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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Martha M. Rivers

Circuit Court Case No. 2024-CP-40-03510
Appellate Case No.: 2024-001963

Sherman and Claudia Howell,.....Respondents,

v.

D.R. Horton, Inc.,…….....Appellant,

AND

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

v.

Jenkins Plumbing Company, LLC, Caryl Mechanicals II, Inc., L&M Electric, Inc., Unique Stone Creations, M&L General Construction, Inc., Alpha Omega Construction Group, Inc., and ASC Services and Supply, Inc.,…….……..Third-Party Defendants.

RECORD ON APPEAL Vol. I

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Sherman and Claudia Howell, Plaintiff, vs. D.R. Horton, Inc., Defendant.	)	CASE NO. 2024-CP-40-03510 **ORDER**
D.R. Horton, Inc. Third-Party Plaintiff, vs. Jenkins Plumbing Company, LLC, Caryl Mechanicals II, Inc., L&M Electric, Inc., Unique Stone Creations, M&L General Construction, Inc., Alpha Omega Construction Group, Inc., and ASC Services and Supply, Inc., Third-Party Defendants.	)	

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Nov 15 2024
SC Court of Appeals

Before the Court is Defendant D.R. Horton, Inc.'s ("D.R. Horton") August 9, 2024, Motion to Stay and Compel Arbitration ("Motion"). Plaintiffs, Sherman and Claudia Howell ("Plaintiffs" or the "Howells"), oppose the Motion. Both Defendant and Plaintiffs filed briefs in support of their positions and a hearing on this matter was attended by counsel for both parties on September 4, 2024.

Having carefully considered the law and facts, the written submissions of the parties, and the arguments of counsel, the Court **DENIES** D.R. Horton's Motion.

As explained in greater detail below, the Court reaches its ruling because the arbitration agreement is unconscionable and unenforceable as a matter of law and the Court concludes that severance of the unconscionable provisions is inappropriate here. Moreover, even if this were not

the case, under the Doctrine of Merger, the arbitration provision relied on by D.R. Horton was merged into the deed at the time of closing and D.R. Horton has not shown its burden to show by "clear and convincing evidence" that the arbitration provision survived closing here.

FINDINGS OF FACT & CONCLUSIONS OF LAW

I. FACTUAL BACKGROUND

D.R. Horton is a large and sophisticated construction company engaged in the building and sale of residential homes across the United States. On or about December 29, 2021, Plaintiffs, the Howells, signed a purchase and sale agreement ("Contract") agreeing to buy a D.R. Horton constructed home located in Blythewood, South Carolina (the "Home").[1]

The Howells were not represented by legal counsel at the time they entered into the Contract and had no significant experience in real estate, construction, or legal matters. The Contract was a standard form contract produced by D.R. Horton and was offered to the Howells on a "take it or leave it" basis. Inclusive of its various addendums, the Contract ran for over thirty pages of single space text.

Section 18 of the Contract speaks to "remedies available to the parties in the event of breach of this Agreement prior to closing or termination of this Contract." Sections 18(a) and (b), respectively, discuss the other party's remedies if "Purchaser" (i.e., the Howells) or "Seller" (i.e., D.R. Horton) defaults under its obligations "*prior to Closing* or termination of this Contract" and expressly provide that these types of claims are subject to Section 15, the arbitration provision.

On the other hand, Section 18(c) styled "Post-Closing and Post-Termination Remedies,"

[1] The copy of the Contract initially submitted by both parties was not signed by a duly-authorized representative of D.R. Horton. Following the September 4, 2024, hearing before this Court, D.R. Horton provided the Court with a copy of the Contract appearing to be electronically signed by "Judy L. Anderson" D.R. Horton's "Assistant Secretary" on January 4, 2022. For purposes of this Order, the Court assumes that the Contract was fully executed by both parties.

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provides that,

> Notwithstanding subsections a and b above, **from and after the Closing** or any termination of this Contract, each party shall have the right to pursue its actual (but not consequential or punitive) damages against the other party **for breach of any covenant or agreement contained herein that expressly survives the Closing or termination of this Contract.**

(emphasis added). In contrast to Section 18(a) of the Contract, Section 18(c) does not reference an alternative dispute resolution (e.g., arbitration) process for claims *arising after Closing*.

Various provisions of the Contract contain the type of "express" language referenced in Section 18(c) that details the parties' rights and obligations *after closing*. For instance, Section 9(b) of the Contract references the Howells' obligation to indemnify D.R. Horton for pre-closing inspections—a clause that "[n]otwithstanding any other provision herein . . . shall survive closing." In a similar way, Section 9(d) provides that D.R. Horton's "obligation to correct, repair or replace any items that are listed on a [pre-closing] Punch List shall survive closing." Finally, Section 10 likewise provides that the Howells' obligation to "indemnify and hold [D.R. Horton] harmless from" claims by real estate brokers or agents "shall survive closing." Conversely, the arbitration provision relied on by D.R. Horton in its Motion and at Section 15 of the Contract, does not contain survival language or state that claims arising after Closing are subject to arbitration.

On or about February 7, 2022, the Howells closed on the Home. At this point, neither side had brought a claim against the other. The deed does not reference the Contract or contain an arbitration provision.

Following the closing, the Howells began to detect various issues with the Home which led them to retain counsel and commission a study by a professional engineer. The engineer's study found that various components of the Home were constructed in an unworkmanlike fashion.

Especially concerning to the Howells though was what they learned occurred before they

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signed the Contract. The Howells knew that a third-party had previously been under contract for the home, but backed out of the transaction before closing. The Howells assert that a D.R. Horton representative told them the third-party could not obtain financing. But the record today reflects that the third-party prospective purchasers, Thomas Simmons and Leigh Anne Thomas (the "Simmons") backed out of their contract with D.R. Horton because D.R. Horton failed to adequately address the Simmons' concerns with needed repairs to the "I-Joists" supporting the second floor of the home. Subsequently, the Howells assert, D.R. Horton tried to cover up the fact that these repairs had not been completed.

Following, the Howells filed their Summons and Complaint against D.R. Horton on June 10, 2024. D.R. Horton answered and moved to compel arbitration and to stay on August 9, 2024.

In bringing its Motion, D.R. Horton relies on Section 15 of the Contract, providing:

> **15. MANDATORY BINDING ARBITRATION.** PURCHASER AND SELLER SHALL SUBMIT TO BINDING ARBITRATION ANY AND ALL DISPUTES WHICH MAY ARISE BETWEEN THEM REGARDING THIS AGREEMENT AND/OR THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY DISPUTES REGARDING: (A) SELLER'S CONSTRUCTION AND DELIVERY OF THE HOUSE; (B) SELLER'S PERFORMANCE UNDER ANY PUNCH LIST OR INSPECTION AGREEMENT; AND (C) THE LIMITED WARRANTY PURSUANT TO SECTION 14 ABOVE. THE ARBITRATION SHALL TAKE PLACE IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED. THE PROCEEDING SHALL BE CONDUCTED PURSUANT TO THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION AND, TO THE EXTENT POSSIBLE, UNDER RULES WHICH PROVIDE FOR AN EXPEDITED HEARING. THE FILING FEE FOR THE ARBITRATION SHALL BE PAID BY THE PARTY FILING THE ARBITRATION DEMAND, BUT THE ARBITRATOR SHALL HAVE THE RIGHT TO ASSESS OR ALLOCATE THE FILING FEES AND ANY OTHER COSTS OF THE ARBITRATION AS A PART OF THE ARBITRATOR'S FINAL ORDER. THE ARBITRATION SHALL BE BINDING AND FINAL, AND EITHER PARTY SHALL HAVE THE RIGHT TO SEEK JUDICIAL ENFORCEMENT OF THE ARBITRATION AWARD. NOTWITHSTANDING ANY OTHER PROVISION HEREIN, ANY DISPUTES ARISING UNDER THE LIMITED WARRANTY SHALL BE MEDIATED, ARBITRATED AND/OR JUDICIALLY RESOLVED PURSUANT TO THE TERMS, CONDITIONS, PROCEDURES AND RULES OF THE LIMITED WARRANTY. . .

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Section 15 refers to and directly proceeds Section 14 of the Contract, which provides as follows:

> **14. WARRANTIES AND DISCLAIMER.**
>
> **a**. **Ten-Year Limited Warranty**. Seller shall provide Buyer with a written, ten-year limited warranty on the House administered by Residential Warranty Corporation ("*RWC*") which shall be effective as of the Closing Date. The terms and conditions of, and exclusions from, the ten-year limited warranty shall be as set forth in that document published by RWC entitled, "LIMITED WARRANTY, 10 YEAR LIMITED WARRANTY FOR NEW HOMES," and referred to herein as the "*Limited Warranty*." At Closing, Seller shall deliver to Buyer the documentation necessary for Buyer to obtain the actual Limited Warranty for the House from RWC.
>
> **b. Manufacturers' Warranties**. At Closing, Seller shall assign to Purchaser all warranties, expressed or implied, which are given by the manufacturer of any appliance or product installed in the House.
>
> **c. Disclaimer and Limitation on Seller's Liability**. THE LIMITED WARRANTY GIVEN TO PURCHASER BY SELLER PURSUANT TO SUBSECTION 14a ABOVE IS TO THE EXCLUSION OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND SELLER HEREBY DISCLAIMS ANY AND ALL SUCH OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF HABITABILITY, MERCHANTABIITY OR FITNESS FOR A PARTICULAR PURPOSE. IN ADDITION, SELLER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING THE PAST, PRESENT OR FUTURE CONDITION OR USE OF ANY LANDS OR AREAS SURROUNDING THE PROPERTY OR IN THE VICINITY OF THE PROPERTY. AFTER CLOSING, SELLER SHALL HAVE NO LIABILITY OR OBLIGATION TO PURCHASER OF ANY NATURE WHATSOEVER EXCEPT AS PROVIDED IN THIS SECTION 14 OF THIS AGREEMENT, IN SECTION 9(d) ABOVE AND IN SELLER'S DEED TO PURCHASER. EXCEPT AS OTHERWISE PROVIDED IN THE LIMITED WARRANTY, SELLER SHALL NOT BE LIABLE FOR ANY REASON, UNDER ANY CIRCUMSTANCES, TO PURCHASER OR ANYONE CLAIMING THROUGH PURCHASER FOR MONETARY DAMAGES OF ANY KIND, INCLUDING SECONDARY, CONSEQUENTIAL, PUNITIVE, GENERAL, SPECIAL, OR INDIRECT DAMAGES.

