement. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the acts and omissions of any subcontractor or supplier who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed also to be the obligation of the subcontractors or suppliers to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with products-completed operations coverage, which contains a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit of no less than Two Million Dollars (\$2,000,000.00) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products-completed operations including materials designed, furnished, and/or

INITIALS: OWNER WJ CONTRACTOR [Signature]

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, t, u) exposures. The CGL Policy shall not exclude from coverage the type of, or nature of, the Work or limit the type of structure on which the Work is to be performed. The CGL policy shall not contain a deductible or self-insured retention of more than \$25,000.00. Contractor shall continuously maintain a CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work.

11.3 Other Insurance. Contractor agrees to carry (a) Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law; (b) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (c) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person for bodily injury and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner as a named, Additional Insured, specifically identifying Owner, on the CGL Policy and policies required above covering both ongoing operations and completed operations (equivalent in scope to form CG 2010 1185 or, if unavailable, both forms CG 2010 1001 and CG 2037 1001). Coverage obtained by Contractor with Owner as an additional insured shall be primary, with any insurance of Owner being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work; (iii) provide for a waiver of subrogation; (iv) indicate that coverage applies in the state where the Work is being performed; and (v) be with a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the required policies, as requested by Owner.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER BY OWNER POLICY WITH RESPECT TO PARTICULAR TRADE CATEGORIES IN ITS SOLE AND ABSOLUTE DISCRETION IN EFFECT AT THE TIME WORK IS PERFORMED) TO COMPENSATE OWNER REASONABLY FOR ANY ADDITIONAL COSTS OF ITS WORKERS COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS AGREEMENT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Owner as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

11.7 Subrogation. Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including but not limited to claims relating to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Owner or any indemnitee, and any of their consultants, subcontractors, agents, employees and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or if another contractor's work, or other property, is damaged by an act or omission of Contractor, its employees, agents, suppliers, or subcontractors, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location as a result of Contractor's acts or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or (viii) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may set off from amounts owing to Contractor hereunder any amounts owing by Contractor to Owner's parent company, any subsidiary or affiliate, under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations,

INITIALS: OWNER DM CONTRACTOR [Signature]

rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking other relief.

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("FAA"). All demands for arbitration shall be made before the expiration of the applicable statutes of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified or corrected only as permitted by the FAA.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator(s) mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes against Owner, is for \$1,000,000 or more, but only one arbitrator shall be appointed if the Dispute is for less than \$1,000,000. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

13.5 Rules. To the extent not in conflict with the FAA, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) can be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner. If multiple lawsuits or arbitrations are commenced, Owner in its sole discretion may consolidate them into a single proceeding. Notwithstanding any other provision of this Section 13, if Owner determines in its sole discretion that a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect unilaterally to waive mediation or arbitration and to litigate the Dispute in court with Contractor.

14. TERMINATION.

14.1 Termination by Owner. This Agreement shall remain in full force and effect until terminated in writing by Owner by mailing notice to Contractor. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) days written notice to Owner before the effective date of any termination by Contractor, and shall perform fully under this Agreement during that notice period.

14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement; (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement; (iii) this Agreement is or will be (when executed) a binding obligations of Contractor, enforceable in accordance with its terms; (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority; (v) Contractor has, and each Contractor's employees, agents or subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement; (vi) Contractor is in compliance with all governmental requirements to which it is subject; and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to amend and supersede all prior Independent Contractor Agreements (other than any Master National Independent Contractor Agreement) or other prior understandings or written or oral agreements, specifically including but not limited to all prior pre-printed standard contractor/subcontractor agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods or services or both by Contractor relating to the subject matter herein. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work and shall be deemed subject to the terms of this Agreement. Any future Pricing Schedules and Purchase Orders entered into hereafter shall also be deemed to be subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices and quantities of sale only. Nothing in any subsequent agreement or document, unless a new Independent Contractor Agreement, shall alter the terms set forth in this Agreement. To the extent possible, this Agreement shall be deemed to supplement the terms of any other agreement or document, unless a new Independent Contractor Agreement. In the event of any conflict between this Agreement and other such documents, this Agreement shall be deemed to control and prevail. Except as otherwise provided in this Agreement, no amendment or supplement to this Agreement shall be valid or binding unless in writing and signed by both Owner and Contractor. Notwithstanding anything in this Subsection to the contrary, this Agreement shall not amend or supersede any Master National Independent Contractor Agreement, but shall supplement its terms. In the event of a conflict, to the extent permitted by

INITIALS: OWNER DM CONTRACTOR DM

rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not limited to trash, unused building materials, garbage, refuse or rubbish ("Waste"), caused by its operations and shall remove all of Contractor's materials at the conclusion of the Work. If materials are furnished by Owner, Contractor shall move all usable materials at the conclusion of the Work to a location designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon demand by Owner and may be deducted by Owner from any sums owed to Contractor.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

7.2 Safety Laws. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations ("Safety Law"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of, or noncompliance with, the Safety Law, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation or noncompliance by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, of the Safety Law, or safety citation, regardless of any alleged fault of Owner. Contractor shall provide written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and, if required by law, provide written notice to Owner of the contact person responsible for Contractor's safety compliance.

7.3 Hazardous Materials. Contractor shall not permit any Hazardous Substances, defined below, to be brought onto or stored at any job site or used in the construction of the Work, except for commonly used construction materials, provided however, that all such material shall be handled in full compliance with all laws, ordinances and regulations. All notices required to be given with respect to such products shall be given by Contractor. Contractor shall not release or dispose, nor allow any other person to release or dispose, of Hazardous Substances or waste at any job site or into the soil, drains, surface or ground water, or air. "Hazardous Substance" means any substance or material which any state, federal or local governmental authority determines or designates as capable of posing a risk of injury to health, safety, property or the environment.

7.4 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, agents, subcontractors or suppliers at a job location, or performance of the Work by any person under the influence of alcohol or drugs. "Drugs" shall include any substance, whether or not illegal, which upon exposure, ingestion, inhalation, injection or by any other introduction, may impair one's ability to safely perform the Work.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. For the longer of ten years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work shall conform to the specifications of this Agreement (including but not limited to the standards referenced in Subsection 6.1), shall be free from any defects or deficiencies in workmanship or materials, shall comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, shall meet or exceed the FHA/VA minimum property standards, and shall comply with the Home Owners' Warranty, defined below and its applicable warranty standards (which Contractor has read and understands). All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects. Contractor shall be liable to make good or promptly repair all Work not complying with the standards set forth in this Section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Subsection 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, any initial home purchaser of property subject to the Work: (i) for a period of ten (10) years all structural elements, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; and (iii) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (a) any statutory warranty or (b) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner, including but not limited to the Residential Warranty Corporation Program (a "Home Owners' Warranty"). Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Home Owners Warranty that is longer than the warranty periods stated above; provided, however, failure to give that notice will not affect the extension of the warranty period to the applicable warranty period under the Home Owners Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform warranty services thereafter.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product information, and guarantees by manufacturers on components of the Work, including any appliances or equipment, and shall furnish all certificates required by any third parties such as any municipality, the VA, or the FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and shall not limit or reduce any applicable statutes of limitation.

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon

INITIALS: OWNER DRH CONTRACTOR DRH

law, the Master National Independent Contractor Agreement shall control.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights, responsibilities, and obligations under this Agreement are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Any attempted assignment shall be null and void. This restriction includes, without limitation, the delegation or subcontracting of any Work or any amounts which may become due to Contractor as a result of the Work. Contractor shall remain fully liable under this Agreement regardless of any consent by Owner to any assignment or delegation of duties by Contractor, including but not limited to any work by a subcontractor. Contractor shall ensure that any subcontractor receives a copy of this Agreement and agrees in writing to be fully responsible for all obligations of Contractor under this Agreement, including but not limited to the insurance and indemnity provisions. Contractor shall also ensure that Owner is an intended third party beneficiary of any subcontractor agreement by including a specific provision to that effect. Contractor shall be responsible for enforcing any warranties given by its subcontractors, suppliers or manufacturers. Nothing contained herein, however, shall create any contractual relationship between Owner and any subcontractor, nor create any obligation on the part of Owner to make payment of any sums to any subcontractor. Subject to the restrictions and prohibitions on assignment set forth in this Subsection, the terms of this Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns. Owner may freely assign this Agreement, in whole or in part.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No act or conduct other than a specific, written waiver of a right shall be deemed a waiver by Owner. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

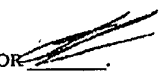
16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

18. NOTICES. All notices required or permitted pursuant to this Agreement or otherwise shall be in writing and shall be delivered as follows: to Contractor at Contractor's business address as shown on page one (1) of this Agreement; to Owner through Owner's official Registered Agent for service of legal process in the state where the Work is performed at that Registered Agent's registered office. Notices may be given by personal delivery, facsimile, commercial overnight delivery service, personal delivery or ordinary mail and shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by commercial overnight delivery service, and upon confirmation if sent by facsimile transmission or by personal delivery. Rejection, refusal to accept or the inability to deliver because of changed address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or subsections.

SOUTH CAROLINA VERSION (REV. 12 APRIL 2013)

INITIALS: OWNER  CONTRACTOR 

Page 7 of 7

DRH-000954
Drier et al v. DRH

PURCHASE ORDER



Check Date 09/17/15
Check Number 126462
Invoice Date 09/09/15
Invoice Number 51566-00200763

Express Homes

PO Rev/Date/Page	0 / / 1
Purchase Order Date	07/14/15
Bid Contract Number	100006
FPO Req#/ JDE WO#	00000000 /
Purchase Order Number	200784 ON
Sub # / BU ID#	51566 / 0018
Swing/Plan/Elevation	L / 2362 / B

VENDOR: 524672 OPEN AMOUNT: 0.00

EAST COAST CONST CLEANUP INC
PO BOX 46
HARDEEVILLE SC 29927

Phone: (843) 384-1310 Fax: (843) 784-2936

Remit To
D.R. HORTON - HILTON HEAD/SAVANNAH
PO BOX 3558
BLUFFTON, SC 29910
Phone: (843) 706-3400 Fax: (843) 706-3401

DELIVER TO:

Tidewater Creek Delivery Date
4892 Breeze Way
LADY'S ISLAND, SC 29907
Lot/Block
Plat Lot/Block/Phase 18 / /

Work Description
42030.01 Exterior Clean 1

Description	Option	Qty	Unit Price	Extension
LOT:515660018 4892 Breeze Way Exterior Clean 1	PLAN: 2362 ELEV: B Phase: 2361.00		.190	448.59

				448.59

PAID

SPECIAL INSTRUCTIONS:

1. We reserve the right to cancel if not filled as specified.
2. Place P.O. number on all invoices.
3. A copy of delivery ticket signed by D.R. Horton personnel and this signed P.O. must accompany each invoice submitted for payment with signed lien release.
4. Partial Shipments will not be accepted.

5. No liability will be assumed for materials placed on the job site that are not installed or that are in the excess of the amount specified on this P.O.
6. This P.O. is applicable only to the jobs indicated.
7. Receipt of this P.O. is binding on supplier for material at prices specified.
8. All terms and conditions of the signed contract and scope of work apply to this document.

Terms	Tax Percentage	Sales Tax	Total PO
			448.59

Superintendent: YANNARELLA, NICHOLAS A Phone: (843) 226-8163

D.R. Horton Appr: _____ DATE: _____

ELECTRONICALLY FILED - 2021 Nov 12 1:43 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0700911

DRH-005858
Drier, et al v. DR

PURCHASE ORDER

D·R·HORTON DRIER HORTON NYSE
America's Builder

Check Date 10/29/15
Check Number 145842
Invoice Date 10/07/15
Invoice Number 51566-00204509

Express Homes

PO Rev/Date/Page	0 / / 1
Purchase Order Date	07/14/15
Bid Contract Number	100006
FPO Req#/ JDE WO#	00000000 /
Purchase Order Number	200785 ON
Sub # / BU ID#	51566 / 0018
Swing/Plan/Elevation	L / 2362 / B

VENDOR: 524672 OPEN AMOUNT: 0.00

EAST COAST CONST CLEANUP INC
PO BOX 46
HARDEEVILLE SC 29927

Phone: (843) 384-1310 Fax: (843) 784-2936

Remit To

D.R. HORTON - HILTON HEAD/SAVANNAH
PO BOX 3558
BLUFFTON, SC 29910

Phone: (843) 706-3400 Fax: (843) 706-3401

DELIVER TO:

Tidewater Creek	<u>Delivery Date</u>
4892 Breeze Way	
LADY'S ISLAND, SC 29907	
Lot/Block	
Plat Lot/Block/Phase	18 / /

Work Description

42030.02 Exterior Clean 2

Description	Option	Qty	Unit Price	Extension
LOT:515660018 4892 Breeze Way Exterior Clean 2	PLAN: 2362 ELEV: B Phase:	2361.00	.190	448.59

				448.59

PAID

SPECIAL INSTRUCTIONS:

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7. Receipt of this P.O. is binding on supplier for material at prices specified.
8. All terms and conditions of the signed contract and scope of work apply to this document.

