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June 12, 2025

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SC Court of Appeals

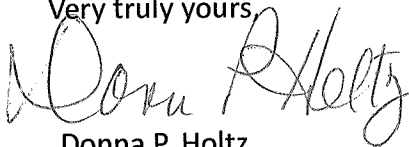
The Honorable Catherine Harrison, Deputy Clerk
The South Carolina Court of Appeals
PO Box 11629
Columbia, SC. 29211

Re: Natalie Zitek v. D. R. Horton, Inc., (2)
Appellate Case No.: 2023-001681

Dear Ms. Harrison:

Pursuant to the direction of your letter dated June 11, 2025, and further pursuant to my phone conversation with your case manager, please find attached Pages 1069-1073 of Volume 3 of the Record on Appeal which have been enlarged. Please let us know if you require anything further.

Very truly yours,



Donna P. Holtz

Assistant to Carl F. Muller

\dph
Enclosures

D.R. HORTON ~~FILE~~
Asst. Sec. of State

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR JES MASONRY, INC ("Contractor")
Sole Proprietorship Partnership Corporation L.L.C. Other (ATTACH W-9)
Social Security No. or Tax ID No. 56-2107549
Name of Owner(s)/Officer(s): JOSE LUIS SANCHEZ
Division Name _____ Area Name _____ Assigned Vendor No. 1195192
Address for All Notices PO Box 78410
City CHARLOTTE State NC Zip Code: 28221
Telephone: 704-249-7464 Fax: 704-249-7464 E-Mail Address: jlmasonryinc@hotmail.com
Insurance: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
This agreement (the "Agreement") is entered into on this 11 day of FEB, 2010, between J R NORVON INC.
~~JES MASONRY, INC~~ ("Owner") and Contractor

1. SCOPE OF WORK: This Agreement is entered on a blank sheet. The terms of the Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement (the "Work") shall include all work performed and materials supplied by Contractor to Owner including but not limited to the labor, services and/or materials, equipment, transportation, or facilities necessary to complete the construction-related activities generally described in Exhibit A. The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation first received and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing will not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to or in place of Contractor. Contractor will be awarded Work on a lot by lot basis. To the extent Exhibit A contains more than one type of construction-related activity, Contractor must clarify with Owner before the Work commences as to which construction-related activity it has been awarded for the lot in question.

2. INDEPENDENT CONTRACTOR STATUS: Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, method and performance of the Work. Contractor shall not be considered an agent or employee of Owner for any purpose, nor shall any employees or permitted subcontractors of Contractor. Contractor shall not represent itself as the agent of Owner unless owner has specifically permitted Contractor to do so in writing. The results achieved shall satisfy the requirements of this Agreement. Contractor shall be responsible for the performance of its employees and permitted subcontractors, and all personnel used by Contractor in the performance of Work shall be qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further agrees to provide written notification to all of its present and future employees of Contractor's provision for Worker's Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work herein covered or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the direction of Owner in the results of the Work only.

3. CONTRACT PRICE

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

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

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

4. PAYMENT

4.1 Invoicing: Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing of the house incorporating the Work from Owner to a purchaser. Contractor hereby agrees that timely invoicing is an important and material term to this agreement, and timely invoicing is a part of Contractor's performance of all material terms of this contract. Contractor hereby waives payment for any Work where Contractor fails to invoice Owner in a timely manner in conformity with this agreement. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-30 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR

Executed this 11 day of FEBRUARY 2010

Owner: D.R. HORTON, INC Contractor: CLD.L.T.
By: EDMOND G. JEAN-BREAU, JR. Name: LUCIENNE DE LA TORRE
Title: PURCHASER Title: General Manager
Division President

INITIALS OWNER [Signature] CONTRACTOR JS

8F = 1392311 MF = 1392312 MACON = 1392313
Greenville = 1392314



ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO SUBCONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN AND THAT OWNER DOES NOT AGREE TO PAY TO SUBCONTRACTOR INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF DELAYED PAYMENTS.