At the time of the execution of the Contract, the Home was already constructed by D.R. Horton. Neither Section 14 nor Section 15 were specifically explained to the Howells when they

signed the Contract. The Home was a significant investment for the Howells. At the time, home prices were increasing and homes available for sale that suited the Howells' needs were limited.

II. THE SCUAA APPLIES TO THE CONTRACT

At the onset, the Court notes D.R. Horton's contention that the Contract here is governed under the Federal Arbitration Act, 9 U.S.C. 1, *et seq*. ("FAA"). *See* D.R. Horton's Memorandum at 7-10. But the "FAA does not reflect a congressional intent to occupy the entire field of arbitration." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 591, 553 S.E.2d 110, 116 (2001) (citing *Volt Info. Scis. Inc. v. Board of Trs.,* 489 U.S. 468, 109 S.Ct. 1248 (1989)).

Instead, "[t]he FAA preempts state laws that invalidate the parties' agreement to arbitrate [b]ut it does not follow that the FAA prevents the enforcement of agreements to arbitrate under different rules than those set forth in the [FAA] itself." *Munoz v. Green Tree Fin. Corp*., 343 S.C. 531, 542 S.E.2d 360 n. 2 (2001) (citations omitted)). "If the parties have agreed to abide by state rules of arbitration, enforcing those rules according to the terms of the agreement is consistent with the goals of the FAA." *Zabinski*, 346 S.C. at 592, 553 S.E.2d at 116 (2001). In other words, "'[t]he parties to a contract are . . . free to agree that our state Arbitration Act will apply and this agreement shall be enforceable even if interstate commerce is involved.'" *Zabinski*, 346 S.C. at 594, 553 S.E.2d at 117 (citing *Munoz,* 343 S.C. at 539, 542 S.E.2d at 363 n. 2).

Here, the face of the Contract provides that it is subject to the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10 *et seq*. ("SCUAA"). And "because the essential character of the [Contract]" here "was strictly for the purchase of a completed residential dwelling and not the construction" this dispute is one of an intrastate nature. *Bradley v. Brentwood Homes, Inc*., 398 S.C. 447, 459, 730 S.E.2d 312, 318 (2012). Accordingly, the SCUAA is what the parties agreed to, what the law provides, and where the Court will focus its analysis.

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Having determined that the SCUAA applies to the parties' Contract here, the Court will now consider the enforceability of Section 15—the language relied on by D.R. Horton in bringing its Motion.

III. THE ENFORCEABILITY OF THE ARBITRATION PROVISION IN THE CONTRACT.

As noted above, D.R. Horton contends that Section 15 of the Contract governs the present dispute,

> PURCHASER AND SELLER SHALL SUBMIT TO BINDING ARBITRATION ANY AND ALL DISPUTES WHICH MAY ARISE BETWEEN THEM REGARDING THIS AGREEMENT AND/OR THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY DISPUTES REGARDING: (A) SELLER'S CONSTRUCTION AND DELIVERY OF THE HOME . . .

See D.R. Horton Motion at ¶ 2 (ellipsis original). The Howells dispute the enforceability of this provision and assert that the arbitration provision is "unconscionable."

Under both the FAA and the SCUAA, trial courts decide whether a valid agreement to arbitrate exists. *See, e.g.*, *Coinbase, Inc. v. Suski*, 144 S. Ct. 1186, 1193 (2024) (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69, 139 S. Ct. 524, 530 (2019)) ("The court determines whether a valid arbitration agreement exists.'"); *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 23, 644 S.E.2d 663, 667 (2007) ("The trial court should determine the threshold validity of the arbitration agreement."); S.C. Code Ann. § 15-48-20(a) (". . . if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue. . .").

But before considering whether the arbitration agreement here is enforceable, this Court must decide the threshold issue of what it should consider in deciding this question.

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A. What Provision(s) of the Contract May the Court Consider in its Enforceability Analysis?

"In *Prima Paint*, the [United States] Supreme Court held that to avoid arbitration, a party must assert a contractual defense to the arbitration agreement itself, and not to the contract as a whole. Thus, for example, a party must allege that the arbitration agreement is unconscionable, not that the entire contract is unconscionable." *Smith v. D.R. Horton, Inc*., 417 S.C. 42, 48, 790 S.E.2d 1, 4 (2016) (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 406 87 S. Ct. 1801 (1967).

While here, the Howells have challenged the enforceability of the specific arbitration provision relied on by D.R. Horton, under *Prima Paint* "in conducting an unconscionability [this Court] may only consider the provisions of the arbitration agreement itself, and not those of the whole contract." *Id.; see also* 1 COMMERCIAL ARBITRATION § 19:36 ("an arbitration clause in a larger contract must be carved out . . . [and] examined separately.").

As such, this Court, like the Supreme Court of South Carolina, must "address this issue first because it controls which portions of the [Contract] [this Court] may properly consider in conducting . . . [its] analysis." *Smith.*, 417 S.C. at 48, n. 4 790 S.E.2d at 3, n. 4. In other words, "the Court must first define the scope of the arbitration agreement before considering whether that agreement is unconscionable." *Damico v. Lennar Carolinas*, LLC, 437 S.C. 596, 609, 879 S.E.2d 746, 753 (2022).

Here, "D.R. Horton asserts that the arbitration agreement is wholly contained in [Section 15]. Therefore, according to D.R. Horton, the Court may not consider any of the remaining [Sections]—such as [Section 14's] damages limitation—in determining whether the arbitration agreement is unconscionable." *Smith*, 417 S.C. at 48, 790 S.E.2d at 4.

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But, as Plaintiffs, the Howells, assert, where an "arbitration agreement [is] not merely a standalone provision but [is] instead embedded in multiple contract terms, including ones dealing with a limited home warranty" this Court may consider terms outside the explicit text of Section 15. *Damico v. Lennar Carolinas*, LLC, 437 S.C. 596, 607, 879 S.E.2d 746, 752 (2022) (citing *Smith*).

Here, the Court concludes that like in *Smith*, this Court must read additional provisions of the Contract "to understand the scope of the warranties and how different disputes are to be handled. The [different sections of the Contract] contain numerous cross-references to one another, intertwining the [sections] so as to constitute a single provision." *Smith*, 417 S.C. at 48, 790 S.E.2d at 4; *see also Ellie, Inc. v. Miccichi*, 358 S.C. 78, 91, 594 S.E.2d 485, 493 (2004) ("Where one contract explains, amplifies, or limits the other, those provision will be given effect between the parties so that the whole agreement, as actually contracted by the parties, may be effected."); 1 COMMERCIAL ARBITRATION § 19:36 ("in determining if [a] severed arbitration clause is enforceable under generic principles of contract law, the court may consider the context of the arbitration clause within the four corners of the [broader] contract, looking at other parts of the contract that *relate to, support, or are otherwise entangled with the operation of the arbitration clause*.") (emphasis added).

To be sure, "courts must respect and enforce a contractual provision to arbitrate as it respects and enforces all contractual provisions. There is however, no public policy—federal or state—'favoring' arbitration." *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 639, 636, 856 S.E.2d 150, 153 (2021), instead, arbitration "agreements [stand] upon the same footing as other contracts." *Morgan v. Sundance, Inc*., 596 U.S. 411, 418, 142 S. Ct. 1708, 1713 (2022).

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"Contract interpretation begins with the plain language of the agreement." *Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 407 S.C. 407, 416, 756 S.E.2d 148, 152 (2014). This is same whether it is a contract to arbitrate or otherwise. *Lampo v. Amedisys Holding, LLC*, 437 S.C. 236, 241, 877 S.E.2d 486, 489 (Ct. App. 2022), *reh'g denied* (Aug. 30, 2022), *cert. granted* (Feb. 7, 2024) (Courts must "treat arbitration agreements the same as all other contracts—no more, no less."). "When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense." *S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant*, *LLC*, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008) (citing *C.A.N. Enters., Inc.*, 296 S.C. at 377, 373 S.E.2d at 586). "Additionally, an interpretation that gives meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous." *Stevens Aviation*, 407 S.C. at 417, 756 S.E.2d at 153. (citations omitted).

Accordingly, documents or other authorities incorporated by reference into an arbitration clause are part of the arbitration agreement, and, just like any other agreement, may be considered in construing their meaning or enforceability. *Lackey v. Green Tree Financial Corp.*, 330 S.C. 388, 498 S.E.2d 988 (Ct. App. 1998) (holding that an authority incorporated by reference into an arbitration clause must be read into the terms of the arbitration agreement); *see also Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 879 S.E.2d 746 (2022) (recognizing that *Smith* held that sections incorporated by reference into the arbitration provision must be read into the agreement in determining the question of enforceability).

Accordingly, "in accordance with the *Prima Paint* doctrine" and the South Carolina Supreme Court's ruling in *Smith*, this Court concludes that "in determining whether the arbitration agreement is unconscionable," this Court "may properly consider the entirety of" the arbitration

provision and its incorporated or "intertwined" sections, that when read together "constitute a single provision." *Smith*, 417 at 48-49, 790 S.E.2d at 4.

Here, while not identical, the Howells' Contract with D.R. Horton is very similar to that analyzed by the Supreme Court in *Smith* and discussed in great detail in the Court of Appeals' earlier, later affirmed decision in *Smith v. D.R. Horton, Inc.,* 403 S.C. 10, 742 S.E.2d 37 (Ct. App. 2013).

In *Smith,* the arbitration provision relied on by D.R. Horton was found within the "Warranties and Dispute Resolution" provision of the contract, a provision containing several sub-sections:

> Section 14(a) [of the contract] provided for a warranty from Residential Warranty Corporation (RWC), which purported to be the only warranty extended by [D.R.] Horton, except for such warranties as cannot be disclaimed by law. Section 14(b) provided that validation of the RWC warranty was conditioned on Horton's compliance with all RWC's enrollment procedures and upon [D.R.] Horton remaining in good standing in the RWC program. Section 14(c) purported to disclaim all other warranties, express or implied, as to quality, fitness for a particular purpose, merchantability, and habitability. Section 14(c) further provided all disputes under the RWC warranty were subject to binding arbitration. Sections 14(d)–(f) provided exclusions to the warranty for landscaping.

Smith., 403 S.C. at 12, 742 S.E.2d at 39 (Ct. App. 2013).