Terms	Tax Percentage	Sales Tax	Total PO
			448.59

Superintendent: YANNARELLA, NICHOLAS A Phone: (843) 226-8163

D.R. Horton Appr: _____ DATE: _____

ELECTRONICALLY FILED - 2021 NOV 12 1:43 PM - BEAUFORT - COMMON PLEAS - CASE#2018CPH0/00911

DRH-005859
Drier. et al v. DRI

PURCHASE ORDER

D.R. HORTON DHI
NYSE
America's Builder

Check Date 11/05/15
Check Number 148588
Invoice Date 10/22/15
Invoice Number 51566-00206218

Express Homes

PO Rev/Date/Page	0 / / 1
Purchase Order Date	07/14/15
Bid Contract Number	100006
FPO Req#/ JDE WO#	00000000 /
Purchase Order Number	200786 ON
Sub # / BU ID#	51566 / 0018
Swing/Plan/Elevation	L / 2362 / B

VENDOR: 524672 OPEN AMOUNT: 0.00

EAST COAST CONST CLEANUP INC
PO BOX 46
HARDEEVILLE SC 29927

Phone: (843) 384-1310 Fax: (843) 784-2936

Remit To

D.R. HORTON - HILTON HEAD/SAVANNAH
PO BOX 3558
BLUFFTON, SC 29910

Phone: (843) 706-3400 Fax: (843) 706-3401

Work Description

42030.03 Exterior Clean 3

DELIVER TO:

Tidewater Creek	<u>Delivery Date</u>
4892 Breeze Way	
LADY'S ISLAND, SC 29907	
Lot/Block	
Plat Lot/Block/Phase	18 / /

Description	Option	Qty	Unit Price	Extension
LOT:515660018 4892 Breeze Way Exterior Clean 3	PLAN: 2362 ELEV: B Phase:	2361.00	.190	448.59

				448.59

PAID

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Terms	Tax Percentage	Sales Tax	Total PO
			448.59

Superintendent: YANNARELLA, NICHOLAS A

Phone: (843) 226-8163

D.R. Horton Appr: _____

DATE: _____

ELECTRONICALLY FILED - 2021 Nov 12 1:43 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0700911

DRH-005860
Drier. et al v. DRI

PURCHASE ORDER

D.R. HORTON • DHI
LISTED
NYSE
America's Builder

Check Date 11/19/15
Check Number 153678
Invoice Date 11/10/15
Invoice Number 51566-00207662

Express Homes

PO Rev/Date/Page	0 / / 1
Purchase Order Date	07/14/15
Bid Contract Number	100006
FPO Req#/ JDE WO#	00000000 /
Purchase Order Number	200787 ON
Sub # / BU ID#	51566 / 0018
Swing/Plan/Elevation	L / 2362 / B

VENDOR: 524672 OPEN AMOUNT: 0.00

EAST COAST CONST CLEANUP INC
PO BOX 46
HARDEEVILLE SC 29927

Phone: (843) 384-1310 Fax: (843) 784-2936

Remit To

D.R. HORTON - HILTON HEAD/SAVANNAH
PO BOX 3558
BLUFFTON, SC 29910

Phone: (843) 706-3400 Fax: (843) 706-3401

DELIVER TO:

Tidewater Creek Delivery Date
4892 Breeze Way
LADY'S ISLAND, SC 29907
Lot/Block
Plat Lot/Block/Phase 18 / /

Work Description

42030.20 Pressure Wash

Description	Option	Qty	Unit Price	Extension
LOT:515660018 4892 Breeze Way Pressure Wash	PLAN: 2362 ELEV: B Phase:	1.00	150.000	150.00
				----- 150.00

PAID

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Terms	Tax Percentage	Sales Tax	Total PO
			150.00

Superintendent: YANNARELLA, NICHOLAS A

Phone: (843) 226-8163

D.R. Horton Appr: _____ DATE: _____

DRH-005861
Drier, et al v. DRH

PURCHASE ORDER

D.R. HORTON DRI Listed NYSE
America's Builder

Check Date 11/19/15
Check Number 153678
Invoice Date 11/10/15
Invoice Number 51566-00207663

Express Homes

PO Rev/Date/Page	0 / / 1
Purchase Order Date	07/14/15
Bid Contract Number	100012
FPO Req#/ JDE WO#	00000000 /
Purchase Order Number	200821 ON
Sub # / BU ID#	51566 / 0018
Swing/Plan/Elevation	L / 2362 / B

VENDOR: 524672 OPEN AMOUNT: 0.00

EAST COAST CONST CLEANUP INC
PO BOX 46
HARDEEVILLE SC 29927

Phone: (843) 384-1310 Fax: (843) 784-2936

Remit To

D.R. HORTON - HILTON HEAD/SAVANNAH
PO BOX 3558
BLUFFTON, SC 29910
Phone: (843) 706-3400 Fax: (843) 706-3401

DELIVER TO:

Tidewater Creek	<u>Delivery Date</u>
4892 Breeze Way	
LADY'S ISLAND, SC 29907	
Lot/Block	
Plat Lot/Block/Phase	18 / /

Work Description

45270.02 Interior Final

Description	Option	Qty	Unit Price	Extension
LOT:515660018 4892 Breeze Way Interior Final	PLAN: 2362 ELEV: B Phase:	2361.00	.140	330.54

				330.54

PAID

SPECIAL INSTRUCTIONS:

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. We reserve the right to cancel if not filled as specified. 2. Place P.O. number on all invoices. 3. A copy of delivery ticket signed by D.R. Horton personnel and this signed P.O. must accompany each invoice submitted for payment with signed lien release. 4. Partial Shipments will not be accepted. | <ol style="list-style-type: none"> 5. No liability will be assumed for materials placed on the job site that are not installed or that are in the excess of the amount specified on this P.O. 6. This P.O. is applicable only to the jobs indicated. 7. Receipt of this P.O. is binding on supplier for material at prices specified. 8. All terms and conditions of the signed contract and scope of work apply to this document. |
|---|--|

Terms	Tax Percentage	Sales Tax	Total PO
			330.54

Superintendent: YANNARELLA, NICHOLAS A Phone: (843) 226-8163

D.R. Horton Appr: _____ DATE: _____

DRH-005895

Printed by DRH

PURCHASE ORDER

D.R. HORTON DRI LISTED NYSE
America's Builder

Check Date 12/17/15
Check Number 166596
Invoice Date 12/07/15
Invoice Number 51566-00209830

Express Homes

PO Rev/Date/Page	0 / / 1
Purchase Order Date	07/14/15
Bid Contract Number	100012
FPO Req#/ JDE WO#	00000000 /
Purchase Order Number	200822 ON
Sub # / BU ID#	51566 / 0018
Swing/Plan/Elevation	L / 2362 / B

VENDOR: 524672 OPEN AMOUNT: 0.00

EAST COAST CONST CLEANUP INC
PO BOX 46
HARDEEVILLE SC 29927

Phone: (843) 384-1310 Fax: (843) 784-2936

Remit To

D.R. HORTON - HILTON HEAD/SAVANNAH
PO BOX 3558
BLUFFTON, SC 29910

Phone: (843) 706-3400 Fax: (843) 706-3401

Work Description

45270.03 Interior Clean Touch Up

DELIVER TO:

Tidewater Creek Delivery Date
4892 Breeze Way
LADY'S ISLAND, SC 29907
Lot/Block
Plat Lot/Block/Phase 18 / /

Description	Option	Qty	Unit Price	Extension
LOT:515660018 4892 Breeze Way Interior Clean Touch Up	PLAN: 2362 ELEV: B Phase:	1.00	50.000	50.00
				50.00

PAID

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Terms	Tax Percentage	Sales Tax	Total PO
			50.00

Superintendent: YANNARELLA, NICHOLAS A Phone: (843) 226-8163

D.R. Horton Appr: _____ DATE: _____

DRH-005896
Drier et al v DRH

PURCHASE ORDER

D.R. HORTON DRI
Listed
NYSE
America's Builder

Check Date 12/17/15
Check Number 166596
Invoice Date 12/01/15
Invoice Number 51566-00209299

Express Homes

PO Rev/Date/Page	0 / / 1
Purchase Order Date	07/14/15
Bid Contract Number	100012
FPO Req#/ JDE WO#	00000000 /
Purchase Order Number	200823 ON
Sub # / BU ID#	51566 / 0018
Swing/Plan/Elevation	L / 2362 / B

VENDOR: 524672 OPEN AMOUNT: 0.00

EAST COAST CONST CLEANUP INC
PO BOX 46
HARDEEVILLE SC 29927

Phone: (843) 384-1310 Fax: (843) 784-2936

Remit To

D.R. HORTON - HILTON HEAD/SAVANNAH
PO BOX 3558
BLUFFTON, SC 29910

Phone: (843) 706-3400 Fax: (843) 706-3401

Work Description

45270.04 Int Clean Touch Up 2

DELIVER TO:

Tidewater Creek Delivery Date
4892 Breeze Way
LADY'S ISLAND, SC 29907
Lot/Block
Plat Lot/Block/Phase 18 / /

Description	Option	Qty	Unit Price	Extension
LOT:515660018 4892 Breeze Way Int Clean Touch Up 2	PLAN: 2362 ELEV: B Phase:	1.00	50.000	50.00
				----- 50.00

PAID

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Terms	Tax Percentage	Sales Tax	Total PO
			50.00

Superintendent: YANNARELLA, NICHOLAS A

Phone: (843) 226-8163

D.R. Horton Appr: _____ DATE: _____

DRH-005897

Drier et al v DRH

PURCHASE ORDER

D.R. HORTON DRI HILTON NYSE
America's Builder

Check Date 12/29/15
Check Number 170770
Invoice Date 12/15/15
Invoice Number 51566-00210314

Express Homes

PO Rev/Date/Page	0 / / 1
Purchase Order Date	07/14/15
Bid Contract Number	100012
FPO Req#/ JDE WO#	00000000 /
Purchase Order Number	200824 ON
Sub # / BU ID#	51566 / 0018
Swing/Plan/Elevation	L / 2362 / B

VENDOR: 524672 OPEN AMOUNT: 0.00

EAST COAST CONST CLEANUP INC
PO BOX 46
HARDEEVILLE SC 29927

Phone: (843) 384-1310 Fax: (843) 784-2936

Remit To

D.R. HORTON - HILTON HEAD/SAVANNAH
PO BOX 3558
BLUFFTON, SC 29910

Phone: (843) 706-3400 Fax: (843) 706-3401

Work Description

45270.05 Int Clean Touch Up 3

DELIVER TO:

Tidewater Creek Delivery Date
4892 Breeze Way
LADY'S ISLAND, SC 29907
Lot/Block:
Plat Lot/Block/Phase 18 / /

Description	Option	Qty	Unit Price	Extension
LOT:515660018 4892 Breeze Way Int Clean Touch Up 3	PLAN: 2362 ELEV: B Phase:	1.00	50.000	50.00
				50.00

PAID

SPECIAL INSTRUCTIONS:

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Terms	Tax Percentage	Sales Tax	Total PO
			50.00

Superintendent: YANNARELLA, NICHOLAS A

Phone: (843) 226-8163

D.R. Horton Appr: _____

DATE: _____

DRH-005898
Drier, et al v. DRH

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

14TH JUDICIAL CIRCUIT

RICHARD W. and REBECCA A.
DREIER, et al.,

:
:
:

Plaintiffs,

:

vs.