4.2 **Payment to Subcontractors.** No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed from Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties, and these joint payments shall satisfy amounts owed by Owner to Contractor, notwithstanding the fact that the third parties may not endorse the checks. In any instance where Owner receives written notice from one of Contractor's sub-contractors, whereby the subcontractor claims a failure to be paid for the Work, Owner reserves the right to pay the subcontractor directly or to make payment payable to both the Contractor and its subcontractor.

4.3 **Acceptance of Work.** Acceptance by Contractor of the final payment of the Contract Price shall waive and release all claims against Owner and the property under this Agreement, but shall not waive any claims of Owner arising out of Work later found to be defective and shall not release Contractor from liability for warranties and warranty services and/or defective Work. Contractor shall remedy any defects and pay for any damage resulting from any defects in or caused by the Work or as required by any other contracts between Owner and Contractor or by law or customary practice. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or assigns is an acceptance of the Work or materials not in compliance with this Agreement.

5. SCHEDULE OF WORK

5.1 **Time is of the Essence.** Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work.

5.2 **Construction Schedule.** Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.3 **Commencement of the Work.** Owner shall issue an authorization (either pursuant to a written purchase order, payment schedule, or work invoice ("Purchase Order") or verbal instructions from an authorized Owner representative) to commence the Work and Contractor shall not commence the Work at a job location until Contractor has received instructions to begin Work at a specific job location. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.4 **Changes in Construction Schedule.** Contractor agrees that Owner shall have the right to make changes to the schedule of Work at Owner's discretion and agrees to comply with such changes.

6. PERFORMANCE STANDARDS.

6.1 **Applicable Standards.** Contractor shall perform all Work in a good and workmanlike manner, in accordance with the plans and specifications of Owner, according to industry standard practices, and warrants that the Work will meet or exceed FHA minimum property standards, VA requirements, all laws (statutory or common) and regulations, and any applicable building code requirements.

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

6.3 **Government Requirements.** Contractor will comply with all applicable federal, state, local, and county statutes, ordinances, regulations, codes, licensing requirements and standards, and the requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 as amended, as well as the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., or similar laws or regulations, and the rules, regulations, or orders of all public authorities relating to performance of the Work, including without limitation, the procurement and posting of all required permits and notices. In addition, Contractor will not discriminate in its hiring or employment and will follow all state and federal employment laws or regulations. Contractor shall perform background checks and use only appropriate employees to perform warranty or repair work after a house is occupied.

6.4 **Indemnity.** To the fullest extent allowed by law, Contractor will agree to indemnify, defend, and hold Owner harmless from all actions, claims, investigations or other acts to enforce such laws or regulations, and further agrees to indemnify Owner from the payment of any fine, penalty or damages imposed, levied, assessed, or found as a result of the Contractor's failure to comply with or adhere to the applicable laws and regulations, or from Contractor's failure to cause its employees or subcontractors to comply with such laws and regulations.

6.5 **Observation and Testing by Owner and Repair by Contractor.** Owner shall have the right to observe or test the Work at any time during or after construction; but that observation or testing is solely for the benefit of Owner's and is not for Contractor's benefit. Owner's failure to note defects in the Work during an inspection will not waive any of Contractor's obligations, representations or warranties related to the Work. Notwithstanding anything contained in this Agreement to the contrary, all Work shall be performed and any defects shall be corrected timely and in accordance with this Agreement to the satisfaction of Owner.

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

6.7 **Licenses, Permits, and Approvals.** Contractor shall secure and maintain all permits, licenses and approvals necessary for or applicable to the performance of the Work.