Here, Section 14(a) of the Howells' contract "provide[s] for a warranty from Residential Warranty Corporation (RWC), which purport[s] to be the only warranty extended by [D.R.] Horton" but the Contract does not include a provision "except[ing] such warranties as cannot be disclaimed by law." *Id.*

Instead of the RWC-related provisions in section 14(b) in *Smith*, Section 14(b) here provides for a post-closing assignment of manufacturer's warranties to the Howells. Section 14(c) here, like in *Smith* "purport[s] to disclaim all other warranties as to quality, fitness for a particular purpose, merchantability, and habitability" excepting a "limited warranty on the [Home]

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administered by Residential Warranty Corporation ("RWC") . . . referred to [within the Contract] as the "*Limited Warranty*." Here, Section 14(c) in the Howells' contract further adds,

> AFTER CLOSING, SELLER SHALL HAVE NO LIABILITY OR OBLIGATION TO PURCHASER OF ANY NATURE WHATSOEVER EXCEPT AS PROVIDED IN THIS SECTION 14 OF THIS AGREEMENT, IN SECTION 9(d) ABOVE[2] AND IN SELLER'S DEED TO PURCHASER. EXCEPT AS OTHERWISE PROVIDED IN THE LIMITED WARRANTY, SELLER SHALL NOT BE LIABLE FOR ANY REASON, UNDER ANY CIRCUMSTANCES, TO PURCHASER OR ANYONE CLAIMING THROUGH PURCHASER FOR MONETARY DAMAGES OF ANY KIND, INCLUDING SECONDARY, CONSEQUENTIAL, PUNITIVE, GENERAL, SPECIAL, OR INDIRECT DAMAGES.

This provision is similar to Section 14(i) "prefaced 'Limitation of Liability" in *Smith* which disclaimed warranties except for those specifically provided or imposed by law, including "as to merchantability or fitness for a particular purpose, either expressed or implied . . . [and that D.R. Horton] shall not be liable for monetary damages of any kind, including secondary, consequential, punitive, general, special or indirect damages." *Smith*., 403 S.C. at 13, 742 S.E.2d at 39 (Ct. App. 2013).

The arbitration provision in *Smith* was located at paragraph 14(g) and read as follows:

> **Mandatory Binding Arbitration:** [The Smiths] and [D.R. Horton] each agree that, to the maximum extent allowed by law, they desire to arbitrate all disputes between themselves. The list of disputes which shall be arbitrated in accordance with this paragraph include, but are not limited to: (1) any claim arising out of [D.R. Horton's] construction of the home; (2) [D.R. Horton's] performance under any Punch List or Inspection Agreement; (3) [D.R. Horton's] performance under any warranty contained in this Agreement or otherwise; and (4) any other matters as to which [the Smiths and Horton] agree to arbitrate.

[2] The Howells have not brought a specific claim arising under Section 9(d). Section 9(d) of the Contract contemplates the Howells and D.R. Horton drafting a "punch list" that D.R. Horton will be obliged to address, even if after closing. However, the Section also provides that "[u]nder no circumstances shall [D.R. Horton] be required to correct, repair or replace any items on or of the Property that are not listed on the Punch List signed by [D.R. Horton]."

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Here, the arbitration provision is contained within a now "separate" Section 15 and states in pertinent part as follows:

> **MANDATORY BINDING ARBITRATION.** PURCHASER AND SELLER SHALL SUBMIT TO BINDING ARBITRATION ANY AND ALL DISPUTES WHICH MAY ARISE BETWEEN THEM REGARDING THIS AGREEMENT AND/OR THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY DISPUTES REGARDING: (A) SELLER'S CONSTRUCTION AND DELIVERY OF THE [HOME] B) SELLER'S PERFORMANCE UNDER ANY PUNCH LIST OR INSPECTION AGREEMENT; AND (C) THE LIMITED WARRANTY PURSUANT TO SECTION 14 ABOVE. . . . NOTWITHSTANDING ANY OTHER PROVISION HEREIN, ANY DISPUTES ARISING UNDER THE LIMITED WARRANTY SHALL BE MEDIATED, ARBITRATED AND/OR JUDICIALLY RESOLVED PURSUANT TO THE TERMS, CONDITIONS, PROCEDURES AND RULES OF THE LIMITED WARRANTY.

In *Smith,* "[s]ection 14(h) provided that if a dispute arose prior to the closing date, [D.R.] Horton had the right to terminate the agreement, return the earnest money, and 'no cause of action shall accrue on behalf of [the Smiths] because of such termination." *Id.*at 12, 742 S.E.2d at 39. Here, neither Section 14 nor Section 15 contain such a provision, but as discussed in greater detail below, Section 18 of the Contract provides for "the sole and exclusive remedies available to the parties in the event of breach of this [Contract] *prior to Closing or termination of this Contract*, and shall be to the exclusion of all other remedies at law." (emphasis added). Among these "remedies" is that in the event of D.R. Horton's default before closing, the Howells could "institute[e] mandatory binding arbitration of [their] claim . . . in accordance with Section 15 above."

D.R. Horton has apparently modified the language of its standard contract terms since the Court of Appeals and Supreme Court's ruling in *Smith.* Today, it asserts that unlike in *Smith*, "the arbitration provision in the [Contract] is contained in a standalone section and should be reviewed as such and is severable from any other language of the [Contract] under *Prima Paint*." And, for

this contention, D.R. Horton cites the South Carolina Supreme Court's ruling in *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 879 S.E.2d 746 (2022).

In *Damico*, the Supreme Court distinguished its prior ruling in *Smith* and held that "in contrast to [*Smith*]" in *Damico* the arbitration agreement relied on by one of the parties was contained in "a distinct section of the purchase and sale agreement that sets forth the entirety of the arbitration agreement." *Damico*, 437 S.C. at 610, 879 S.E.2d at 754. As the Court explained, the *Damico* arbitration provision "deal[t] solely with the scope of arbitration and the requisite formalities accompanying an arbitration proceeding, such as the procedural rules and number of arbitrators required to resolve the dispute." *Id.* However, in further distinguishing the arbitration provision in *Damico* from the one at issue in *Smith*, the Court in *Damico* also observed that the arbitration provision contained no "refer[ence] to the limited warranty" and did not "incorporate[ ] it by reference." *Id.*

Here, D.R. Horton's revisions to the Contract, while a change in form from what was previously considered, are not a change in function. In function, the Contract here still closely resembles the contract in *Smith* as opposed to the contract considered in *Damico*. The arbitration language at Section 15 of the Contract still incorporates by reference the warranty provisions of Section 14—without reference to which, one cannot understand how various disputes are to be handled.

Why it is still necessary for the Court to review the "various subparagraphs" dealing with "'Warranties and Dispute Resolution'" and their "'numerous cross-references to one another,'" that create such "intertwining [of] the subparagraphs so as to constitute a single provision" so that they "'must be read [together] to understand the scope of the warranties and how different disputes are to be handled'" can be illustrated by the way different types of disputes are to be resolved under

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the arbitration provision. *Damico*, 437 S.C. at 609, 879 S.E.2d at 754 (citing *Smith*, 417 S.C. at 48, 790 S.E.2d at 4 (second substitution in *Damico*).

For instance, pre-closing disputes are dealt with in a relatively straightforward fashion. As Section 18(b) contemplates, had D.R. Horton "default[ed] on any of its obligations [under the Contract] *prior to closing or termination of this Contract*" the Howells could have "institute[ed] mandatory binding arbitration of" their claim "**in accordance with Section 15 above**" (providing for arbitration of *inter alia* disputes regarding the "construction and delivery" of the home).

Yet, *after closing*, how disputes are resolved becomes more complex. Under Section 18(c), the Contract only provides for "a right to pursue . . . damages" *after closing only* for "breach[es] of any covenant or agreement that expressly survives the Closing or termination of the Contract."

But such "expressly surviv[ing]" obligations for D.R. Horton are limited. In all events, a purchaser's relief *after closing* is limited by Section 14(c) of the Contract, providing that,

> **AFTER CLOSING, SELLER SHALL HAVE NO LIABILITY OR OBLIGATION TO PURCHASER OF ANY NATURE WHATSOEVER EXCEPT AS PROVIDED IN THIS SECTION 14 OF THIS AGREEMENT, IN SECTION 9(d) ABOVE AND IN SELLER'S DEED TO PURCHASER**. EXCEPT AS OTHERWISE PROVIDED IN THE LIMITED WARRANTY, SELLER SHALL NOT BE LIABLE FOR ANY REASON, UNDER ANY CIRCUMSTANCES, TO PURCHASER OR ANYONE CLAIMING THROUGH PURCHASER FOR MONETARY DAMAGES OF ANY KIND, INCLUDING SECONDARY, CONSEQUENTIAL, PUNITIVE, GENERAL, SPECIAL, OR INDIRECT DAMAGES.

(emphasis added).

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As this provision confirms, outside of continuing "punch list" obligations (not at issue here), the only remaining post-closing obligations for D.R. Horton are those set out in the "deed" or in the "Limited Warranty" described in Section 14(a).[3]

However, showing the intertwined nature of Section 14 and Section 15 (on which D.R. Horton relies for its Motion) Section 15 also provides that,

> . . . NOTWITHSTANDING ANY OTHER PROVISION HEREIN, **ANY DISPUTES ARISING UNDER THE LIMITED WARRANTY SHALL BE MEDIATED, ARBITRATED AND/OR JUDICIALLY RESOLVED PURSUANT TO THE TERMS, CONDITIONS, PROCEDURES AND RULES OF THE LIMITED WARRANTY.**

(emphasis added).

D.R. Horton does not suggest that the Limited Warranty's dispute resolution mechanism(s) apply to this dispute, and neither party has presented evidence of what the Limited Warranty provides. But, as the foregoing illustrates, to "understand the scope of the warranties and how different disputes are to be handled," *Smith*, 417 S.C. at 48, 790 S.E.2d at 4, this Court cannot, as D.R. Horton suggests, limit its review to only the explicit text of Section 15—because Section 15, on its face, incorporates by reference Section 14 and its warranty provisions.

This Court having concluded, as *Smith* and *Damico* seem to require, that in order to understand the arbitration provision at issue here, both Section 15, itself, along with Section 14 that it incorporates by reference, must be considered, the Court now turns its analysis to the unconscionability of these provisions.

[3] Which, as referenced above, is ". . a written, ten-year limited warranty on the [Home] administered by Residential Warranty Corporation ("*RWC*") ***which shall be effective as of the Closing Date***." Section 14(a) (emphasis added).

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B. The Arbitration Agreement is Unconscionable.

"[A]rbitration agreements [stand] on an equal footing with other contracts." *Goodwin v. Branch Banking & Tr. Co.*, 699 F. App'x 274, 275 (4th Cir. 2017). So, like all other contracts "generally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements . . . " *Damico*, 437 S.C. at 611, 879 S.E.2d at 755; *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687, 116 S. Ct. 1652, 1656 (1996) (*accord*).