:

CASE NO.

:

2018-CP-07-00911

:

AMERICO ROOFING CONCEPTS, :
INC.; ARCHER EXTERIORS, :
INC.; BUILDERS FIRSTSOURCE - :
SOUTHEAST GROUP, LLC; :
CROSSROADS ENTERPRISES, LLC; :
D.R. HORTON, INC.; DEAN :
CUSTOM AIR, LLC; EAST COAST :
CONSTRUCTION CLEANUP CORP. :
f/k/a S.C. CLEANUP CO., INC.; :
FREEDOM HOMES, INC. f/k/a :
ARMOR BUILDING SOLUTIONS... :

(Caption continues on Page 2)

VIDEO CONFERENCE 30(b)(6) DEPOSITION OF
EAST COAST CONSTRUCTION CLEANUP CORPORATION,
through its designated representative, OLGA AQUINO

DATE TAKEN: Friday, April 2, 2021
TIME BEGAN: 10:08 a.m.
TIME ENDED: 2:43 p.m.
LOCATION: Clawson & Staubes
126 Seven Farms Drive, Suite 200
Daniel Island, South Carolina
REPORTED BY: Marie H. Bruegger, RPR, CRR
(Appearing Remotely)

Examination by Alexandra Scott Williams, Attorney for Respondent Plaintiffs

1 **call and tell you it is ready to clean, or**
2 **sometimes they don't even call because we check**
3 **it's ready.**

4 Q And other than -- you said that East
5 Coast would do cleaning inside the houses and then
6 trash removal. Was the trash removal isolated to
7 what was in the trash receptacles, or was there
8 trash removal on the individual lots themselves?

9 A **One more time, please.**

10 Q So was East Coast responsible for picking
11 up trash outside of the dumpsters, trash on the
12 individual properties themselves?

13 A **I don't understand very well what you try**
14 **to ask me.**

15 Q Sure. So was East Coast responsible for
16 picking up trash on the ground that wasn't in
17 dumpsters, so trash around on the ground around the
18 house?

19 A **No, around the house, no. The**
20 **contractor, they bring the trash by the dumpster.**

21 Q And who would bring the trash to the
22 dumpster?

23 A **The contractor, whoever are installing or**
24 **whatever. Any trash has to be sitting in the**
25 **dumpster. We don't have to go around the house.**

1 **Only a special request would be any superintendent,**
2 **they -- somebody don't pick it up, and they call us**
3 **and give you an EPO for that work.**

4 Q And did East Coast -- if there was trash
5 on the ground on the property around a house, would
6 East Coast report that to the superintendent, or
7 did East Coast take any other action without an EPO
8 as to handling trash on the ground around the
9 houses?

10 A No, because we don't do that. We only do
11 like the container. And I tell you one more time,
12 the superintendent has to call us, and we can do
13 it. If not, we don't.

14 Q And what was the process once a
15 superintendent called to let you know that the
16 trash containers were full? What did East Coast do
17 then?

18 A We send the truck. We had a front loader
19 with like -- we had some cans sitting there, and we
20 send the truck to empty.

21 Q How many trucks did East Coast have that
22 were working in the Tidewater Creek neighborhood?

23 A One, one truck.

24 Q And what were the -- who were the
25 employees who were authorized to drive that truck?

Examination by Alexandra Scott Williams, Attorney for Respondent Plaintiffs

1 Q And did they call you on your cell phone
2 or at the office?

3 A **On my cell phone.**

4 Q What would you do -- you said that once
5 you were called and told that a trash container was
6 full and needed to be removed, that you would send
7 out a truck. What would the truck do then?

8 A **What the truck do or --**

9 Q What did you do with the trash that had
10 been in the receptacles after you came to pick it
11 up?

12 A **We -- when the truck was full, we'd take**
13 **it to the dump.**

14 Q And is there one dump that was acceptable
15 for all of the materials that were in the trash can
16 on the Tidewater Creek project, or did you have to
17 take some materials to one dump and construction
18 materials to another dump?

19 A **No, to all the dump. The landfill accept**
20 **everything because it's construction trash.**

21 Q Did East Coast Construction supply the
22 dumpsters that were on the Tidewater Creek project?

23 A **Yes.**

24 Q How many dumpsters were on the project at
25 a given time?

1 **A Normally we set out one per house.**

2 Q And what was the size of those dumpsters?
3 You're saying that there would be one dumpster per
4 lot as construction was underway?

5 **A Uh-huh.**

6 Q What was the status --

7 **A That is small dumpsters.**

8 Q Do you know the dimensions?

9 **A Eight-by-eight.**

10 MR. CLOUD: Real quick, Ali. If it's a
11 yes or no answer, make sure you give yes or no
12 so the court reporter can understand so we
13 don't have any confusion later.

14 THE WITNESS: Oh, okay.

15 MS. WILLIAMS: Thanks.

16 BY MS. WILLIAMS:

17 Q So one eight-by-eight dumpster per lot.
18 What was the status of construction when
19 East Coast first began the Tidewater Creek project?

20 **A Excuse me?**

21 Q So when East Coast first had an employee
22 on the Tidewater Creek project, so in the
23 neighborhood, what was the status of construction?
24 Where were the houses in the building process?

25 **A I don't understand.**

Examination by Alexandra Scott Williams, Attorney for Respondent Plaintiffs

1 Q And who went there -- who first went to
2 the neighborhood? You said, "There were a few
3 poured when we went." Was it you and your husband?

4 A Yes, yes.

5 Q Who did you meet with?

6 A Nobody.

7 Q Did you meet with anyone from DR Horton
8 to walk through the neighborhood before --

9 A No, no. They only send mostly request to
10 put the dumpster right in because we're going to
11 start a new community like normally we do. We went
12 to see where was the outlets and everything, how
13 many dumpsters we going to need.

14 Q So if you could break that down. How was
15 East Coast assigned to this neighborhood? How did
16 that process happen? How did East Coast first find
17 out from DR Horton that it would be working in
18 Tidewater Creek?

19 A They send us a text, we have to bring
20 dumpster to the new community, just start -- going
21 to start new project, and that's why we went to
22 check. We going to decide how many dumpsters we
23 need out there first, you know, probably two, three
24 dumpsters. We don't know until we see what they
25 had.

Examination by Alexandra Scott Williams, Attorney for Respondent Plaintiffs

1 correct?

2 **A Yes. But I tell you before we don't go**
3 **like five days a week, because sometimes was empty,**
4 **and only when it require or the superintendent**
5 **call.**

6 Q And when you say "it was empty," you mean
7 the dumpster, correct?

8 **A Yes, yes.**

9 Q Set the permit box in front of the water
10 meter, did that apply in the Tidewater Creek
11 neighborhood?

12 **A Set permit box. We don't do that.**

13 Q The next item: Pick up all construction
14 debris at the curb or area designated by
15 superintendent (location to be predetermined by
16 superintendent and subcontractor prior to
17 starting).

18 So we talked about some other area for
19 materials that weren't trash. Were there any areas
20 that a superintendent designated as outlined in
21 this item for construction debris other than the
22 dumpsters?

23 **A One more time.**

24 Q So this item, pick up all construction
25 debris at the curb or at an area designated by the

1 superintendent, did that apply in the Tidewater
2 Creek neighborhood?

3 **A Like pickup, like you say pickup?**

4 **Q Yes.**

5 **A Yeah. Well, he call -- they call only**
6 **when it's blooming trash is why they call, and**
7 **sometimes out by the street also blooming trash.**
8 **They don't want the neighborhood looks trashy, and**
9 **then is when they call.**

10 **Q And what kind of trash did you say?**

11 **A Like bottles, papers, things like that.**

12 **Q And would that be items that weren't in**
13 **the dumpster, or were those in the dumpster that**
14 **you're referring to?**

15 **A Yeah, because sometimes around the**
16 **dumpster too, and then we pick it up.**

17 **Q The next item: Pick up trash on lot**
18 **around house daily, including trash that is blown**
19 **onto adjacent home sites and across the alley.**

20 **Does this item apply in the Tidewater**
21 **Creek neighborhood?**

22 **A No.**

23 **Q And was there some other scope of work**
24 **contract document that did not include this item**
25 **that East Coast had for the Beaufort area rather**

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 BEAUFORT COUNTY

4 DEPOSITION OF RONALD BUNNER
5 30(B)(6) D.R. HORTON, INC.

6 RICHARD W. AND REBECCA A. DREIER; YOLANDA J.
7 DRIER; JACOB R. AND CARLA EMERSON; JOHN B. AND
8 LORI ANNE GECY; AARON M. AND STASHA R.
9 GROOMS; ADAM F. GROOMS; AVARAE HALL;
10 MICHAEL B. AND CHEYENNE M. JOHNSON; KENNY
11 MANUEL LOPEZ AND KELSEY TRUDEL LOPEZ; DYLAN
12 C. AND SAMANTHA DAWN MACHADA; MARVIN K. AND
13 MARYALICE MAMARIL; CORY M. MCDANIEL;
14 THOMAS R. AND MELISSA S. MCFEELY; MICHAEL
15 AND KAREN M. RODRIGUEZ; SARMED AND JESSICA
16 M. SHAFI; JAMES J. SMITH, III, AND ALAYSHIA
17 SMITH; AND NICOLE J. VERSTEGEN,

18 Plaintiffs,

19 vs.

20 CASE NO. 2018-CP-07-00911

21 ADVANCED FLOORING & DESIGN DIVISION OF ISI,
22 LLC f/k/a ADVANCED FLOORING AND DESIGN, LLC;
23 ARMOR BUILDING SOLUTIONS, LLC; ATLAS
24 SURVEYING BFT, LLC f/k/a ATLAS SURVEYING
25 HOLDING COMPANY, LLC; ATLAS SURVEYING, INC.;
26 BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC;
27 CROSSROADS ENTERPRISES, LLC; D.R. HORTON, INC.;
28 DEAN CUSTOM AIR, LLC; EAST COAST CONSTRUCTION
29 CLEANUP CORP. f/k/a CLEANUP CO., INC.; FREEDOM
30 HOMES, INC. f/k/a ARMOR BUILDING SOLUTIONS,
31 INC.; HUTTON'S LANDSCAPES, INC.; JENKINS
32 PLUMBING COMPANY, LC; LATHER CONSTRUCTION
33 SC, INC.; LATHER CONSTRUCTION, INC.; MASCO
34 CABINETRY, LLC; PROBUILD EAST, LLC;
35 PROFESSIONAL DRYWALL & PAINT SERVICES, LLC;
36 PROFESSIONAL EXTERIORS II, LLC; QUALITY ELECTRIC
37 OF THE COASTAL CAROLINAS INCORPORATED; STIER
38 SUPPLY COMPANY f/k/a STIER-HOLMAN SUPPLY
39 CO.; SUPERIOR ASSOCIATION SERVICES, LLC; and
40 VALIM CONSTRUCTION, LLC,

41 Defendants.

Examination by Emily Gifford Lucey, Attorney for Hutton's Landscapes, Inc.

1 A. That's the subdivision number. 51566
2 is -- it's a number within our operating system
3 that's assigned to Tidewater Creek, and the 0017
4 is the lot number.

5 Q. Okay. And then there's a vendor number
6 on the top right-hand corner. Is that the vendor
7 number for Hutton's Landscapes?

8 A. In Hilton Head/Savannah, yes.

9 Q. So would it -- if Hutton's was doing
10 work in Texas, would it have a different vendor
11 number?

12 A. Yes.

13 Q. So that's -- so that vendor number is
14 specific to Hilton Head/Beaufort?

15 A. Hilton Head Hutton -- Hilton
16 Head/Beaufort/Savannah/Hutton's Landscapes, yes.

17 Q. And then it looks like there's a
18 description of the work. Landscape turnkey, and
19 then there's a second line that's landscaping
20 irrigation front and side only, and then there's
21 an option number. What is that option number?

22 A. Yeah. Basically we categorize options
23 in our operating system. This is where we --
24 this is how we manage all of the bids that
25 contractors submit. So underneath the

Examination by Emily Gifford Lucey, Attorney for Hutton's Landscapes, Inc.