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

6.9 **Subdivision Rules.** Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed;

INITIALS. OWNER JPL, CONTRACTOR JLS

(i) governing storage of materials on the job location; (ii) regulating trash pick-up and waste collection at the job location; and (iv) work site safety requirements.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste materials or rubbish caused by its operations and shall remove all of Contractor's materials, and if materials are furnished by Owner, Contractor shall move all usable materials provided by Owner to a location designated by Owner. Contractor shall sweep out any waste material from inside the home under construction upon completion of its operation. All refuse shall be placed in receptacles provided or at locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up activities and collect a one hundred dollar (\$100.00) fine from Contractor for each incident. The cost of such clean-up and the aforementioned fine shall be deducted from any sums owed by Owner to Contractor, or shall be immediately payable by Contractor upon demand therefore by Owner.

7. SAFETY

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from or in any way related to the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Owner reserves the right to set minimum standards or rules relating to Work on its site. **UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OWNER'S MINIMUM REQUIREMENTS. THE OWNER ASSUMES NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE.** Contractor shall immediately notify Owner's construction supervisors of any unsafe condition or practice observed on the Work Site. Further, Contractor shall immediately notify Owner of any accidents or injuries on the Work Site. Contractor shall have an ongoing safety program and conduct inspections to determine that safe working conditions and equipment exist and safe practices are observed. Contractor shall prohibit and prevent the presence of children under age eighteen (18) from the Work Site.

7.1 Safety Laws and Indemnity Agreement. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards, statutes, and industry best practices concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations. Contractor shall provide Owner with written verification of its compliance with all applicable safety and health standards and regulations, including but not limited to OSHA's Hazard Communication Standard for the Construction Industry, 29 C.F.R. §1926.59 et seq., and provide written notice to Owner of the contact person responsible for Contractor's compliance with all safety and health standards and regulations. To the fullest extent allowed by law, Contractor agrees to indemnify, defend, and hold Owner harmless from all actions prosecuted to enforce and the payment of any fine or penalty imposed under such safety laws and regulations and shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work.

7.2 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, permitted subcontractors or suppliers at a job location or performance of the Work by any person under the influence of alcohol or drugs.

8. CONTRACTOR'S WARRANTIES

8.1 Against Defective Work. Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate corporations, and successors and assigns, that all labor performed and materials furnished by Contractor shall conform to the specifications of this Agreement, shall be free from any defects or deficiencies in workmanship or materials, and will comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, will meet or exceed the FHA/VA minimum property standards, and will comply with the Residential Warranty Corporation ("RWC") Program and the applicable limited warranty standards, which Contractor has read and understands and to which Contractor agrees to be bound. All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects for purposes of Contractor's obligations under this Contract. Contractor shall make good and promptly repair all Work not complying with the standards set forth in this section at its own expense.

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

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty/repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty obligations, Contractor's indemnity obligations, or the ability of Owner to request Contractor to perform warranty services in the future.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment, and shall furnish all certificates required by any municipality and/or VA and/or FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and are not in limitation of periods of applicable statutes of limitation.

9. LIENS AND RETAINAGE

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

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

9.3 Lien Claim Indemnity. If any liens are filed against Owner relating to portions of the Work for which Owner has paid Contractor, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such lien or affidavit to be removed.