At its core, unconscionability is defined "as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 403, 472 S.E.2d 242, 245 (1996). This general description of unconscionability applies to all contract terms, including arbitration provisions. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339, 131 S.Ct. 1740, 1746 (2011).

Unconscionability must be evaluated under two prongs: (1) lack of meaningful choice; and (2) oppressive terms. *Simpson,* 373 S.C. at 25 644 S.E.2d at 668-69; *see also* 17A Am. Jur. 2d Contracts § 272 (characterizing these two prongs as procedural and substantive unconscionability, respectively); *see also id.* § 271 ("Generally, the doctrine of unconscionability protects against unfair bargains and unfair bargaining practices. . . .").

As analyzed below, the purported arbitration provision within the Agreement fails on both substantive (one-sided and oppressive terms) and procedural (lack of meaningful choice) grounds and is, thus, unconscionable and unenforceable.

"Lack of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue." *Simpson v. MSA of Myrtle Beach,* 373

S.C. 14, 25 644 S.E.2d 663, 668-69 (2007) (citations omitted). "In determining whether a contract was tainted by an absence of meaningful choice," courts should consider,

> . . . the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause.

Simpson, 373 S.C. at 25, 644 S.E.2d at 669 (citations omitted); *see also* 17A Am. Jur. 2d Contracts § 272 ("Other factors to be considered include the use of sharp practices or high-pressure tactics, the sophistication or wealth of the parties, the relative scarcity of the subject matter of the contract, the age of the parties, who drafted the contract, whether the terms were explained to the weaker party, and whether alterations in the printed terms were possible.").

"[U]nder general principles of state contract law, an adhesion contract is a standard form contract offered on a 'take-it-or-leave-it' basis with terms that are not negotiable." *Simpson.* 373 S.C at 26-27, 644 S.E.2d at 669. In circumstances involving adhesion contracts, an absence of meaningful choice is readily apparent based upon the lack of bargaining power. The South Carolina Supreme Court recently recognized that national homebuilders engage in "'consumer transaction[s] which [are] essentially contract[s] of adhesion" and that they "may be examined by the courts with *special scrutiny* to assure that it is not applied in an unfair or unconscionable manner against the party who did not participate in its drafting.'" *Damico*, 437 S.C. at 614, 879 S.E.2d at 756 (2022), (quoting 17 C.J.S. CONTRACTS § 9) (emphasis added). In the analysis of the lack of meaningful choice in *Smith*, the Supreme Court highlighted that previously it had "'taken judicial cognizance of the fact that the modern buyer of new residential housing is normally in an unequal bargaining position as against the seller.'" *Smith*, 417 S.C. at 50; 790 S.E.2d at 4 (citing *Kennedy v. Columbia Lumber & Mfg. Co*., 299 S.C. 335, 343, 384 S.E. 2d 730, 735-36 (1989).

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Here, as in *Smith*, "there is no indication . . . that the [Plaintiffs] enjoyed a substantially stronger bargaining position against D.R. Horton than the average homebuyer, or that they were represented by independent counsel" in negotiating the Agreement. 417 S.C. at 50, 790 S.E.2d at 4. Likewise, just as in *Smith*, here the record demonstrates Plaintiffs had no meaningful choice in accepting the arbitration provision, as it was embedded in a purchase and sale agreement over 30 pages in length that was offered on a take it or leave it basis by D.R. Horton. Also, like the transaction in *Smith*, the Plaintiffs' purchase of their Home had little business concern to D.R. Horton, "as they are a single client to a corporation that constructs houses in [now more than] twenty-seven states." *Id*. at 50, 790 S.E.2d at 5. Contrasting with D.R. Horton's large and highly sophisticated business operations, the Howells were relatively unsophisticated in real estate transactions and related fields. The purchase of the Home represented a significant investment for them—especially relative to D.R. Horton. And, at the time, home selections that fit the Howells' needs in the Columbia-area were limited.

The cumulative effect of the arbitration, disclaimers, and limitation of liability provisions is significant if enforced. These one-sided terms purportedly limit any monetary damages that Plaintiffs can recover; leave the repairs at D.R. Horton's discretion; require Plaintiffs (the only parties likely to bring claims under the Agreement) to pay the arbitrator fee; and commit Plaintiffs to waive their right to a jury trial as to claims against D.R. Horton—a party that is alleged to have committed fraud by lying multiple times in the transaction, in a case that involves significant construction defects.[4]

[4] While the Court sets to the side, for purposes of present analysis, allegations of fraud in the inducement to the Contract as a whole here, the Howells allegations of a literal "cover-up" of potentially dangerous structural defects by a large corporation are a reminder of the seriousness of the Howells' claims.

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In *Smith v. D.R. Horton*, the Supreme Court of South Carolina affirmed the holdings of the Circuit Court and Court of Appeals concluding that D.R. Horton's form arbitration provision "attempt[ing] to disclaim implied warranty claims and prohibit *any* monetary damages [is] clearly one-sided and oppressive." 417 S.C. at 48, 790 S.E.2d at 4. Here, like in *Smith*, the arbitration provision is "intertwin[ed]" *Smith*, 417 S.C. at 48, 790 S.E.2d at 4, with the "clearly one-sided and oppressive" terms purporting to "disclaim[ ] all other warranties, expressed or implied" and allegedly absolving D.R. Horton of responsibility for "monetary damages of any kind." *Smith*, 417 S.C. at 55; 790 S.E.2d at 5. Here, the Howells, like the plaintiffs in *Smith*, "are left with no remedy at all because it leaves the relief at the whim of D.R. Horton while simultaneously allowing no monetary recuperation, when as is here, the repairs are simply inadequate." *Smith*, 417 S.C. at 50, 790 S.E.2d at 4.

Accordingly, the Court finds that the arbitration provision here is both procedurally and substantively unconscionable, and thus, unenforceable as a matter of law.

C. The Court Will Not Sever the Unconscionable Terms from the Arbitration Agreement.

Having held that the arbitration provision here is unconscionable, the Court must now decide whether these unconscionable terms may be severed from the arbitration agreement.

"[T]he general principle in this State is that it is not the function of the court to rewrite contracts for parties." *Simpson*, 373 S.C. at 34, 644 S.E.2d at 673. Instead, when confronted with an unconscionable provision, "the intent of the parties is best achieved by severing the arbitration clause in its entirety rather than 'rewriting' the contract by severing multiple unenforceable provisions." *Id.* at 35.

In *Damico v. Lennar Carolinas, LLC*, the Supreme Court emphasized the special quality of a consumer transaction "involv[ing] the purchase of a new home." 437 S.C. at 623, 879 S.E.2d

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at 761. This is because "South Carolina has a deeply-rooted and long-standing policy of protecting new home buyers." *Damico*, 437 S.C. at 621, 879 S.E.2d at 760. To honor a severability clause in a new home purchase agreement "would encourage sophisticated parties to intentionally insert unconscionable terms—that often go unchallenged—throughout their contracts, believing the courts would step in and rescue the party from its gross overreach," *id.* at 604, 879 S.E.2d at 751, "knowing that if the contract is found unconscionable, a narrower version will be substituted against an innocent, inexperienced homebuyer." *Id.* at 622, 879 S.E.2d at 760.

Accordingly, "[b]ecause most homebuyers simply comply with their arbitration agreements rather than challenging them in court . . . *the law should provide a strong incentive for home builders not to overreach*." *Id.* at 623, 879 S.E.2d at 761 (emphasis added) (quotations omitted). The Court concluded:

> Given that the subject matter of the contract involves new home construction, and South Carolina has an extensive history of expanding its common law on contracts so as to protect new homebuyers, we find honoring the severability clause here—particularly because it goes to a material term of the arbitration agreement—would violate public policy. Our holding is based primarily upon two factors. First, the contract at issue is a contract of adhesion, in which it is "considerably doubtful" both parties truly intended a court to sever an unconscionable provision and enforce the remainder of the agreement. Second, with respect to the public policy considerations inherent in this type of consumer transaction (homebuying), "the likelihood that refusal to enforce the bargain or term will further [public] policy" is, we hope, high. *See* 17A Am. Jur. 2d *Contracts* § 238.

Damico, 437 S.C. at 624, 879 S.E.2d at 761; *see also Smith*, 403 S.C. at 16, 742 S.E.2d at 41 ("We conclude the arbitration clause . . . should not be severed from the numerous unconscionable provisions and particularly [D.R.] Horton's attempt to waive any seller liability for 'monetary damages of any kind . . .'"); *Goodwin v. Branch Banking & Tr. Co.*, 699 F. App'x 274 (4th Cir. 2017) (affirming district court's refusal to sever unconscionable terms of a putative arbitration agreement).

Here, this Court finds no reason to distinguish its holding from the well-established precedent above. Accordingly, the Court finds that severance of the unconscionable provisions of the arbitration provision here is not warranted.

***

Accordingly, the arbitration agreement in the Contract is unconscionable, and thus, unenforceable as a matter of law. Furthermore, severance of these unconscionable provisions is not warranted under the Contract or the law. As such, on these grounds, D.R. Horton's Motion is DENIED.

IV. THE ARBITRATION PROVISION WAS MERGED INTO THE DEED AT CLOSING

Even if the arbitration provision here was not unconscionable and unenforceable, South Carolina's Merger Doctrine would apply to prevent application of the arbitration language of Section 15.

Under the doctrine of merger, "[t]he execution, delivery, and acceptance of a deed varying from the terms of the antecedent contract indicates an amendment of the original doctrine, and generally the rights of the parties are fixed by their expressions as contained in the deed." *Wilson v. Landstrom*, 281 S.C. 260, 264, 315 S.E.2d 130, 132 (Ct. App. 1984) *quoting Charleston & W. C. Ry. Co. v. Joyce*, 231 S.C. 493, 504, 99 S.E.2d 187 (1957). In other words, once parties execute a deed ". . . the written . . . agreement to convey is merged in the deed, the agreement to convey is discharged or is modified as indicated by the deed, the deed regulates the rights and liabilities of the parties, and [prior] agreement[s] [are] inadmissible." *Charleston & W. C. Ry. Co.*, 231 S.C. at 505, 99 S.E.2d at 193; *Wilson*, 281 S.C. at 264, 315 S.E.2d at 132 ("A deed executed [after a] contract for the sale of land supersedes that contract. . .").