1 idea what that is. But we have to go look at
2 their scope of work and see what it says.

3 Q. Okay.

4 A. And I am happy to do that.

5 Q. Well, we will get there. I can assure
6 you. I promise. We will get there. We can
7 circle back.

8 Would construction debris be debris from
9 ongoing construction, do you believe?

10 A. Yes.

11 Q. Do the contractors who are actually
12 constructing the house have an obligation to pick
13 up their debris?

14 A. They do.

15 Q. Did Horton also hire East Coast
16 Construction Cleanup to do cleanup at the site?

17 A. Well, it's trash haul typically but yes.

18 Q. Did they also do interior and exterior
19 cleanups, "they" being East Coast?

20 A. They did in some neighborhoods but maybe
21 not all the neighborhoods as far as doing both.
22 They did perform those services. I'm not sure if
23 they performed them within Tidewater Creek. They
24 may have.

25 Q. If East Coast performed exterior

Sean Higgs
November 8, 2019

1

STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	14TH JUDICIAL CIRCUIT
RICHARD W. and REBECCA A.	:
DRIER, et al.,	:
	:
Plaintiffs,	:
	:
vs.	:
	:
	: CASE NO.
	:
	: 2018-CP-07-00911
ADVANCED FLOORING & DESIGN	:
DIVISION OF ISI, LLC, f/k/a	:
ADVANCED FLOORING AND	:
DESIGN, LLC, et al.,	:
	:
	:
Defendants.	:

DEPOSITION OF SEAN HIGGS

DATE TAKEN:	Friday, November 8, 2019
TIME BEGAN:	9:14 a.m.
TIME ENDED:	2:11 p.m.
LOCATION:	McDougall Law Firm 115 Lady's Island Commons Beaufort, South Carolina
REPORTED BY:	Marie H. Bruegger, RPR, CRR

Spectrum Reporting Services
843-849-0133

Examination by Benjamin A.C. Traywick, Attorney for Respondent Plaintiffs

1 worked there for a few years. After working on
2 motorcycles, went to work with Shawn Lather when he
3 started his business back in the site development
4 industry.

5 Q What year, roughly, did you start with
6 Lather?

7 A Somewhere around 2009, roughly.

8 Q Been with him ever since?

9 A Off and on.

10 Q How much off, and how much on?

11 A From 2009 'til now, I'd say probably four
12 years off, five years on.

13 Q Why did you come and go?

14 A Me and Shawn have been long-time friends.
15 It was hard for us to differentiate the friendship
16 and the employee work relationship. We butted
17 heads a good bit, we didn't see eye to eye, so we
18 felt the need to part ways at times, but all that's
19 in the past.

20 Q Do you work for Lather right now?

21 A I do.

22 Q How long have you been in a continuous
23 employment relationship with Lather?

24 A Since 2014.

25 Q Where is Cleland Construction?

Examination by Benjamin A.C. Traywick, Attorney for Respondent Plaintiffs

1 that had come out of that pond been spread up
2 elsewhere on the property?

3 A It's hard to tell. It's all sand.

4 Q Had trees already been removed from parts
5 of it you could tell?

6 A Yes.

7 Q Could you tell how recently?

8 A No.

9 Q Do you know who cleared -- who did the
10 clearing that had been done before y'all got there?

11 A No.

12 Q What exactly was y'all's scope of work
13 for the Tidewater Creek job?

14 A That we did in-house?

15 Q Well, no, the entire job, including
16 whatever you subbed out. Like what was the --

17 A Clearing, grading, utilities, asphalt,
18 turnkey job for them to build their houses on.

19 Q So did y'all prepare the building pads?

20 A Yes.

21 Q Did y'all bring dirt to the Tidewater
22 Creek job site?

23 A I believe we may have. I don't remember.

24 Q Where do y'all get dirt from?

25 A Various places.

Examination by Benjamin A.C. Traywick, Attorney for Respondent Plaintiffs

1 Q And were they working on Phase I while
2 y'all were working on Phase II?

3 A Yes.

4 Q Did you talk to anybody from Hutton about
5 the trash/the refuse/the debris?

6 A No.

7 Q Was that because you considered the
8 problem to have been solved?

9 A Yes.

10 Q So you didn't notify Hutton's like, hey,
11 there's this issue out here?

12 A Well, Hutton's didn't work for me, so my
13 contact with Hutton's was I won't say nonexistent.
14 It was extremely minimal. If anything else, it was
15 more hem-hawing than anything. It was nothing work
16 related. There was nothing that we really did hand
17 in hand, like work together on, so to speak.

18 MS. WILLIAMS: Off the record for a
19 second.

20 (Off-the-record conference.)

21 BY MR. TRAYWICK:

22 Q Let me ask you a little bit more about
23 these nonexistent files, all right.

24 A Uh-huh, yes.

25 Q Just by like category of documents, what

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 BEAUFORT COUNTY

4 VIDEO RECORDED DEPOSITION OF
5 MATT HUTTON

6 RICHARD W. AND REBECCA A. DREIER; YOLANDA J.
7 DRIER; JACOB R. AND CARLA EMERSON; JOHN B. AND
8 LORI ANNE GECY; AARON M. AND STASHA R.
9 GROOMS; ADAM F. GROOMS; AVARAE HALL;
10 MICHAEL B. AND CHEYENNE M. JOHNSON; KENNY
11 MANUEL LOPEZ AND KELSEY TRUDEL LOPEZ; DYLAN
12 C. AND SAMANTHA DAWN MACHADA; MARVIN K. AND
13 MARYALICE MAMARIL; CORY M. MCDANIEL;
14 THOMAS R. AND MELISSA S. MCFEELY; MICHAEL
15 AND KAREN M. RODRIGUEZ; SARMED AND JESSICA
16 M. SHAFI; JAMES J. SMITH, III, AND ALAYSHIA
17 SMITH; AND NICOLE J. VERSTEGEN,

18 Plaintiffs,

19 vs. CASE NO. 2018-CP-07-00911

20 ADVANCED FLOORING & DESIGN DIVISION OF ISI,
21 LLC f/k/a ADVANCED FLOORING AND DESIGN, LLC;
22 ARMOR BUILDING SOLUTIONS, LLC; ATLAS
23 SURVEYING BFT, LLC f/k/a ATLAS SURVEYING
24 HOLDING COMPANY, LLC; ATLAS SURVEYING, INC.;
25 BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC;
26 CROSSROADS ENTERPRISES, LLC; D.R. HORTON, INC.;
27 DEAN CUSTOM AIR, LLC; EAST COAST CONSTRUCTION
28 CLEANUP CORP. f/k/a CLEANUP CO., INC.; FREEDOM
29 HOMES, INC. f/k/a ARMOR BUILDING SOLUTIONS,
30 INC.; HUTTON'S LANDSCAPES, INC.; JENKINS
31 PLUMBING COMPANY, LC; LATHER CONSTRUCTION
32 SC, INC.; LATHER CONSTRUCTION, INC.; MASCO
33 CABINETRY, LLC; PROBUILD EAST, LLC;
34 PROFESSIONAL DRYWALL & PAINT SERVICES, LLC;
35 PROFESSIONAL EXTERIORS II, LLC; QUALITY ELECTRIC
36 OF THE COASTAL CAROLINAS INCORPORATED; STIER
37 SUPPLY COMPANY f/k/a STIER-HOLMAN SUPPLY
38 CO.; SUPERIOR ASSOCIATION SERVICES, LLC; and
39 VALIM CONSTRUCTION, LLC,

40 Defendants.

1 DEPONENT: MATT HUTTON
2
3 DATE: NOVEMBER 10, 2021
4
5 TIME: 2:03 PM
6
7 LOCATION: VIA REMOTE VIDEOCONFERENCE
8
9 REPORTED BY: DARAH BOLEN, RPR, CSR(IA)
10 CLARK BOLEN
11 CHARLESTON, SC 29415
12 843-762-6294
13 WWW.CLARK-ASSOCIATES.COM
14 Darah@clark-associates.com
15
16
17
18
19
20
21
22
23
24
25

Examination by Emily Gifford Lucey, Attorney for Respondent Hutton's Landscapes, Inc.

1 MATT HUTTON,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MS. LUCEY:

6 Q. Good afternoon, Mr. Hutton. How are you
7 this afternoon?

8 A. Excellent, thank you.

9 Q. All right. If you would, would you
10 introduce yourself to the jury and tell them a
11 little bit about yourself, please.

12 A. Yeah. Sure. I'm Matt Hutton. I am the
13 CEO of Hutton's Landscapes. Hutton's Landscapes
14 ceased operations in December of 2019, and
15 basically since then I have just been dealing
16 with whatever bears such as this.

17 Q. Let's talk a little bit about Hutton's
18 Landscapes. When was it founded?

19 A. 2000.

20 Q. And have you always been the owner?

21 A. I have.

22 Q. What kind of work did Hutton's
23 Landscapes perform?

24 A. Hutton's Landscapes was a landscape
25 contractor, a grading contractor, and a concrete

Examination by Emily Gifford Lucey, Attorney for Respondent Hutton's Landscapes, Inc.

1 bid.

2 A. Yes. Definitely. That's also integral
3 to that.

4 Q. What work -- scopes of work did Hutton's
5 ultimately provide in connection with the
6 Tidewater neighborhood?

7 A. Landscaping, concrete, and some slip
8 skid control also. Lawn maintenance as well.

9 Q. All right. Did Hutton's provide any
10 land development services?

11 A. We poured the common area sidewalks and
12 we installed trees and irrigation and sod
13 throughout.

14 Q. And would that be in the common areas of
15 the neighborhood?

16 A. Yes, ma'am. And we also maintained
17 those common areas for several years.

18 Q. Did Hutton's perform any site work or
19 earthwork in connection with the Tidewater
20 neighborhood project?

21 A. No. We're not a mass grading
22 contractor.

23 Q. Was there an agreement between
24 D.R. Horton and Hutton's that governed the work
25 that Hutton's provided?

1 A. Yes, there were the general agreements
2 and the scopes of work.

3 Q. Tell me about the general agreements.

4 A. The general agreement was basically a
5 blanket contractual agreement that spelled out
6 most things as far as the general
7 contractor/subcontractor relationship.

8 D.R. Horton always worked as the general
9 contractor.

10 And then there was addendums to that and
11 the basis of the individual descriptions of the
12 different work, and that's how your job was
13 spelled out.

14 Q. So there was a general agreement in the
15 addendum. Are those also known as scopes of
16 work?

17 A. That is correct, the scopes.

18 Q. How did that general blanket agreement
19 come about? How -- how did that work between
20 Hutton's and Horton? Were you the one involved
21 in that process?

22 A. Yeah. I signed all general scopes of
23 work for the company, and it was a formality of
24 doing business with D.R. They presented you with
25 a contract. It wasn't a negotiable item. You

1 either signed it -- signed on or you didn't work
2 for them.

3 Q. Was the price negotiated with Horton?

4 A. Yes, the price was also negotiated with
5 D.R. Horton.

6 Q. But the -- and what about the scopes of
7 work?

8 A. The scopes of work, they were not
9 alterable either. They were just like the
10 contract. They were scopes for the scopes. The
11 scopes weren't always valid, because they used
12 scopes that might pertain to a rocky area or
13 something like that or somewhere where you had
14 basements and our area did not have those things.
15 So the scopes were more of a general scope in the
16 way they were formed and a specific scope that
17 was site specific.

18 Q. So the general agreement would not apply
19 to a specific neighborhood. Is that what I'm
20 hearing?

21 A. No. No. The general agreement does --
22 it's a blanket contract for everything, and you
23 would have a contract for Georgia, contract for
24 South Carolina. If you worked in Florida, you'd
25 have the general contractor agreements. I would

Examination by Emily Gifford Lucey, Attorney for Respondent Hutton's Landscapes, Inc.

1 but when I was there, my first recollection was
2 padded lots with street in place and us forming
3 up slabs and putting in silt fence. That was the
4 first thing that we really did in that community.

5 Q. So what work was done prior to Hutton's
6 arriving on --

7 A. All of the mass grading work was done,
8 you know, curb, gutter, underground utilities, so
9 on and so forth, mass drainage, that kind of
10 thing.