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

and released of record. Contractor agrees to INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any liens relating to portions of the Work for which Owner has paid Contractor, and further agrees at Owner's request to any or all of the following: (i) procure a bond to indemnify Owner and any home purchaser from Owner, in an amount sufficient to discharge that lien, or (ii) refund to Owner all monies, including any additional amount necessary to cover all of Owner's or home purchaser's attorneys' fees and court costs paid in discharging the lien, whichever remedy Owner elects in its sole and absolute discretion, or (iii) provide sworn testimony that payment has already been made to Contractor for the work for which the alleged lien applies.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY AGREES TO HOLD HARMLESS, INDEMNIFY, PROTECT AND DEFEND OWNER, ITS PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THE AFOREMENTIONED ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "INDEMNITEE"), FROM AND AGAINST ANY AND ALL DEMANDS, CLAIMS, ACTIONS, CAUSES OF ACTION, PROCEEDINGS, LAWSUITS, SETTLEMENTS, JUDGMENTS, FINES, PENALTIES, LOSSES, ATTORNEYS FEES, LITIGATION COSTS, INTEREST, AND EXPENSES OF ANY KIND (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "LOSSES") FOR DAMAGES FROM BODILY OR PERSONAL INJURY, DEATH, THE DESTRUCTION OR LOSS OF PROPERTY (INCLUDING LOSS OF USE), OR ANY OTHER KIND OF DAMAGES OR HARM, ARISING OUT OF, OR RESULTING FROM, OR RELATED IN ANY WAY TO THE WORK PERFORMED AND/OR THE MATERIALS SUPPLIED UNDER THIS CONTRACT, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY INDEMNITEE. SUCH LOSSES SPECIFICALLY INCLUDE, BUT ARE IN NO WAY LIMITED TO LOSSES ARISING OUT OF OR ATTRIBUTABLE TO: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR OBLIGATIONS OF CONTRACTOR SET FORTH HEREIN; (2) THE WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR, CONTRACTOR'S AGENTS OR EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, AND/OR ALL OTHER ENTITIES OVER WHOM THE CONTRACTOR MAY EXERCISE CONTROL (INDIVIDUALLY OR COLLECTIVELY HEREINAFTER, "CONTRACTOR'S AGENTS"); (3) ANY NEGLIGENCE, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF CONTRACTOR AND/OR CONTRACTOR'S AGENTS; OR (4) ANY NEGLIGENCE, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE INDEMNITY FOR LOSSES CAUSED SOLELY BY FAULT OR NEGLIGENCE OF THE INDEMNITEE. THE LOSSES DESCRIBED HEREIN SHALL INCLUDE, BUT ARE NOT LIMITED TO, DEMANDS, CLAIMS, OR ACTIONS ASSERTED BY (1) ANY PRESENT OR FUTURE OWNER OF THE HOUSE INCORPORATING THE WORK; AND (2) ANY OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY CONTRACTOR AND/OR CONTRACTOR'S AGENTS). THE INDEMNIFICATION OBLIGATION UNDER THIS CONTRACT SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. THE INDEMNITY PROVISIONS CONTAINED HEREIN ARE INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY LAW.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. IT IS THE EXPRESS INTENTION OF THE PARTIES THAT CONTRACTOR'S INDEMNITY OBLIGATIONS HEREIN WILL SURVIVE THE TERMINATION OF CONTRACTOR OR THIS AGREEMENT. INDEMNITEE SHALL HAVE THE RIGHT, AT ITS DISCRETION AND CHOOSING, TO DEFEND ANY AND ALL CLAIMS WHICH MAY BE ASSERTED AGAINST IT, AND CONTRACTOR AGREES TO REIMBURSE INDEMNITEE FOR ANY AND ALL EXPENDITURES WHICH INDEMNITEE MAY MAKE OR INCUR ON ACCOUNT OF ANY SUCH CLAIM.

10.3 CONTRACTOR AND CONTRACTOR'S AGENTS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS OR EQUIPMENT.

10.4 Subcontractor's and Supplier's Indemnity Obligations. Contractor shall require each of its subcontractor to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required in this section and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms as Section 13. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the actions of any subcontractor engaged by Contractor, whether in written agreement or otherwise, or who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed to be the obligation of the subcontractors to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with completed operations coverage which contains a per occurrence limit of no less than one million dollars (\$1,000,000.00), and an aggregate limit of no less than two million dollars (\$2,000,000.00) protecting against liability for bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (v, c, u) exposures. The CGL Policy shall not exclude from coverage (no type of, or nature of, the Work or limit the type of structure on which the Work is to be performed). The CGL Policy shall not contain a deductible or self insured retention of more than \$25,000.00. Contractor shall continuously maintain a CGL Policy covering completed operations for any applicable statute of repose for commencing lawsuits associated with the Work.