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South Carolina first recognized the merger doctrine in 1885, when St. Phillip's Church sought to enforce a provision in an agreement between it and Zion Presbyterian Church, in which the parties agreed that the purchase property must be home to a Presbyterian church. *St. Philip's Church v. Zion Presbyterian Church*, 23 S.C. 297, 300 (1885). Because the provision limiting the use of the land was included in a lease agreement between the parties but not included in the later deed, the Supreme Court of South Carolina refused to enforce the provision, holding that the two agreements "merged, and that the conditions annexed to the lease were extinguished" by the subsequent deed. *Id.* at 307.

D.R. Horton asserts that one of the recognized exceptions to the merger doctrine applies here. Either that merger was not intended, *see, e.g.*, *Hughes,* 283 S.C. at 451, 322 S.E.2d at 828, or that the arbitration requirement is a "collateral agreement." *See, e.g.*, *New Prospect Area Fire Dist. v. New Prospect Ruritan Club*, 311 S.C. 402, 405, 429 S.E.2d 791, 792 (1993) ("[w]here a deed constitutes only part performance of a preceding contract, other distinct and unperformed provisions of the contract are not merged in the deed.)

In either event, D.R. Horton, as "the party denying merger has the burden of proving by clear and convincing evidence that merger was not intended." *Carlson v. South Carolina State Plastering, LLC*, 404 S.C. 250, 260, 743 S.E.2d 868, 874 (Ct. App. 2013). "Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal.'" *Anonymous (M-156-90) v. State Bd. of Med. Examiners*, 329 S.C. 371, 375, 496 S.E.2d 17, 18 (1998) (internal citations and quotations omitted) (emphasis added).

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In *Carlson*, the South Carolina Court of Appeals recognized that an arbitration clause in a purchase and sale agreement for a new home may merge into the deed, however the *Carlson* court ruled that the merger doctrine was inapplicable, because clear and convincing evidence was submitted that "the parties did not intend for the arbitration clause to be superseded by the subsequently-executed deed." *Id.* at 261, 732. S.E.2d at 874. This was because *both* the *Carlson* purchase agreement and its arbitration provision contained an explicit survival clause:

> "The covenants, disclaimers and agreements contained in this Agreement shall not be deemed to be merged into or waived by the instruments executed at Closing, **but shall expressly survive the closing** and continue to be binding upon both parties. In addition, the arbitration clause in the purchase agreement specifically state[d] that "**after closing**, every controversy or claim arising out of or relating to this Agreement . . . shall be settled by binding arbitration."

Id. (ellipsis original, emphasis added). Accordingly, the *Carlson* court concluded that these "clear and unambiguous terms" evidenced "clear and convincing . . . support[ ]" for a "finding that the parties did not intend for the arbitration clause to be merged into the deed at closing." *Id.*

Here, as discussed above, Section 15 of the Contract, which D.R. Horton relies upon, does not contain such "express" language providing that it will survive closing. While other components of the Contract provide expressly surviving obligations on *both* parties in a plain fashion (*see* Sections 9(b), 9(d), and 10) Section 15, especially when read together with Section 14 and Section 18(c) express the parties' intention for the arbitration language of Section 15 to not survive closing, except for the limited exceptions discussed above and not applicable here.

As for the "collateral agreement" exception, that analysis is similar. D.R. Horton cannot maintain the sword of asserting that its obligations were only "partly perform[ed]" and that it has "distinct and unperformed provisions of the contract" still yet to be done, *New Prospect*, 311 S.C. at 405, 429 S.E.2d at 792, when the contract itself shields it from any such obligation pertinent to this dispute. *See, e.g.*, Section 14(c) ("after closing, Seller shall have no liability or obligation to

purchaser of any nature whatsoever . . . Seller shall not be liable for any reason, under any circumstances, to purchaser . . . for monetary damages of any kind, including secondary, consequential, punitive, general, special, or indirect damages . . .").[5]

As such, even if the unconscionable nature of the arbitration agreement did not result in denial of D.R. Horton's Motion here, the Court would conclude that the Merger Doctrine applies here and that any arbitration provision within Section 15 of the Contract was merged into the deed at the time of Closing. Because of this and because D.R. Horton has failed to meet its burden, through clear and convincing evidence, that the merger doctrine does not apply, on these grounds, D.R. Horton's Motion is DENIED.

CONCLUSION

As such, the Court finds and holds that the arbitration provision within the parties' contract is unconscionable, that these unconscionable provisions of the arbitration agreement should not be severed, and for these reasons, D.R. Horton's Motion is **DENIED.**

[5] In other contexts, where South Carolina courts have found that an arbitration provision "expressly survives" and is not merged, they have consistently applied the same "clear and convincing evidence" standard in evaluating the parties' intentions. *See, e.g.*, *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 355, 755 S.E.2d 450, 455 (2014) (concluding that language in the admission agreement that "recognize[d] the 'separatedness' of the [arbitration agreement] and the admission agreement" plus a clause allowing the arbitration agreement to "be disclaimed within thirty days of signing while the admission agreement could not" indicated the parties' intention "that the common law doctrine of merger not apply"); *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 562-63, 813 S.E.2d 292, 302 (Ct. App. 2018) (determining an admission agreement and arbitration agreement did not merge because "the Admissions Agreement indicated it was governed by South Carolina law, whereas the Arbitration Agreement stated it was governed by federal law," "each document was separately paginated and had its own signature page," and "the Arbitration Agreement stated signing it was not a precondition to admission" evidenced the parties' intention the documents be construed as separate instruments).

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Moreover, even if the arbitration agreement were enforceable here, the arbitration agreement was merged into the deed, and is thus, of no present enforceable effect. On these additional grounds, denial of D.R. Horton's Motion is warranted.

For these reasons, D.R. Motion to Stay and Compel Arbitration is **DENIED.**

AND IT IS SO ORDERED.

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Richland Common Pleas

Case Caption: Sherman Howell , plaintiff, et al vs D R Horton Inc , defendant, et al

Case Number: 2024CP4003510

Type: Order/Other

IT IS SO ORDERED.

/s/ Hon. Martha M. Rivers (2788)

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS _____ JUDICIAL CIRCUIT
Sherman and Claudia Howell, Plaintiff, vs. D.R. Horton, Inc., Defendant.	)	CASE NO. 2024-CP-___-_____ **SUMMONS** **(Jury Trial Demanded)**

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on subscriber at his office at Post Office Box 1980, Myrtle Beach, South Carolina 29578, within thirty (30) days after the service hereof, exclusive of the day of such service, AND IF YOU FAIL TO APPEAR AND DEFEND THE ACTION AS REQUIRED BY LAW, JUDGMENT BY DEFAULT WILL BE RENDERED AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

RICHARDSON THOMAS, LLC

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June 10, 2024

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS _____ JUDICIAL CIRCUIT
Sherman and Claudia Howell, Plaintiff, vs.	)	CASE NO. 2024-CP-___-_____ **COMPLAINT** **(Jury Trial Demanded)**
D.R. Horton, Inc., Defendant.	)	

The Plaintiffs, complaining of the Defendant herein, would respectfully show unto this Honorable Court as follows:

1. The Plaintiffs, Sherman and Claudia Howell, are citizens and residents of the County of Richland, State of South Carolina and own real property located in the Long Cove community ("Community") at 564 Pine Knot Drive, Blythewood, South Carolina (hereinafter the "Residence").

2. Defendant, D.R. Horton, Inc. (hereinafter "Defendant Homebuilder"), is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of Delaware which was, at all times relevant hereto, conducting business in Richland County, South Carolina. Defendant Homebuilder acted as the builder of the Residence.

3. This Court has jurisdiction over this action as Defendant Homebuilder committed tortious acts within the State of South Carolina.

4. Venue is proper pursuant to S.C. Code Ann. §15-7-20 because the acts and omissions giving rise to this complaint occurred in Richland County, South Carolina.

FACTUAL ALLEGATIONS

I. Defective Construction

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5. Defendant Homebuilder is the builder of the Residence.

6. Plaintiffs closed on the Residence built and sold by Defendant Homebuilder located at 564 Pine Knot Drive, Blythewood, South Carolina.

7. Since the Plaintiffs closed on the Residence, problems have occurred related to the i-joists, trusses, siding, and roof. Upon information and belief, the problems or defects in the Residence are a result of defective design and/or construction.

8. The Residence has one or more of the following defects in design and/or construction, including but not limited to, the following:

a. Failure to properly install the i-joists;

b. Failure to properly install the roof;

c. Failure to properly flash the roof;

d. Failure to properly install roof trusses;

e. Failure to properly install the siding;

f. Failure to properly install the stone veneer cladding; and

g. In such other failures as will be shown through the discovery and trial of this matter.

9. A summary of these design defects is articulated in the attached report of REI Engineers which details the structural defects in the Residence. The report is attached hereto as Exhibit A.

10. The latent design and construction defects in the Residence have resulted in repeated and continual exposure to water intrusion to the Residence, failure of the components of the exterior envelope, and other resulting damage to the Residence. The Plaintiffs have been and

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will continue to be proximately damaged by the design and construction defects existing at the Residence.

11. As a direct and proximate result of the acts and omissions of the Defendant Homebuilder, Plaintiffs have been injured and continue to be injured and are entitled to a recovery of damages in the amount of the cost to repair the Residence, consequential damages, including loss of use and loss of value, punitive damages where applicable, attorney's fees where applicable, plus costs and interest.

II. Fraud and Unfair Trade Practices Related to the Defective Construction

12. Upon information and belief, the Defendant Homebuilder repeatedly engaged in the marketing and sale of the Residence with knowledge that the i-joists were defective.

13. Prior to selling the Residence to Plaintiffs, the Defendant Homebuilder attempted to sell this home to a prospective buyer ("Prospective Buyer").

14. The Prospective Buyer was able to perform a visual inspection before the drywall was installed and expressed concerns about the construction of the i-joists.