11 Now, that was not completed because they
12 do these project in phases so, you know, we might
13 be on the first street and we're doing our job;
14 it's a completed street. But a block over, you
15 know, they could still be doing their excavating
16 and their underground over there.

17 Q. So what would be the first thing
18 Hutton's would do when it would arrive on-site
19 at -- let's, I guess, focus on a particular lot
20 in the Tidewater neighborhood.

21 A. Do you just want me to bring you through
22 the whole process of Hutton's there?

23 Q. Yes. That would be very helpful. Thank
24 you.

25 A. Yes. You're welcome.

1 So we probably installed a permit box
2 the very beginning thing because you can't do
3 anything without the lot box in the yard. We
4 would install silt fence. I'm not sure in that
5 project if we installed the construction
6 entrances or if the site contractor did that. It
7 went back and forth, and I just don't have the
8 recollection, but that's basically a 12-by-12
9 rock pad or thereabouts in front of the house.
10 So that's the first steps.

11 Then we would come in and form the house
12 slab, and at that point we'd walk away. The
13 plumber would come in and plumb that slab. Then
14 that inspection would pass -- there was basically
15 someone from the City of Beaufort there through
16 this whole thing. The inspection process is
17 overseen by them. Multiple inspectors.

18 But -- so it'd pass the plumbing
19 inspection. We'd go in there, we'd cover
20 plumbing, we'd dig footers, we'd prep the slab.
21 Then another inspection would happen. We'd would
22 walk away while that process went down.

23 And then we'd come back and we'd pour
24 that slab, and then we would do our first grade.
25 That's a rough grade or a knockdown grade. Okay?

1 Different contractors refer to it in different
2 things. I believe D.R. Horton calls it a rough
3 grade.

4 And we perform that rough grade, which
5 is basically just a knockdown of like the footer
6 material or whatnot, creating positive drainage
7 away from the slab.

8 At that point in time, we'd walk away
9 from that house from a period of maybe two months
10 to six months. And after the complete vertical
11 construction was done on that house, we'd come
12 back and pour the flat work, remove the silt
13 fence. And then landscape crews would come in
14 and install the irrigation, do the final grading
15 where -- you know, just get it completely ready
16 for sod-type grade. Then install the sod,
17 install the plants, the trees, the irrigation.

18 And then we'd would walk away, come back
19 about two weeks later, and we'd start cutting the
20 grass on that house. And in that community, you
21 maintain a lot of those houses for a long time.

22 Q. All right. I appreciate that overview.
23 So I'm going to go back and try to go through
24 those one at a time. I think you said you'd
25 install a permit box and potentially the silt

Examination by Emily Gifford Lucey, Attorney for Respondent Hutton's Landscapes, Inc.

1 final grade.

2 Q. So after you said the -- you formed the
3 house slab and then the plumber comes in, what
4 does the plumber do?

5 A. He puts the underground plumbing in
6 underneath the house, and then that is subject to
7 the inspection as well.

8 Q. Okay. And then what does Hutton's do
9 next?

10 A. After that inspection passes, we cover
11 the plumbing up. We would dig our footers.
12 That's the first time we really have ever gone
13 into, you know, what I would call virgin soil at
14 that point in time, and footers in that
15 neighborhood were probably 20 to 24 inches deep,
16 and then we put in the rebar and the plastic and
17 whatnot. Just get the -- you know, get
18 everything final, 100 percent. And we'd walk
19 away and then we'd have an inspection on our
20 slab. Pre-pour inspection.

21 Q. So does someone come inspect the holes
22 that have been dug for the footers?

23 A. Yeah. The City inspector. And if you
24 have the debris inside of the footers, they make
25 you do your job again. They don't pass.

1 Q. And then once those holes pass, what
2 happens next?

3 A. You -- after you pass slab inspection,
4 you pour the slab.

5 Q. And did Hutton's do that?

6 A. Yes. Yes. Yes, we did.

7 Q. And what happened -- what is Hutton's
8 next step after pouring the slabs?

9 A. After pouring the slab, we would do the
10 rough grade or the knockdown grade to basically
11 knock down those form piles around the house, you
12 know, the waste material that we pulled out of
13 the slab. The --

14 Q. And -- I'm sorry. Go ahead.

15 A. Waste and dirt, soil.

16 Q. And how does Hutton's go about doing
17 that? Do they use some kind of equipment?

18 A. Skid steer loader.

19 Q. Can you call it light dirt movement --

20 A. Yeah.

21 Q. Is that the term that's used in the
22 industry?

23 A. Yes. It takes about 15 to 30 minutes on
24 average to perform a rough grade.

25 Q. And what is the purpose of the rough

1 grade?

2 A. To create positive drainage around the
3 house. That way you don't have puddling and
4 standing water.

5 Q. And how does that type of grading
6 compare to mass grading or clearing and grubbing
7 of the lot?

8 A. Well, it's much different. It's just a
9 light finish grade. It's to knock down small
10 piles. We're not going into the virgin soil at
11 all. You know, we're not doing any like massive
12 work. You're talking about an 8,000-pound
13 machine versus like a 50,000-pound machine if you
14 want to give a reference point.

15 Q. And then what happens after the
16 knockdown grading.

17 A. Then Hutton's walks away except to come
18 by on a weekly basis to maintain silt fence
19 and/or tree protection. And then like I said,
20 that process takes two to six months to build
21 that home vertically. And then we come in at the
22 very end, that -- we will pour the driveway and
23 remove the silt fence and then start the
24 landscaping.

25 Q. How does Hutton's know when it should

Examination by Emily Gifford Lucey, Attorney for Respondent Hutton's Landscapes, Inc.

1 he didn't spend a bunch of time on-site like he
2 needed to.

3 Q. So you said Hutton's will come back.
4 They'll pour the driveway. What happens after
5 the driveway's poured? What's next?

6 A. The irrigation is installed and then the
7 final grading and then the landscape install
8 itself.

9 Q. Talk to me about the final grading and
10 what that entails.

11 A. You know, just making sure you have 100
12 percent positive drainage. There's no dips or
13 anything like that. You create swales in and
14 around the home, you know, so you want your water
15 to shed to the left and right and go down swales
16 to the street and just make a really nice grade.
17 And you're there doing that for hours. That is
18 not a quick grade. That's probably two to six
19 hours worth of machine work.

20 Q. Okay. And how much -- how much -- how
21 deep are you disturbing the soil when you're
22 doing that fine grade?

23 A. Once again, you're not in virgin soil.
24 You're dealing all -- with like fill material on
25 top pretty much at that juncture. The only time

1 when we went into the virgin soil was during
2 irrigation install and trenching process and
3 doing our footers. That's the only time we would
4 have crossed into a virgin soil situation.

5 Q. On some lots is it -- can it occur that
6 there's no fill brought into a particular lot?

7 A. Yes. That could occur.

8 Q. Okay. But is that -- but prior to
9 Hutton's getting there, is there clearing and
10 grubbing that can occur that will sort of set the
11 baseline for the soil or the --

12 A. Yeah. All of that's done. Even if you
13 were left with virgin soil and there was no fill
14 material put on top of that at all, which is
15 irregular by the way. But if that happened, you
16 wouldn't be able to discern that from when it did
17 have the fill material on it. Everything looks
18 the same when we show up. It's like a bear camp.

19 Q. You mentioned digging trenches for
20 irrigation. How deep does the irrigation go?

21 A. Roughly 20, 24 inches. About the same
22 depth as the footer.

23 Q. Okay. Have you ever heard the term
24 light trashing? Is that a term in the industry?

25 A. I would say that is a general

1 construction specific term, yeah. Sure.

2 Q. And what do you understand that term to
3 mean?

4 A. I mean, light trashing is picking up a
5 soda can or a shingle. It does not apply to any
6 type of heavy trashing of a yard. That would be
7 a paid service, but it'd just be like you or I
8 walking down the street and picking up a soda can
9 that was in the wrong place.

10 Q. Okay. So did Hutton's scope include
11 what you have described as light trashing?

12 A. I would say light trashing, yes. I
13 think that should have been in everybody's scope
14 of work to do light trashing.

15 Q. Did Hutton's scope include cleaning up
16 construction debris --

17 A. No. We were not --

18 Q. -- of ongoing construction?

19 A. We were not that contractor. That was a
20 different contractor. I believe it was East
21 Coast Construction more than likely at that
22 point.

23 MR. CLOUD: Objection.

24 MS. LUCEY: What's the objection?

25 MR. CLOUD: He's testifying to my

1 client's scope.

2 Q. (MS. LUCEY) Mr. Hutton, you have been
3 on projects before with East Coast Construction?

4 A. Yeah. They were everywhere.

5 Q. And what did they typically do based on
6 your understanding?

7 A. They would basically pick up the
8 dumpsters. If there was a large pile of lumber
9 left over, they would throw it in a dumpster, but
10 they were basically a trash service.

11 Q. What if a lot had broken glass on it or
12 metal sheets or bed frames, would picking up that
13 debris be included in Hutton's scope of work?

14 A. In their scope of work?

15 Q. No. In Hutton's scope of work.

16 A. No. That's not in our scope of work.

17 Q. Is picking up that kind of debris within
18 Hutton's bid structure?

19 A. No. That would be an extra purchase
20 item.

21 Q. Were you ever made aware of anyone from
22 Hutton's ever finding that kind of debris, broken
23 glass, metal sheets, bed frames on any lots in
24 the Tidewater neighborhood?

25 A. Was never aware of that until this

1 litigation started.

2 Q. Okay.

3 A. The only thing I ever saw out there
4 myself was a dock piling.

5 Q. All right. Tell me about that.

6 A. There was a dock piling. They asked me
7 to move it. I was like, I don't have a machine
8 big enough. That was it.

9 Q. Do you know what happened to that dock
10 piling?

11 A. Wasn't in my scope of work, wasn't my
12 problem. It was eventually removed, I know that,
13 because it wasn't there anymore.

14 Q. Would you have heard if there were --
15 there was excessive amount of debris on the site
16 or debris that was not typical for a construction
17 site?

18 A. I am certain I would have heard of it.

19 Q. All right. Let's talk about after the
20 irrigation trenches have been dug and irrigation
21 put in. Let's talk about the process of
22 preparing the lot for sod. Tell me what that
23 involves.

24 A. Basically it's just that final grade.
25 That's what you did to prep it for sod and

Examination by Emily Gifford Lucey, Attorney for Respondent Hutton's Landscapes, Inc.

1 A. That is correct. We have definitely
2 reviewed that.

3 Q. Did Hutton's install plants and shrubs
4 and that type of thing for individual lots at
5 Tidewater?

6 A. We did.

7 Q. And was that included in this
8 landscape -- landscape, excuse me, scope of work?

9 A. Yes. This is the part that would be
10 applicable, but I have not reviewed this
11 landscape turnkey scope to what actually happened
12 in the field.

13 Q. Okay. Tell me, what -- what is hand
14 raking or what does it mean when you hand rake a
15 yard.

16 A. Hand grading is going to be the final
17 step of grading, and it can also be done with a
18 machine called a Harley Rake, that's basically
19 lightly tilling up that top 1 or 2 inches of soil
20 and just kind of loosening the soil in order to
21 put the sod down on it for it to adhere to the
22 grass better -- or the ground better.

23 Q. And why do you need to do that hand
24 raking or machine raking prior to putting the sod
25 down?

1 A. In order to ensure the proper health of
2 the grass. And/or -- and/or seeding bed. It can
3 be hydroseed as well as for crop like that.

4 Q. So we have talked about purchase orders.
5 What's the difference between a purchase order
6 that Hutton's received from Horton and an extra
7 purchase order?

8 A. Purchase orders were sent out with the
9 job start. And basically -- I think we covered
10 that earlier in this conversation as well, that
11 purchase orders would be batched when the home
12 started, and you could wait for months to a year
13 plus to actually be able to go and do that work.
14 But that purchase order was basically Horton's
15 agreement to pay you for that individual task.

16 Q. And, Mr. Hutton, if you will bear with
17 me. I shared my screen again, and I just wanted
18 to scroll through the rest of this Hutton's
19 Exhibit 1 and ask you, does this appear to be a
20 true and accurate copy of Hutton's contract with
21 D.R. Horton, this blanket contract? I just
22 scrolled to the last page. I'm happy to scroll
23 back up for you, sir.