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

11.3 General Requirements Applicable to All Required Insurances. Contractor shall add Owner as an Additional Insured on the CGL Policy or policies required above covering both on-going operations and completed operations (equivalent to form CG20101185 or form CG2037). Coverage obtained by Contractor naming Owner as an Additional Insured shall be primary with any insurance of Owner being excess coverage. That insurance coverage will be carried continuously during the term of this Agreement and thereafter as required by this Agreement with insurance companies acceptable to Owner in its sole and absolute discretion. That insurance shall provide for a waiver of subrogation. All insurance shall be with

INITIALS: OWNER ELH, CONTRACTOR JES

a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the required policies. Each Certificate of Insurance or policy shall contain an unqualified clause to the effect that the policy shall (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days' prior written notice to Owner, (ii) be carried continuously from the date of commencement of the Work until expiration of the period of the Contractor's warranty provided in this Agreement, (iii) specifically identify Owner as an Additional Insured, and (iv) indicate that coverage applies in the state where the Work is being performed. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself and the Work required to be performed under this Agreement.

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

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

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or another contractor's work is damaged by an act for which Contractor, or its employees, agents or subcontractors, are responsible, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct such Work, replace or repair any defective material, or repair any damage Contractor shall make all repairs and correct such within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours notice on a non-emergency basis; or (ii) retain a third party to undertake to perform those duties, and return any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld resulting in a deficiency, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and reasonable attorneys' fees, incurred by Owner, and shall pay to Owner this amount within thirty (30) days of demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Paragraph 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or permitted subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location as a result of Contractor's actions or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; Exhibit A of this Agreement, or the specifications; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order that is Contractor's obligation under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary tools, material, or equipment for, or cleaned up after, the Work; (viii) Contractor fails to comply with any other provision of this Agreement.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement and rights and remedies available under this Agreement shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. Owner shall have a right to collect from Contractor its reasonable attorneys' fees and expenses incurred in enforcing Contractor's obligations.

13. ALTERNATIVE DISPUTE RESOLUTION.

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

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

13.3 Arbitration. If mediation fails, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq., regardless of any other choice of law provision in any underlying contract or this Agreement. All demands for arbitration shall be made before the expiration of the applicable statutes of limitations and repose. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court of competent jurisdiction.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrators mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes, is over \$200,000, but only one arbitrator shall be appointed if the Dispute is 200,000 or less. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days after the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of a mediator or arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint a mediator or arbitrator. The AAA's Code of Arbitrator Ethics (revised March 1, 2004) is applicable to all arbitrations.

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

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

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

14. TERMINATION.

14.1 Termination by Owner for Cause or Convenience. This Agreement shall remain in full force and effect until terminated in writing by mailing notice to the other Party. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) Days' written notice before the effective date of termination, and shall perform fully under this Agreement during that notice period. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.3 Survival. All obligations, duties and warranties for Work performed under this Agreement shall survive termination.

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

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement, and with respect to prices and quantities only, the Price Schedule and all written Purchase Orders shall be the entire agreement between Owner and Contractor related to the Work, and there are no other agreements, oral or written, made by or relied upon by Owner and Contractor. Except as otherwise provided in this Agreement, no provision of this Agreement may be amended or supplemented except in writing signed by both Owner and Contractor.

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

16.3 Assignability. Contractors' rights and obligations are not assignable or transferable without the express written consent of Owner, who may consent or withhold in Owner's sole and absolute discretion. Subject to the restrictions and prohibitions on assignment set forth in this section, the terms of the Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns.

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

16.5 Waiver. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

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

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Contractor shall provide and transfer ownership to any and all samples and/or shop drawings requested by Owner.

18. NOTICES. All notices required pursuant to this Agreement or otherwise shall be in writing and shall be delivered to the respective business address of Owner and Contractor. However, Contractor's business address shall be as noted on page one (1) of this Agreement. Notices shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by overnight delivery service, and upon confirmation if sent by facsimile transmission.

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

SOUTH CAROLINA REVISED 7/23/2007

INITIALS OWNER ELP CONTRACTOR jes