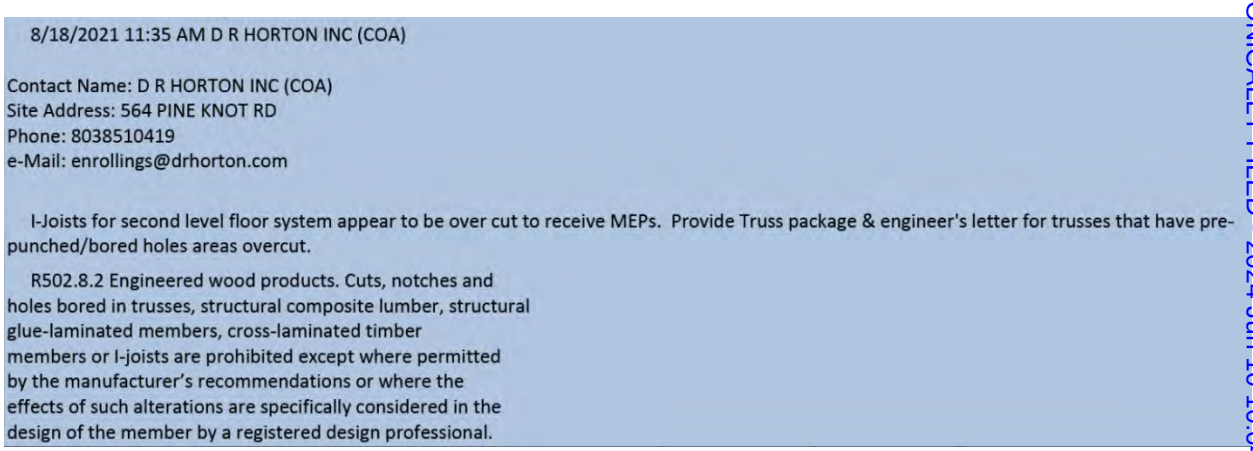
15. These concerns were justified by a pre-drywall inspection of the Residence dated August 9, 2021. A report detailing this inspection is attached hereto as Exhibit B.

16. After the inspection was completed, Richland County (the "County") performed an inspection of the Residence.

17. Upon completion of the inspection, the County sent an email to the Defendant Homebuilder providing notice that the i-joists for the second level floor system appeared to be overcut.

18. The email providing notice to the Defendant Homebuilder is as follows:

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8/18/2021 11:35 AM D R HORTON INC (COA)

Contact Name: D R HORTON INC (COA)
Site Address: 564 PINE KNOT RD
Phone: 8038510419
e-Mail: enrollings@drhorton.com

I-Joists for second level floor system appear to be over cut to receive MEPs. Provide Truss package & engineer's letter for trusses that have pre-punched/bored holes areas overcut.

R502.8.2 Engineered wood products. Cuts, notches and holes bored in trusses, structural composite lumber, structural glue-laminated members, cross-laminated timber members or I-joists are prohibited except where permitted by the manufacturer's recommendations or where the effects of such alterations are specifically considered in the design of the member by a registered design professional.

19. Two days later, the County sent another email to the Defendant Homebuilder instructing the Defendant Homebuilder not to drywall until the engineer's recommended repairs were verified:



Notes:

8/20/2021 2:56 PM D R HORTON INC (COA)

ontact Name: D R HORTON INC (COA)
ite Address: 564 PINE KNOT RD
hone: 8038510419
-Mail: enrollings@drhorton.com

Do not drywall until all Engineer's repairs have been verified by inspection team.
lake sure the Engineering Reports are sealed/stamped by the engineer. .

20. Engineering plans were prepared by the i-joist manufacturer detailing a repair to the i-joist defects ("Engineering Plans").

21. The Engineering Plans were stapled to the defective i-joists.

22. The Defendant Homebuilder *never* performed any repairs to the defective i-joists.

23. Instead, upon information and belief, the Defendant Homebuilder installed drywall without performing any repairs with the intention of concealing the Engineering Plans stapled to the defective i-joist(s) and at the express contravention of the County's instructions.

24. The Prospective Buyer did not close on the Residence.

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25. Upon information and belief, the defective i-joist was a factor in the Prospective Buyer's decision not to purchase the Residence.

26. Thereafter, Plaintiffs entered into a purchase and sale agreement with the Defendant Homebuilder to purchase the Residence.

27. Before the purchase and sale agreement was entered, the Defendant Homebuilder failed to disclose the defects in the i-joists.

28. During the due diligence process and prior to the closing of the Residence, the Defendant Homebuilder did not disclose the defects in the i-joists.

29. When the Plaintiffs inquired as to why the prior sale fell through, they were told the Prospective Buyer "could not get financing."

30. The Prospective Buyer represented to the Plaintiffs the Defendant Homebuilder's statements about the failure to obtain financing was an outright lie and materially false.

31. The Defendant Homebuilder also represented to the Plaintiffs that the Residence was a good home.

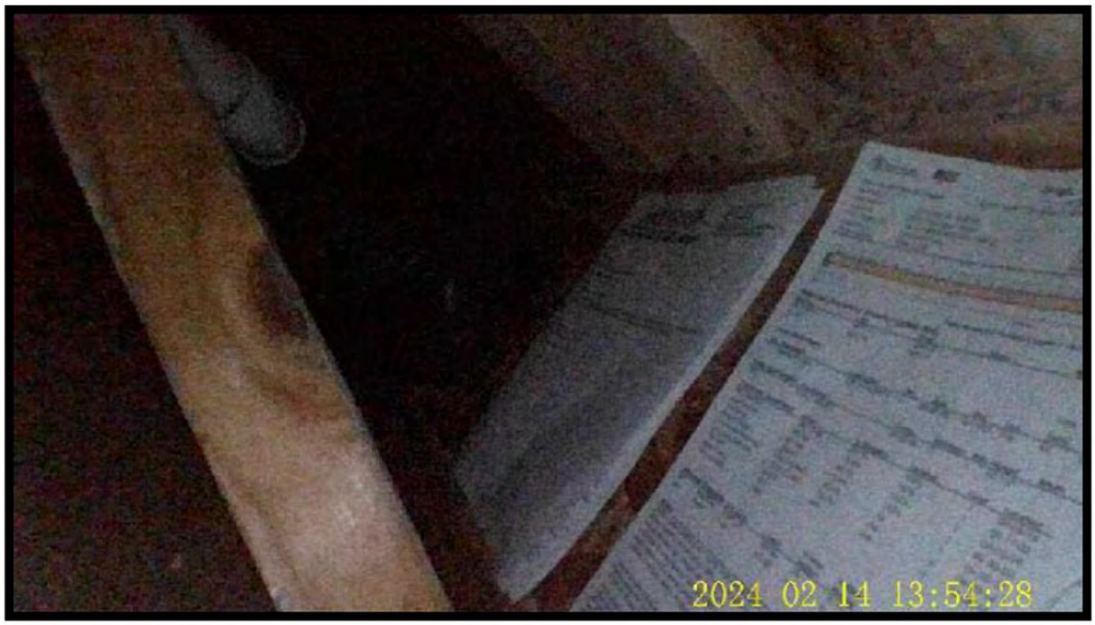
32. Plaintiffs relied on the truthfulness of the Defendant Homebuilder's statements in deciding to purchase the Residence.

33. Defendant Homebuilder both affirmatively and by way of omission lied to Plaintiffs in their dealings with Plaintiffs regarding the Residence.

34. After purchasing the Residence, Plaintiffs performed destructive testing.

35. The Engineering Plans detailing a "fix" for the i-joists were still stapled to one of the defective i-joists, as seen below:

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36. An inspection confirmed that the Defendant Homebuilder did not repair the defects in the i-joists as recommended in the Engineering Plans and as required by the County, but instead, the Defendant Homebuilder hid the issue from the Plaintiffs.

37. These blatant acts of recklessness, gross negligence, and/or fraud directly and proximately caused and continues to cause injury to Plaintiffs.

38. As a result, Plaintiffs are entitled to a recovery of damages in the amount of the cost to repair the Residence, consequential damages, including loss of use and loss of value, punitive damages where applicable, attorney's fees where applicable, plus costs and interest.

39. Plaintiffs have confirmed similar issues in other homes in this neighborhood constructed before and after the Residence at issue.

40. Upon information and belief, the Defendant Homebuilder knew that the homes had defective i-joists and failed to disclose the defects to prospective buyers before they purchased.

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41. The Defendant Homebuilder's repeated deceptive actions were committed in trade and/or commerce of building and selling homes.

42. The public has an interest in the practices of homebuilders, especially national homebuilders, as the public is impacted by unsafe, poorly constructed homes that are costly to repair.

43. Plaintiffs have suffered significant monetary and other losses as a result of the Defendant Homebuilder's actions.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence – Defendant Homebuilder)

44. Plaintiffs reference and incorporate every allegation set forth above as if fully repeated verbatim herein.

45. Defendant Homebuilder owed a duty to Plaintiffs to exercise that degree of skill necessary to construct, supervise, and review the design and otherwise deliver the Residence free of construction defects and designed and built in conformity with customary and ordinary standards of the building and construction industry.

46. The deficiencies and defects which exist at the Residence are the proximate and direct result of the negligence and/or gross negligence of the Defendant Homebuilder, in one or more of the following particulars:

a) In failing to properly construct the Residence by deviating from the plans and specifications and/or failing to employ practices and methods of construction conforming to the customary and ordinary standards of the construction industry;

b) In using and supplying defective materials;

c) In installing materials not in accordance with the plans and specifications;

d) In installing materials in violation of manufacturer's instructions;

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e) In performing work which violated applicable building codes;

f) In failing to properly supervise employees, agents, and subcontractors to ensure that all work proceeded in accordance with the plans and specifications and in conformity with industry standards;

g) In accepting defective and/or non-conforming materials and labor;

h) In accepting and providing deficient and/or defective workmanship and/or materials without proper inspections to ensure the work was correct and in conformity with customary industry standards and in accordance with the plans and specifications and the manufacturer's instructions;

i) In failing to inform the architect and/or owner of the defects in the plans and specifications;

j) In constructing the Residence in violation of the applicable building codes; and

k) In failing to act as a reasonable and prudent contractor would under the circumstances then and there existing.

47. As a direct and proximate result and consequence of the negligence and/or gross negligence of Defendant Homebuilder, Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance, and reconstruction costs required and to be required over the expected life of the structure, loss of use, diminution in value, and for such punitive damages as may be appropriate.

FOR A SECOND CAUSE OF ACTION
(Breach of Express and Implied Warranties - Defendant Homebuilder)

48. Plaintiffs reference and incorporate every allegation set forth above as if fully repeated verbatim herein.

49. Upon information and belief, Defendant Homebuilder, as the builder of the Residence, made express warranties in connection with contracting to build the Residence to the effect that the building would be free of construction defects.

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50. Defendant Homebuilder also impliedly warranted that the Residence would be constructed in a careful, diligent, and workmanlike manner, free of construction defects.

51. Defendant Homebuilder breached its express and implied warranties in one or more of the following particulars:

    a. In failing to properly construct the Residence by deviating from the plans and specifications and/or failing to employ practices and methods of construction conforming to the customary and ordinary standards of the construction industry;

    b. In using and supplying defective materials;

    c. In installing materials not in accordance with the plans and specifications;

    d. In installing materials in violation of manufacturer's instructions;

    e. In performing work which violated applicable building codes;

    f. In failing to properly supervise employees, agents, and subcontractors to ensure that all work proceeded in accordance with the plans and specifications and in conformity with industry standards;

    g. In accepting defective and/or non-conforming materials and labor;

    h. In providing deficient and/or defective workmanship and/or materials without proper inspections to ensure the work was correct and in conformity with customary industry standards and in accordance with the plans and specifications and the manufacturer's instructions; and

    i. In failing to inform the architect or owner of the defects in the plans and specifications.