24 A. Are you just asking me again if this is
25 the general contractor agreement?

Examination by Emily Gifford Lucey, Attorney for Respondent Hutton's Landscapes, Inc.

1 paid roughly 3,600 to provide and install the
2 landscaping around the house; is that accurate?

3 A. That would be accurate. Yes, ma'am.

4 Q. Thank you, sir.

5 And then in an effort to speed this
6 along, Mr. Hutton, I'm not going to go through
7 every document, but I would like to focus on what
8 is page T21 but also Hutton 70.

9 Can you explain to the jury what this
10 particular document is, sir?

11 A. That is a warranty work order for lot 18
12 and -- sorry -- habit -- for finishing pine straw
13 around trees missed, pick up construction
14 development debris, construction billable.

15 Q. So does it appear that Hutton's was
16 asked to pick up construction and development
17 debris at lot 18?

18 A. It appears to be that is the case on
19 this lot and it's a billable item, and it's not
20 in our general or a scope of work or in the
21 addendums for a scope of work. It was additional
22 work.

23 Q. Is this an EPO request that you were
24 talking about for that same scope of work?

25 A. It is. And I -- it appears that the

1 pine straw and the labor are both in one line
2 item here for \$130. The pine straw in that era
3 was probably \$6 a bale. I'm sure that we put out
4 at least 10 bales. That would be \$60. So we
5 paid -- we were paid roughly 80 bucks to do
6 something in that yard laborwise in addition to
7 the pine straw.

8 Q. All right. I am going to scroll this
9 down to what is T29 of Hutton's Exhibit Number 2.
10 It's also Bates stamped Hutton 072. Can you
11 explain to the jury, Mr. Hutton, what this is and
12 I will zoom in a little bit.

13 A. Oh, a little bit more, please. Thank
14 you.

15 So it says, Construction debris in
16 backyard. Schedule May 6. Contact homeowner to
17 confirm. Bumping. That means it got moved from
18 May 6 to another day. Continue to work with Carl
19 and homeowner. So Carl and homeowner have
20 dialogue about this lot. Sod the back yard.
21 Hand rake entire yard prior to sod. Owner needs
22 to inspect raking before sod is placed. No
23 irrigation installed. And this was updated on
24 May 26th.

25 Q. And I am going to scroll to the bottom

1 of this page. Do you see a signature at the
2 bottom of the page?

3 A. I do, but it's meaningless to me. I
4 can't decipher that.

5 Q. All right. Is it in the block of
6 homeowner signature?

7 A. It is. Yes.

8 Q. Was it customary for Hutton's to obtain
9 a homeowner's signature on a warranty service
10 work order?

11 A. It could be the Hutton's employee or it
12 could be a D.R. Horton representative. It could
13 be either/or.

14 Q. Do you recall how much Hutton's was paid
15 for that work? And I will show you what is
16 marked as T034 of Hutton's Exhibit 2, also
17 Hutton's 74. Do you recognize this document,
18 sir?

19 A. Yeah, because it's in front of me right
20 now. Yes. It appears that Hutton's was paid for
21 14 pallets of sod and eight man hours of cleanup.
22 And I have no idea what that eight hours was
23 other than this line description, and I have no
24 idea anything about the grass other than the line
25 item description here.

1 Q. But can you tell me for which lot
2 Hutton's performed this particular work?

3 A. It says lot 18, so I'm assuming it was
4 on lot 18.

5 Q. And does it appear that Hutton's was
6 paid for this work?

7 A. We were definitely paid for that work.
8 That's my piece of paper with my stamp on it.

9 Q. Mr. Hutton, we have been talking about
10 Hutton's as a party to this litigation. Have you
11 as a representative of Hutton's ever been hired
12 as an expert in litigation?

13 A. Well, when you say hired, do I have to
14 be paid to do that or just asked?

15 Q. Well, let me rephrase the question.
16 Were you asked to serve as an expert in
17 litigation?

18 A. I believe I was an expert in previous
19 litigation in Tidewater for D.R. Horton based on
20 these matters.

21 Q. And D.R. Horton asked you to serve as an
22 expert on its behalf you believe?

23 A. They told us to, so yeah, yeah.

24 MS. LUCEY: All right. Very good.

25 Mr. Hutton, I appreciate your time this

RICHARD & REBECCA DRIER vs ADVANCED FLOORING
2018-CP-07-00911 - KEVIN CICCARELLA

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

RICHARD W. and REBECCA A. DRIER, et al.,
Plaintiffs,

vs. CIVIL ACTION NUMBER
2018-CP-07-00911

ADVANCED FLOORING & DESIGN DIVISION OF ISI,
LLC, f/k/a ADVANCED FLOORING AND DESIGN, LLC,
et al.,
Defendants.

-----/

The deposition of KEVIN CICCARELLA, a
witness in the above-entitled cause, taken
pursuant to Notice and agreement, before Kyle J.
Saniga, Certified Court Reporter and Notary
Public, at the Offices of Coastal Court
Reporting, 100 Bull Street, The Altmayer
Building, Suite 200, Savannah, Georgia, on the
12th day of March 2020, commencing at or about
the hour of 1:09 p.m.



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Examination by Alexandra Scott Williams, Attorney for Respondent Plaintiffs

1 A Okay.

2 Q I'm sure your best friend's a great guy
3 and I'd be happy to have him on my jury, just
4 need to know, okay.

5 So what is your current employment?

6 A I'm an account manager for a landscape
7 company in Savannah.

8 Q What's the company called?

9 A The Greenery.

10 Q How long have you worked there?

11 A Since October of 2019.

12 Q All right. What was your job before
13 that?

14 A General manager for Hutton's
15 Landscapes.

16 Q And why did you stop working for
17 Hutton's?

18 A I was just tired of it.

19 Q Did you quit or were you fired? What
20 were the terms when you left?

21 A It was mutual. I had said that I
22 wanted to quit and then the owner decided he was
23 going to shut the whole thing down, so I'd say
24 it was mutual.

25 Q Okay. And why did you want to quit



Examination by Alexandra Scott Williams, Attorney for Respondent Plaintiffs

1 Q Because it's -- your subcontractor's
2 under Tim Swain?

3 A Yes.

4 Q And since you're not in the
5 neighborhood and Daniel is there, supposed to be
6 there twice a week say nobody's from one side,
7 the concrete side is -- sees one of you guys in
8 person onsite how would Tim, you know, let you
9 -- let Matt or to you know that he finished.
10 Would he e-mail or?

11 A No. Concrete has to be ordered.
12 Concrete has to be scheduled. Pump trucks
13 occasionally have to be ordered and scheduled as
14 well. You know when concrete's getting poured.

15 Q Okay. And what was the scope of
16 work -- what did you understand the scope of
17 work to be for rough grading?

18 A It was to knock down any piles
19 generated by the slab formation process and to
20 get the site graded out so that there was no
21 puddling or standing water issues.

22 Q You said -- explain that knock down
23 part.

24 A So as you form a slab you have to dig a
25 footer. That dirt goes outside the slab. Some



Examination by Alexandra Scott Williams, Attorney for Respondent Plaintiffs

1 initially on that lot?

2 A If any was added it would have been
3 Lather.

4 Q So we talked about the Phase 1. The
5 pond, the garage that you noticed around the
6 pond. Were there any other -- you know, was
7 there any other debris or anything else that you
8 noticed anywhere else in Phase 1?

9 A No. The lots were clear.

10 Q All right. And so we've discussed the
11 rough grade process. What was the next step in
12 the process for Hutton's scope of work after
13 rough grade?

14 A Maintaining the silt fence during the
15 construction process.

16 Q And what did that entail? Just making
17 sure that it didn't get knocked over?

18 A If it did get knocked over repairing
19 it. If the damage was real bad, replacing it.

20 Q Was it Hutton's job to do any sort of
21 inspection of the slab once it had been poured?

22 A I wasn't involved in concrete. There
23 was a slab inspection. I don't believe it was
24 done by Hutton's. I believe it was a third
25 party.



1 Q Okay. The -- the debris removal that
2 is mentioned in -- we talked about the rough
3 grade scope of work and on I'm just going to
4 call it 19 where I asked if anybody from
5 Hutton's would just push debris off the edge of
6 the property.

7 If you were to remove -- what would be
8 the proper process rather than pushing debris
9 off the edge of the property?

10 A So at the rough grade stage the -- we
11 have to haul off anything we brought on. So it
12 would have been -- like I said, form boards or
13 rebar or rolls of plastic. None of that is
14 allowed to be left onsite. We would have gotten
15 fined if any of that was left onsite.

16 Q Fined by?

17 A DR Horton.

18 Q And do you remember getting fined on
19 the Tidewater Creek project?

20 A No.

21 Q What -- if there's -- other than the
22 actual construction materials that you
23 mentioned, if there's other debris on the lot,
24 you know, at the time when you're rough grading
25 what would be -- what would you have to do if



1 you're removing debris, where would you take it?

2 A If we had to remove -- I honestly can
3 tell you that it's never come up. When we go to
4 do a slab the lots are cleared. The dirt is
5 new. There's nothing else there but us.

6 Q When you did -- were doing the --
7 walked the property, the Lot 20, 19, 18 that
8 area, did you notice any glass on the
9 properties, any of those lots?

10 A No.

11 Q Did you notice any shingles in that
12 area?

13 A No.

14 Q And this is at the rough grade stage,
15 correct?

16 A Yes.

17 Q Okay. So after the rough grade and
18 maintaining the silt fence what was the next
19 part of Hutton's scope of work at the Tidewater
20 project?

21 A Hutton's overall the next thing we
22 would do is the driveway.

23 Q What did that process entail?

24 A Cutting out the dirt, forming the
25 driveway and pouring concrete.



Examination by Alexandra Scott Williams, Attorney for Respondent Plaintiffs

1 Q And who -- is the subcontractor who's
2 pouring the slab or the driveway in charge of
3 then removing whatever's left over?

4 A They're in charge of making sure that
5 the trucks that aren't washing out on the lots.

6 Hutton's employees or the sub that was
7 doing the landscape install was responsible for
8 taking any chunks or -- and putting them in the
9 washout.

10 Q Okay. The -- okay. And then after you
11 had poured the driveway what was Hutton's next
12 step?

13 A After -- usually within a couple of
14 weeks we'd do -- start the landscape process.

15 Q And what was entailed in that process?
16 What did that involve?

17 A You did another rough grade, knock down
18 any piles, installed the irrigation if there was
19 irrigation, do your final grading, plants, sod,
20 pine straw.

21 Tidewater they were doing hydro seed in
22 the backyard so hydro seed would be the last
23 thing you did.

24 Q Were there -- was there any -- were you
25 supposed -- did landscaping involve laying sod



1 on any parts of the lots?

2 A On the front.

3 Q And what was the -- you know, in terms
4 of -- what was the status of the property
5 supposed to be when you're hydro seeding, like,
6 you know?

7 A Graded out, raked out, ready to go.

8 Q You say 'raked out', did the
9 landscaping crew hand rake each of the lots?

10 A Yes.

11 Q And what sort of rake did they use for
12 that?

13 A Hard rake.

14 Q What were they supposed to do with
15 whatever they, you know, raked up at that time?

16 A Dispose of it properly.

17 Q In DR Horton's timeframe in Tidewater
18 how much time were you allotted for that whole
19 landscaping process?

20 A There was no allotment given for that
21 process. It usually only took two -- two days,
22 two, three days and then at that property come
23 back later and do the hydro seeding.