52. As a direct and proximate result and consequence of Defendant Homebuilder's breach of its express and implied warranties, Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance, and reconstruction costs required and to be required over the expected life of the structure, loss of use, and diminution in value.

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FOR A THIRD CAUSE OF ACTION
(Breach of Contract - Defendant Homebuilder)

53. Plaintiffs reference and incorporate every allegation set forth above as if fully repeated verbatim herein.

54. Plaintiffs entered into a contract (the "Contract") with Defendant Homebuilder to purchase the Residence for consideration. For purposes of this Complaint, Plaintiffs incorporate their respective Contract with Defendant Homebuilder by reference.

55. Plaintiffs' Contract with Defendant Homebuilder includes promises by Defendant Homebuilder to construct and build the Residence according to certain specifications.

56. Defendant Homebuilder was bound by the terms of the Contract.

57. Plaintiffs have complied fully with the terms of the Contract.

58. Defendant Homebuilder breached the Contract by failing to construct the Residence consistent with the terms of the Contract, including, but not limited to, constructing the Residence as specified and in compliance with the International Residential Code.

59. As a result of this breach, the Plaintiffs have suffered actual damages that are the direct and proximate result of Defendant Homebuilder's breach including, but not limited to, the amount equal to the extraordinary repair, maintenance, and reconstruction costs required and to be required over the expected life of the Residence.

FOR A FOURTH CAUSE OF ACTION
(Violation of the Unfair Trade Practices Act - Defendant Homebuilder)

60. Plaintiffs reference and incorporate every allegation set forth above as if fully repeated verbatim herein.

61. Defendant Homebuilder built the Residence with the construction and/or design defects as more fully set forth herein.

62. Defendant Homebuilder represented to Plaintiffs that it consistently delivers top-quality new homes to homebuyers across the nation.

63. Defendant Homebuilder misrepresented that the Prospective Buyer did not purchase the Residence due to a financing contingency, when in reality, the Prospective Buyer refused to purchase the Residence due to construction defects.

64. Upon information and belief, Defendant Homebuilder sold a tract home to Plaintiffs that required tight construction schedules with insufficient resources and labor to build top-quality Residence.

65. Upon information and belief, as a result, the Residence has design and/or construction defects.

66. Upon information and belief, the Defendant Homebuilder was aware of one consistent defect occurring in these tract homes prior to the construction and/or sale of Plaintiffs' Residence. The issue involved subcontractors cutting structural i-joists in violation of the manufacturer's specifications and the building code.

67. Defendant Homebuilder, upon information and belief, knowing that the cut i-joists violated the manufacturer's specifications and the building code, allowed the subcontractors to continue to cut the i-joists without supervision in the Community and in a manner that violated the manufacturer's specifications and building code.

68. Upon information and belief, the Defendant Homebuilder knew about the existence of the design and/or construction defects, including the defects in the i-joists, and knowingly sold the Residence to Plaintiffs without making remedial repairs.

69. Upon information and belief, the following practices of Defendant Homebuilder are unfair and deceptive in the trade of construction services and are unlawful:

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a. Marketing the Residence with construction and/or design defects as top-quality knowing that the homes had construction and/or design defects;

b. Entering into the Contract to sell the Plaintiffs a top-quality home knowing that there were insufficient time, resources, and labor to complete the Residence and to properly supervise the work;

c. After discovering the construction and/or design defects, failing to inspect the Residence to cure the construction and/or design defects;

d. Failing and refusing to follow the instructions of the County in repairing the construction and/or design defects; and

e. Selling the Residence to the Plaintiffs knowing that the home had construction and/or design defects.

70. Upon information and belief, Defendant Homebuilder has repeatedly conducted such unlawful acts in connection to construction services.

71. Upon information and belief, Defendant Homebuilder's unlawful acts have been repeated and are capable of repetition, in that Defendant Homebuilder knew of the issues with the i-joist in the Community and continued to sell homes that had the construction and/or design defects in violation of South Carolina law.

72. As a result of Defendant Homebuilder's unfair and deceptive acts in violation of the South Carolina Unfair Trade Practices Act, Plaintiffs are entitled to actual and treble damages, as well as attorney's fees and costs.

FOR A FIFTH CAUSE OF ACTION
(Breach of the Contract accompanied by a Fraudulent Act—Defendant Homebuilder)

73. Plaintiffs reference and incorporate every allegation set forth above as if fully repeated verbatim herein.

74. Plaintiffs entered into the Contract with Defendant Homebuilder to purchase the Residence.

75. Plaintiffs' Contract with Defendant Homebuilder includes promises by Defendant Homebuilder to construct and build the Residence according to certain specifications.

76. Defendant Homebuilder breached the Contract by failing to construct the Residence consistent with the terms of the Contract, including, but not limited to, constructing the Residence as specified and in compliance with the International Residential Code.

77. Upon information and belief, Defendant Homebuilder had a fraudulent intent in entering into the Contract, as the Defendant Homebuilder knew or had reason to know that the Residence did not comply with the specifications and the International Building Code at the time that the Residence was transferred to the Plaintiffs.

78. Upon information and belief, Defendant Homebuilder's breach of the Contract was accompanied by fraudulent acts, in that the Defendant Homebuilder systematically sold homes to purchasers that were not code compliant or in accordance with the specifications for its own profit and with no intent of resolving the construction and/or design defects in the homes.

79. As a result of the Defendant Homebuilder's breach of the Contract accompanied by fraudulent acts, the Plaintiffs have suffered actual damages that are the direct and proximate result of Defendant Homebuilder's breach, including, but not limited to, the amount equal to the extraordinary repair, maintenance, and reconstruction costs required and to be required over the expected life of the Residence, and are entitled to actual, direct, and consequential damages, as well as punitive damages and attorney's fees and costs.

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FOR A SIXTH CAUSE OF ACTION
(Constructive Fraud—Defendant Homebuilder)

80. Plaintiffs reference and incorporate every allegation set forth above as if fully repeated verbatim herein.

81. Defendant Homebuilder represented to the Plaintiffs that it builds top-quality homes in accordance with specifications and the International Building Code.

82. These representations were false.

83. Upon information and belief, the Defendant Homebuilder should have known that these representations were false, in that the Defendant Homebuilder knew that its subcontractors cut the i-joist in at least one home without following the specifications and the International Building Code and the same subcontractors completed the construction of the remaining homes in the Community.

84. These representations were material, in that they addressed the quality of the Residence and they were instrumental in the Plaintiffs' decision to purchase the Residence.

85. The Defendant Homebuilder intended that these representations would be acted upon by the Plaintiffs so that the Defendant Homebuilder could sell the Residence and make a profit.

86. The Plaintiffs were ignorant as to the falsity of these representations and had no reason to believe that the Defendant Homebuilder's representations were false.

87. The Plaintiffs relied on these representations, in that the Defendant Homebuilder's representations about the quality of the Residence and the building practices of the Defendant Homebuilder were key to their decision to purchase the Residence.

88. The Plaintiffs had the right to rely on the Defendant Homebuilder's representations, as Defendant Homebuilder built the Residence and sold it to the Plaintiffs and would be in the best position to make statements about the quality of the construction.

89. As a proximate cause of the Defendant Homebuilder's misrepresentations, the Plaintiffs were injured, in that they will have to incur significant costs to repair the construction and/or design defects, and are entitled to actual, direct, and consequential damages, as well as punitive damages and attorney's fees and costs.

FOR A SEVENTH CAUSE OF ACTION
(Fraud and Misrepresentation—Defendant Homebuilder)

90. Plaintiffs reference and incorporate every allegation set forth above as if fully repeated verbatim herein.

91. Defendant Homebuilder represented that it builds top-quality homes in accordance with specifications and the International Building Code to the Plaintiffs.

92. These representations were false.

93. These representations were material, in that they addressed the quality of the Residence and were instrumental in the Plaintiffs' decision to purchase the Residence.

94. Upon information and belief, the Defendant Homebuilder knew or had reckless disregard for the truth or falsity of these representations, in that the Defendant Homebuilder knew that its subcontractors cut the i-joist in at least one home without following the specifications and the International Building Code and the same subcontractors completed the construction of the remaining homes in the Community.

95. The Defendant Homebuilder intended that these representations would be acted upon by the Plaintiffs so that the Defendant Homebuilder could sell the Residence and make a profit.

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96. The Plaintiffs were ignorant as to the falsity of these representations and had no reason to believe that the Defendant Homebuilder's representations were false.

97. The Plaintiffs relied on these representations, in that the Defendant Homebuilder's representations about the quality of the Residence and the building practices of the Defendant Homebuilder were key to their decision to purchase the Residence.

98. The Plaintiffs had the right to rely on the Defendant Homebuilder's representations, as Defendant Homebuilder built the Residence and sold it to the Plaintiffs and would be in the best position to make statements about the quality of the construction.

99. As a proximate cause of the Defendant Homebuilder's misrepresentations, the Plaintiffs were injured, in that they will have to incur significant costs to repair the construction and/or design defects, and are entitled to actual, direct, and consequential damages, as well as punitive damages and attorney's fees and costs.

WHEREFORE, Plaintiffs pray for a judgment against the Defendant Homebuilder for such actual and punitive damages as this Court deems appropriate and for such other and further relief as is just and proper, including, but not limited to, pre-judgment interest, post-judgment interest, and attorney's fees and costs.

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Attorneys for Plaintiff

June 10, 2024

Summary of Visual Survey & Destructive Testing

Howell Residence

PLAINTIFF'S EXHIBIT

A



564 Pine Knot Road
Blythewood, South Carolina

May 8, 2024

REI ENGINEERS

REI Engineers, Inc.
218 East Main Street ▪ Westminster ▪ South Carolina ▪ 29693
www.reiengineers.com

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EXECUTIVE SUMMARY

REI Engineers, Inc. (REI) has prepared this *Summary of Visual Survey & Destructive Testing* report for William C. Lewis, Esquire of Richardson Thomas, LLC, based on our visual surveys with limited destructive testing. The purpose of our work was to determine if the subject residence was constructed in accordance with the applicable building code requirements, manufacturer's installation instructions, accepted industry standards, project plans, and/or project specifications (collectively referred to as the contractor's instructions). Additionally, REI has determined the extent of damages and/or construction deficiencies associated from deviations from the contractor's instructions and has provided a recommended outline scope of repair to address these issues.