24 Q Did any of the employees report to you
25 ever, you know, during any of that process from



South Carolina General Assembly
124th Session, 2021-2022

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Bill 422

~~Indicates Matter Stricken~~

Indicates New Matter

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A BILL

TO AMEND SECTION 32-2-10 OF THE 1976 CODE, RELATING TO HOLD HARMLESS CLAUSES IN CONSTRUCTION CONTRACTS, TO PROVIDE THAT CERTAIN INDEMNIFICATION PROVISIONS IN CONSTRUCTION AGREEMENTS AND DESIGN PROFESSIONAL AGREEMENTS ARE AGAINST PUBLIC POLICY AND UNENFORCEABLE IN SOUTH CAROLINA, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 32-2-10 of the 1976 Code is amended to read:

"Section 32-2-10. (A) For the purposes of this section:

- (1) 'Construction agreement' means a promise, agreement, or contract concerning the design, planning, construction, alteration, repair, or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition, and excavation. A construction agreement may be a public or private agreement.
- (2) 'Defend' means to pay for or furnish counsel at a promisor's expense to shield a promisee or promisee's derivative parties from claims brought against the promisee or the promisee's derivative parties by a third party in a court or tribunal, including forms of alternative dispute resolution required by law or contract, before a final determination of fault is reached.
- (3) 'Derivative parties' means a party's subcontractors, agents, employees, or other persons or entities for which the party may be liable or responsible as a result of any statutory duty, tort, or contractual duty.
- (4) 'Design professional' means a person licensed or registered pursuant to the provisions of Title 40 as an architect, a landscape architect, an engineer, or a surveyor.
- (5) 'Design professional agreement' means any promise, agreement, or contract with a design professional or firm for design professional services.
- (6) 'Design professional services' means work or a service performed by a design professional licensed or registered pursuant to the provisions of Title 40.
- (7) 'Fault' means:
 - (a) a breach of contract;

(b) a negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or

(c) a violation of applicable statutes or regulations.

(8) 'Firm' means a business entity functioning as a sole proprietorship, partnership, limited liability partnership, professional association, professional corporation, limited liability company, joint venture, or other legally constituted organization that offers or provides design services. For the purposes of this section, this term includes, but is not limited to, a firm through which the practice of providing design services requires a certificate of authorization.

(9) 'Subcontractor' means a person or entity providing labor or material through a promisor for use on a project at issue in a construction agreement or design professional agreement.

(B) Notwithstanding any other provision of law, a promise or agreement provisions in, or in connection with, the a construction agreement or design professional agreement, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating, purporting to indemnify the promisee, its independent contractors, agents, employees, or indemnitees or the promisee's derivative parties 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 or the promisee's derivative parties is against public policy and unenforceable. Nothing contained in this section subsection shall affect prohibit a promise or agreement whereby the promisor shall indemnify or hold harmless the promisee or the promisee's independent contractors, agents, employees or indemnitees derivative parties against liability for damages resulting from the sole negligence, in whole or in part, of the promisor, its agents, or its employees. The provisions of this section shall not affect any insurance contract or workers' compensation agreements; nor shall it apply to any electric utility, electric cooperative, common carriers by rail and their corporate affiliates or the South Carolina Public Service Authority.

(C) Provisions in, or in connection with, a construction agreement or design professional agreement purporting to require a promisor to indemnify or hold harmless a promisee, the promisee's derivative parties, or any other person against losses, damages, or expenses are against public policy and unenforceable unless the fault of the promisor or its derivative parties is a proximate cause of the loss, damage, or expense indemnified.

(D) Provisions in, or in connection with, a construction agreement that include design professional services or a design professional agreement purporting to require a design professional to defend a promisee, the promisee's derivative parties, or any other person or entity against liability, claims for damages, or expenses, including attorney fees, proximately caused or allegedly caused by the professional negligence of the promisor, the promisee, or their derivative parties, are against public policy and unenforceable, whether the claim is alleged or brought in tort or contract.

(E) Nothing in this section shall be interpreted to exclude from any indemnity or hold harmless provision that is enforceable under subsections (B) or (C) of this section attorney fees, litigation or arbitration expenses, or court costs actually incurred by the promisee when guarding against third-party claims alleged in a court, tribunal, or alternative dispute resolution procedure required of the promisee by law or by contract, if the fault of the promisor or its derivative parties is a proximate cause of the attorney fees, litigation or arbitration expenses, or court costs to be indemnified.

(F) This section shall not apply to:

(1) an insurance agreement or a workers' compensation agreement;

(2) an electric utility, an electric cooperative, common carriers by rail and their corporate affiliates, or the South Carolina Public Service Authority; or

(3). claims relating to liens or bonds."

SECTION 2. This act takes effect upon approval by the Governor.

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This web page was last updated on January 12, 2021 at 2:45 PM

South Carolina General Assembly
124th Session, 2021-2022

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A161, R210, H4048

STATUS INFORMATION

General Bill

Sponsors: Rep. G.M. Smith

Document Path: I:\council\bill\ncd\11204sd21.docx

Introduced in the House on March 9, 2021

Introduced in the Senate on April 7, 2022

Last Amended on May 10, 2022

Passed by the General Assembly on May 12, 2022

Governor's Action: May 13, 2022, Signed

Summary: Duty to defend and indemnify

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
3/9/2021	House	Introduced and read first time (House Journal-page 34)
3/9/2021	House	Referred to Committee on Ways and Means (House Journal-page 34)
3/31/2022	House	Committee report: Favorable with amendment Ways and Means (House Journal-page 31)
4/1/2022		Scrivener's error corrected
4/6/2022	House	Amended (House Journal-page 87)
4/6/2022	House	Read second time (House Journal-page 87)
4/6/2022	House	Roll call Yeas-107 Nays-2 (House Journal-page 89)
4/7/2022	House	Read third time and sent to Senate
4/7/2022	Senate	Introduced and read first time (Senate Journal-page 7)
4/7/2022	Senate	Referred to Committee on Judiciary (Senate Journal-page 7)
4/25/2022	Senate	Referred to Subcommittee: Talley (ch), Hutto, Matthews, Climer, Senn, Cash, Harpootlian
5/4/2022	Senate	Committee report: Favorable with amendment Judiciary (Senate Journal-page 13)
5/5/2022		Scrivener's error corrected
5/10/2022	Senate	Committee Amendment Adopted (Senate Journal-page 61)
5/10/2022	Senate	Read second time (Senate Journal-page 61)
5/10/2022	Senate	Roll call Ayes-44 Nays-0 (Senate Journal-page 61)
5/11/2022	Senate	Read third time and returned to House with amendments (Senate Journal-page 13)
5/12/2022	House	Concurred in Senate amendment and enrolled (House Journal-page 74)
5/12/2022	House	Roll call Yeas-102 Nays-0 (House Journal-page 75)
5/12/2022		Ratified R 210 (Senate Journal-page 222)
5/13/2022		Signed By Governor
5/31/2022		Effective date 05/13/22
5/31/2022		Act No. 161

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VERSIONS OF THIS BILL

[3/9/2021](#)

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[5/4/2022](#)

[5/5/2022](#)

[5/10/2022](#)

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(A161, R210, H4048)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 1-11-445 SO AS TO PROVIDE THAT THE STATE OF SOUTH CAROLINA MUST PROVIDE A LEGAL DEFENSE FOR AND INDEMNIFICATION TO A STATE AGENCY, DEPARTMENT, OR INSTRUMENTALITY AGAINST A CLAIM OR SUIT THAT ARISES OUT OF OR BY VIRTUE OF THE PERFORMANCE OF OFFICIAL DUTIES ON BEHALF OF A STATE AGENCY, DEPARTMENT, OR INSTRUMENTALITY, AND TO PROVIDE A SIMILAR DEFENSE AND INDEMNIFICATION TO BOARD MEMBERS AND EMPLOYEES, AND OFFICERS OF THE ENTITY; TO REPEAL SECTION 1-11-440 RELATING TO LEGAL DEFENSES AND INDEMNIFICATIONS PROVIDED TO MEMBERS OF THE FISCAL ACCOUNTABILITY AUTHORITY AND ITS DIRECTOR; AND TO REPEAL SECTION 12-4-325 RELATING TO LEGAL DEFENSES AND INDEMNIFICATION PROVIDED TO OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF REVENUE.

Be it enacted by the General Assembly of the State of South Carolina:

Defense and indemnification of state agencies

SECTION 1. Article 1, Chapter 11, Title 1 of the 1976 Code is amended by adding:

"Section 1-11-445. (A) The State of South Carolina, by and through its agencies, departments, and instrumentalities, must defend the state agency, department, or instrumentality, and the members of a governing board of the state agency, department, or instrumentality, as applicable, against an uninsured claim or suit that arises out of or by virtue of the performance of official duties on behalf of the state agency, department, or instrumentality, and must indemnify them for an uninsured loss or judgment incurred by them as a result of the claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. The State also must defend directors, officers, and employees of the entity, and legislative employees performing duties for the entity, against an uninsured claim or suit that arises out of or by virtue of the performance of official

duties unless the director, officer, employee, or legislative employee was acting in bad faith including, but not limited to, acting outside the scope of his official duties, or that the actions constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. The State shall indemnify these directors, officers, employees, and legislative employees for a loss or judgment incurred by them as a result of such uninsured claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. This commitment to defend and indemnify extends to members of the entity, the entity's officers, the entity's director, the entity's employees, and legislative employees after they have left their employment with the entity or the General Assembly, as applicable, if the uninsured claim or suit arises out of or by virtue of their performance of official duties on behalf of their employer.

(B) The term 'instrumentality' as used in this section includes an entity where a specific duty or function is imposed on the entity by law and includes any function where the entity must exercise a portion of the state's sovereignty. Entities to which this provision applies include, but are not limited to, the State Fiscal Accountability Authority, the Judicial Merit Selection Commission, the Public Utilities Review Committee, the Retirement Systems Investment Panel, and all joint special legislative committees.

(C) The provisions of subsection (A) also apply to employees and officers while acting within the scope of their employment when administering any South Carolina statute which has not been held to be unconstitutional or unlawful by a final decision of a court of competent jurisdiction. For purposes of this section, a final decision is the decision of a court declaring the South Carolina statute unconstitutional or otherwise unlawful, and from which the appropriate officials of this State may not or do not take an appeal or request a rehearing.

(D) This section does not waive any defense, immunity, limitation, or jurisdictional bar including, but not limited to, the Tort Claims Act. This section does not affect the terms or conditions of any applicable policy of insurance."

Repeal

SECTION 2. Sections 1-11-440 and 12-4-325 are repealed on the effective date of this act.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 12th day of May, 2022.

Approved the 13th day of May, 2022.

This web page was last updated on June 10, 2022 at 3:52 PM

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

SECTION 1-11-435. Protection of critical information technology infrastructure and data systems.

To protect the state's critical information technology infrastructure and associated data systems in the event of a major disaster, whether natural or otherwise, and to allow the services to the citizens of this State to continue in such an event, the Office of the State Chief Information Officer (CIO) should develop a Critical Information Technology Infrastructure Protection Plan devising policies and procedures to provide for the confidentiality, integrity, and availability of, and to allow for alternative and immediate on-line access to critical data and information systems including, but not limited to, health and human services, law enforcement, and related agency data necessary to provide critical information to citizens and ensure the protection of state employees as they carry out their disaster-related duties. All state agencies and political subdivisions of this State are directed to assist the Office of the State CIO in the collection of data required for this plan.

HISTORY: 2002 Act No. 339, Section 4.

SECTION 1-11-440. Repealed.

HISTORY: Former Section, titled Defense of members of Fiscal Accountability Authority and the Director of the Department of Administration, had the following history: 2003 Act No. 13, Section 1; 2014 Act No. 121 (S.22), Pt VII, Section 20.A, eff July 1, 2015. Repealed by 2022 Act No. 161, Section 2, eff May 13, 2022.

SECTION 1-11-445. Defense and indemnification of state agencies.

(A) The State of South Carolina, by and through its agencies, departments, and instrumentalities, must defend the state agency, department, or instrumentality, and the members of a governing board of the state agency, department, or instrumentality, as applicable, against an uninsured claim or suit that arises out of or by virtue of the performance of official duties on behalf of the state agency, department, or instrumentality, and must indemnify them for an uninsured loss or judgment incurred by them as a result of the claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. The State also must defend directors, officers, and employees of the entity, and legislative employees performing duties for the entity, against an uninsured claim or suit that arises out of or by virtue of the performance of official duties unless the director, officer, employee, or legislative employee was acting in bad faith including, but not limited to, acting outside the scope of his official duties, or that the actions constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. The State shall indemnify these directors, officers, employees, and legislative employees for a loss or judgment incurred by them as a result of such uninsured claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. This commitment to defend and indemnify extends to members of the entity, the entity's officers, the entity's director, the entity's employees, and legislative employees after they have left their employment with the entity or the General Assembly, as applicable, if the uninsured claim or suit arises out of or by virtue of their performance of official duties on behalf of their employer.

(B) The term "instrumentality" as used in this section includes an entity where a specific duty or function is imposed on the entity by law and includes any function where the entity must exercise a portion of the state's sovereignty. Entities to which this provision applies include, but are not limited to, the State Fiscal Accountability Authority, the Judicial Merit Selection Commission, the Public Utilities Review Committee, the Retirement Systems Investment Panel, and all joint special legislative committees.

(C) The provisions of subsection (A) also apply to employees and officers while acting within the scope of their employment when administering any South Carolina statute which has not been held to be unconstitutional or unlawful by a final decision of a court of competent jurisdiction. For purposes of this section, a final decision is the decision of a court declaring the South Carolina statute unconstitutional or otherwise unlawful, and from which the appropriate officials of this State may not or do not take an appeal or request a rehearing.

(D) This section does not waive any defense, immunity, limitation, or jurisdictional bar including, but not limited to, the Tort Claims Act. This section does not affect the terms or conditions of any applicable policy of insurance.

HISTORY: 2022 Act No. 161 (H.4048), Section 1, eff May 13, 2022.

SECTION 1-11-460. Payment of judgments against governmental employees and officials in excess of one million dollars; limitations; recovery of amount paid by assessment against entities purchasing tort liability insurance.

The State Fiscal Accountability Authority, through the Division of Insurance Services, is authorized to pay judgments against individual governmental employees and officials, in excess of one million dollars, subject to a maximum of four million dollars in excess of one million dollars for one employee and a maximum of twenty million dollars in excess of five million dollars in one fiscal

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2017 South Carolina Code of Laws Title 1 - Administration of the Government

CHAPTER 11 - DEPARTMENT OF ADMINISTRATION

Section 1-11-440. Defense of members of Fiscal Accountability Authority and the Director of the Department of Administration.

Universal Citation: SC Code § 1-11-440 (2017)

(A) The State must defend the members of the State Fiscal Accountability Authority and the Director of the Department of Administration against a claim or suit that arises out of or by virtue of their performance of official duties on behalf of the authority or the department, as applicable, and must indemnify them for a loss or judgment incurred by them as a result of the claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. The State must defend officers and management employees of the authority, legislative employees performing duties for the authority's members or the department, and the department's officers and management employees against a claim or suit that arises out of or by virtue of the performance of official duties unless the officer, management employee, or legislative employee was acting in bad faith and

must indemnify these officers, management employees, and legislative employees for a loss or judgment incurred by them as a result of such claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. This commitment to defend and indemnify extends to members of the authority, the authority's officers and management employees, the department's director and officers and management employees, and legislative employees after they have left their employment with the authority, the General Assembly, or the department, as applicable, if the claim or suit arises out of or by virtue of their performance of official duties on behalf of their employer.

(B) The State must defend the members of the Retirement Systems Investment Panel established pursuant to Section 16, Article X of the Constitution of this State and Section 9-16-310 against a claim or suit that arises out of or by virtue of their performance of official duties on behalf of the panel and must indemnify these members for a loss or judgment incurred by them as a result of the claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. This commitment to defend and indemnify extends to members of the panel after they have left their service with the panel if the claim or suit arises out of or by virtue of their performance of official duties on behalf of the panel.

HISTORY: 2003 Act No. 13, Section 1; 2014 Act No. 121 (S.22), Pt VII, Section 20.A, eff July 1, 2015.

Editor's Note

Section 9-16-310, referenced in subsection (B), was repealed by 2012 Act No. 278.

Effect of Amendment

2014 Act No. 121, Section 20.A, rewrote subsection (A).

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(4) enter into a written agreement with a person with regard to a tax liability. If the agreement is approved by the director, it is final and conclusive and the case may not be reopened by administrative or judicial action or otherwise, except in cases of fraud, malfeasance, or misrepresentation;

(5) publish its findings and decisions in all controversies resolved by it. This publication may be in brief hypothetical form so as to give all pertinent facts, decisions, and reasons without violating the provisions of Section 12-54-240;

(6) for damage caused by war, terrorist act, or natural disaster or service with the United States armed forces or national guard in or near a hazard duty zone, extend the date for filing returns, payments of taxes, collection of taxes, and conducting audits, and waive interest and penalties;

(7) enter into an installment payment agreement with a taxpayer.

HISTORY: 1991 Act No. 50, Section 2; 1994 Act No. 516, Section 26; 1999 Act No. 114, Section 4; 2007 Act No. 110, Section 36, eff June 21, 2007; 2007 Act No. 116, Section 42, eff June 28, 2007, applicable for tax years beginning after 2007.

SECTION 12-4-325. Repealed.

HISTORY: Former Section, titled Defense and indemnification of Department of Revenue employees and officers, had the following history: 1998 Act No. 432, Section 1. Repealed by 2022 Act No. 161, Section 2, eff May 13, 2022.

SECTION 12-4-330. Witnesses before department.

(A) The director may summon witnesses to appear and give testimony and to produce records, books, papers, and documents relating to any matters which the department has authority to investigate or determine.

(B) The director may cause the deposition of witnesses residing within or without the State or absent from the State to be taken upon notice to the interested party, if any, in the manner that depositions of witnesses are taken in civil actions pending in the circuit court in any matter which the department has authority to investigate or determine.

(C) Oaths to witnesses may be administered by the department. A person who testifies falsely in a matter under consideration by the department is guilty of and, upon conviction, will be punished for perjury.

(D) An officer who serves summons or subpoenas and a witness appearing before the Department of Revenue receive the same compensation as an officer and a witness in the circuit court. The department may incur and pay the expense of obtaining expert witnesses or of other evidence for use by the department in a judicial or administrative proceeding. This compensation and expert witness expense must be paid upon certificate of the department by the State Treasurer, by drawing upon funds from the tax on income as provided by Section 12-6-510.

(E) Out-of-state appraisers serving as witnesses are not required to be licensed or certified in this State. For purposes of this section, out-of-state appraisers are defined as appraisers with a business address outside of this State.

(F) The director of the Department of Revenue and the officers designated by the director may administer oaths to any person or take acknowledgments of any person in respect of any return or report required by this title or the rules and regulations of the department.

HISTORY: 1991 Act No. 50, Section 2; 1994 Act No. 516, Section 27; 1995 Act No. 76, Section 9; 1998 Act No. 432, Section 2.

SECTION 12-4-340. Authority to contract with collection agency to collect delinquent taxes.

The department, for the purposes of collecting delinquent taxes due from a taxpayer, may contract with a collection agency, within or without the State, for the collection of delinquent taxes, including penalties and interest as provided in Section 12-54-227.

HISTORY: 1991 Act No. 50, Section 2; 1993 Act No. 164, Part II, Section 101.

SECTION 12-4-350. Contracts for computer and data processing services; confidentiality of data.

The department may contract for computer and other electronic data processing services as it considers necessary. A person, firm, or governmental entity and their employees, under contract with the South Carolina Department of Revenue, having access to information contained in or produced from a tax return, document, or magnetically or electronically stored data may not publish or disclose any part or parts of the data or information resulting from the data except to the department, or as authorized by the department, or as otherwise provided by law or by an order of a court of competent jurisdiction. This provision does not exempt the department from the provisions of the South Carolina Consolidated Procurement Code.

HISTORY: 1991 Act No. 50, Section 2; 1993 Act No. 164, Part II, Section 101.



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2013 South Carolina Code of Laws

Title 12 - Taxation

CHAPTER 4 - THE SOUTH CAROLINA DEPARTMENT OF REVENUE

SECTION 12-4-325. Defense and indemnification of Department of Revenue employees and officers.

Universal Citation: SC Code § 12-4-325 (2013)

(A) The State shall defend employees and officers of the Department of Revenue against liability arising out of their actions within the scope of their employment and indemnify them from resulting loss when they are sued in their official or individual capacities, or both.

(B) Department of Revenue employees and officers are acting within the scope of their employment when administering any South Carolina statute which has not been held to be unconstitutional or unlawful by a final decision of a court of competent jurisdiction. For purposes of this section, a final decision is the decision of a court declaring the South Carolina statute unconstitutional or otherwise unlawful and from which the appropriate officials of this State may not or do not take an appeal or request a rehearing.

HISTORY: 1998 Act No. 432, Section 1.

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Chapter 22B.

Contracts Against Public Policy.

Article 1.

Invalid Agreements.

§ 22B-1. Certain indemnity and defend agreements invalid.

(a) Provisions in, or in connection with, a construction agreement or design professional agreement purporting to require a promisor to indemnify or hold harmless the promisee, the promisee's independent contractors, agents, employees, or indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of the promisee, its independent contractors, agents, employees, or indemnitees, is against public policy, void and unenforceable. Nothing contained in this subsection shall prevent or prohibit a contract, promise or agreement whereby a promisor shall indemnify or hold harmless any promisee or the promisee's independent contractors, agents, employees or indemnitees against liability for damages resulting from the sole negligence of the promisor, its agents or employees.

(b) Provisions in, or in connection with, a construction agreement or design professional agreement purporting to require a promisor to indemnify or hold harmless the promisee, the promisee's independent contractors, agents, employees, indemnitees, or any other person or entity against losses, damages, or expenses are against public policy, void, and unenforceable unless the the fault of the promisor or its derivative parties is a proximate cause of the loss, damage, or expense indemnified.

(c) Provisions in, or in connection with, a construction agreement that includes design professional services or a design professional agreement purporting to require a design professional to defend a promisee, the promisee's independent contractors, agents, or employees, the promisee's indemnitees, or any other person or entity against liability or claims for damages or expenses, including attorney's fees, proximately caused or allegedly caused by the professional negligence, in whole or in part, of the promisor, the promisee, or their derivative parties, whether the claim is alleged or brought in tort or contract, is against public policy, void, and unenforceable.

(d) Nothing in this section shall be interpreted to exclude from any indemnity or hold harmless provisions enforceable under subsections (a) and (b) of this section attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the promisee to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of the promisee by law or by contract, if the fault of the promisor or its derivative parties is a proximate cause of the attorney's fees litigation or arbitration expenses, or court costs to be indemnified.

(e) This section shall not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer. This section shall not apply to lien or bond claims asserted under Chapter 44A of the General Statutes.

(f) For purposes of this section, the following definitions shall apply:

- (1) Construction agreement. - Any promise or agreement in, or in connection with, a contract or agreement relative to the design, planning, construction, alteration, repair, or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition, and excavating connected therewith.

- (2) **Defend.** - Any obligation to pay for or furnish counsel at the expense of the promisor to defend a promisee, the promisee's independent contractors, agents, employees, or indemnitees against claims alleged or brought against the promisee, the promisee's independent contractors, agents, employees, or indemnitees by a third party alleged or brought in any court or other tribunal, including forms of alternative dispute resolution required by law or contract, before the court or tribunal has reached a final determination of fault.
- (3) **Derivative parties.** - With respect to a party, any of that party's subcontractors, agents, employees, or other persons or entities for which the party may be liable or responsible as a result of any statutory, tort, or contractual duty.
- (4) **Design professional.** - A person or entity who is licensed under and provides professional services regulated by Chapters 83A, 89A, 89C, 89E, or 89F of the General Statutes.
- (5) **Design professional agreement.** - Any promise or agreement in, or in connection with, a contract or agreement with a design professional to provide design professional services.
- (6) **Design professional services.** - A service or work performed by a design professional for which licensure is required under Chapters 83A, 89A, 89C, 89E, or 89F of the General Statutes.
- (7) **Fault.** - A breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violations of applicable statutes or regulations.
- (8) **Subcontractor.** - Any person or entity, of any tier, providing labor or material through the promisor for use on the project at issue in the applicable construction agreement or design professional agreement. (1979, c. 597, s. 1; 1991, c. 636, s. 3; 1993, c. 553, s. 12; 2019-92, s. 1.)

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 28, 2023

Respectfully,

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[NOTE: Except as otherwise shown or to avoid duplication, all exhibits to all motions and memoranda will be included.]