It is the opinion of REI, to a reasonable degree of engineering certainty, that construction deficiencies exist that require repair at the subject residence. Specifically, REI observed the following construction defects and/or issues to date at the subject residence.

Building Component	Construction Defect and/or Issue	
Roof	R.1	Absence of Metal Drip at Eave
	R.2	Unprotected Plumbing Vent Pipe
Attic	A.1	Absence of Diagonal Bracing at Base Roof Trusses
	A.2	Absence of Diagonal Bracing at Piggyback Roof Trusses
	A.3	Inadequate Fastening of Wood Framing Connection at Base Roof Truss and Piggyback Roof Truss
Exterior Walls	EW.1	Improper Integration of Weather Resistive Barrier and Metal Flashing at Vertical Board & Batten Fiber Cement Siding
	EW.2	Improper Integration of Weather Resistive Barrier and Metal Flashing at Horizontal Fiber Cement Trim
	EW.3	Improper Installation of Adhered Masonry Stone Veneer Cladding
Interior Wood I-Joists	I.1	Evidence of Damage to I-Joist Flange
	I.2	Absence of Recommended Repairs at I-Joist

The construction defects and issues described above represent building code violations that serve to reduce the serviceable life of the subject residence. The observed conditions will continue to worsen, if left in an uncorrected condition.

REI ENGINEERS, INC.

218 East Main Street
Westminster ▪ South Carolina 29693

Office ▪ 864.647.1065
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www.reiengineers.com

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REI File Number: 3036.01
May 8, 2024

William C. Lewis
Attorney
Richardson Thomas, LLC
1513 Hampton Street
Columbia, South Carolina 29201

Re: Summary of Visual Survey & Destructive Testing
Howell Residence
Long Cove Neighborhood
564 Pine Knot Road
Blythewood, South Carolina 29016

Dear Mr. Lewis:

Pursuant to your request, REI Engineers, Inc. (REI) has performed a visual survey with limited destructive testing at the above referenced property. The purpose of our work was to determine if the subject residence was constructed in accordance with the applicable building code requirements, manufacturer's installation instructions, accepted industry standards, project plans, and/or project specifications (collectively referred to as the contractor's instructions). Additionally, REI was asked to determine the extent of construction deficiencies that may exist at the subject residence based on one (1) or more of the following conditions:

1. A building code violation;

2. A life / safety issue; and/or,

3. Physical damage resulting from a construction deficiency.

In accordance with these conditions, REI has provided a recommended outline scope of repair based on the extent of construction deficiencies that may exist at the subject residence. This report provides a summary of our findings to date.

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DESCRIPTION

The subject residence is a two (2) story structure located on the south side of Pine Knot Road in Blythewood, South Carolina (Figure 1) [1]. The subject residence is supported by a reinforced concrete slab-on-grade foundation. Above the foundation, the construction consists of conventional wood framing, engineered wood joists (i.e., I-joists) and metal plate connected wood roof trusses. The exterior walls are clad with a combination of adhered masonry stone veneer, fiber cement board horizontal lap siding, vertical board and batten fiber cement siding, and fiber cement shake siding. The roof construction consists of a steep slope clipped gable roof configuration with an intersecting gable roof configuration that are covered with architectural laminated shingles. Photos 1, 2, 3, and 4 show the front, rear, left, and right elevations of the subject residence. For purposes of this report, the front elevation is considered to face north.



Figure 1 ▪ Satellite View of Subject Residence









Photos 1, 2, 3, & 4 ▪ Front, Rear, Left, and Right Elevations of the Subject Residence

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BACKGROUND INFORMATION

The background information provided below is considered to be relevant to determine if the subject residence was constructed in accordance with the contractor's instructions.

Homeowner Interview

During the visual survey, the homeowner Claudia Howell, provided the following relevant information with regard to the subject residence.

- The subject residence was purchased in February 2022.
- Floor vibration of the second floor I-joists occurred when subjected to normal walking conditions.

Home Inspection Report

HomeTeam Inspection Services, Inc. (HomeTeam) produced the document *Home Inspection Report* by Evan Williams based on a site visit performed on August 9, 2021, at the subject residence [2]. HomeTeam performed a pre-interior finish inspection of the following areas:

- Structural wood framing components
- Electrical service
- Heating system
- Roof
- Chimneys & flues
- Garage
- Foundation
- Plumbing
- Windows & doors

The HomeTeam report identified the following issues related to the structural wood framing components:

1. BCI joists are gapped or may require lateral support (see Figure 2 below - Presented in HomeTeam Report).
2. Some 2x4 studs appear to be have damage over 25% or appear excessively warped (see Figure 3 below - Presented in HomeTeam Report).
3. Some BCI joists appear to have flange damage (see Figure 4 below - Presented in HomeTeam Report).
4. Previous water intrusion in areas of home (see Figure 5 below - Presented in HomeTeam Report).

Additionally, the HomeTeam report provided photographs depicting the installation of the weather resistive barrier at the exterior walls prior to the installation of adhered masonry stone veneer, fiber cement board horizontal lap siding, vertical board and batten fiber cement siding, and fiber cement shake siding systems (see Figure 6 below - Presented in HomeTeam Report).

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Figure 2 ▪ BCI Joist Gapping
(Presented in HomeTeam Report)



Figure 3 ▪ Structural Wood Stud Damage
(Presented in HomeTeam Report)



Figure 4 ▪ BCI Joist Flange Damage
(Presented in HomeTeam Report)

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Previous water intrusion was noted in areas of the home. This should be assessed by a licensed contractor to ensure that the intrusion has ceased and that no damage has occurred to the structure.



Figure 5 ▪ Previous Water Intrusion
(Presented in HomeTeam Report)



Figure 6 ▪ Installation of Weather Resistive Barrier Prior to Exterior Claddings Systems
(Presented in HomeTeam Report)

Applicable Building Code

Based on our review of the Richland County Assessor database and Richland County Geographic Information System (GIS) database, it is the understanding of REI that the subject residence was constructed circa 2021 [3]. The applicable building code at the time of original construction 2018 Edition of the South Carolina Residential Code (2018 SCRC) [4].

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OBSERVATIONS

REI performed two (2) visual surveys with limited destructive testing at the subject residence. The visual surveys included selected observations of the roof, attic, exterior, and interior areas. A summary of the work performed by REI is provided in Table 1.

REI Personnel	Date	Visual Survey	Destructive Testing
John C. Wylie, P.E. RBEC, REWC, RWC, RRC, RRO	November 9, 2023	✓	
	February 14, 2024	✓	✓

Table 1 ▪ Summary of Work Performed by REI at the Subject Residence

A summary of relevant and representative observations noted during the visual surveys with limited destructive testing is provided below.

Roof

1. Observations at the roof eave revealed the absence of a metal drip edge (Photo 5).

2. The polyvinyl chloride (PVC) vent pipes were observed to be unprotected (Photo 6).

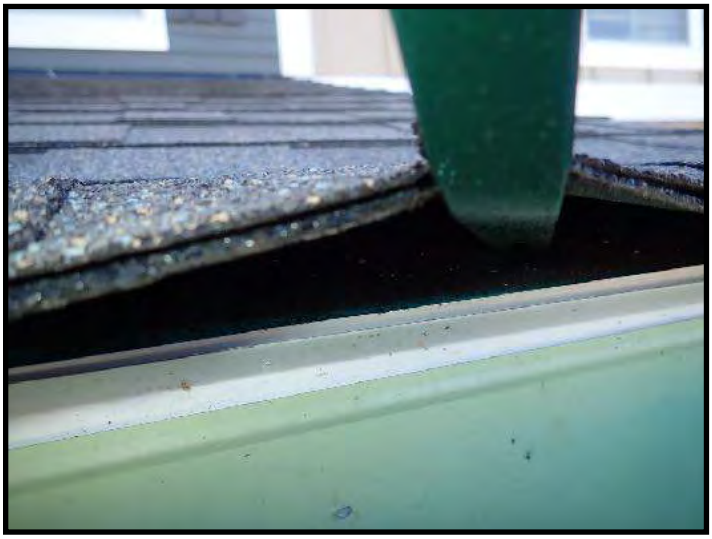


Photo 5 ▪ Absence of Metal Drip Edge at the Eave



Photo 6 ▪ Unprotected PVC Vent Pipes

Attic

3. Roof truss diagonal bracing was observed to be absent at the base truss web horizontal lateral brace lines (see Photo 7 below).

4. Roof truss diagonal bracing was observed to be absent at the horizontal bace lines between the piggyback and base trusses (see Photo 8 below)

5. Inadequate fastening of the supplemental wood framing was observed at the connection of the base truss and piggyback truss (see Photos 9 & 10 below).



Photo 7 ▪ Absence of Diagonal Bracing at Base Truss



Photo 8 ▪ Absence of Diagonal Bracing at Piggyback Truss





Photos 9 & 10 ▪ Inadequate Fastening of Supplemental Wood Framing at Base & Piggyback Truss

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Exterior

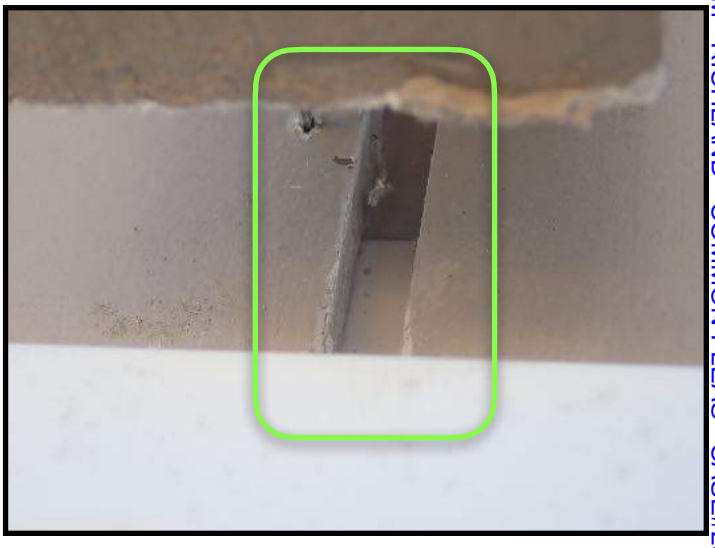
Vertical Board and Batten Fiber Cement Siding

6. The weather resistive barrier was observed to be improperly integrated with the vertical leg of the metal flashing located at the top of the fiber cement board horizontal trim at the first-to-second floor line (Photos 11 & 12).

Fiber Cement Horizontal Trim

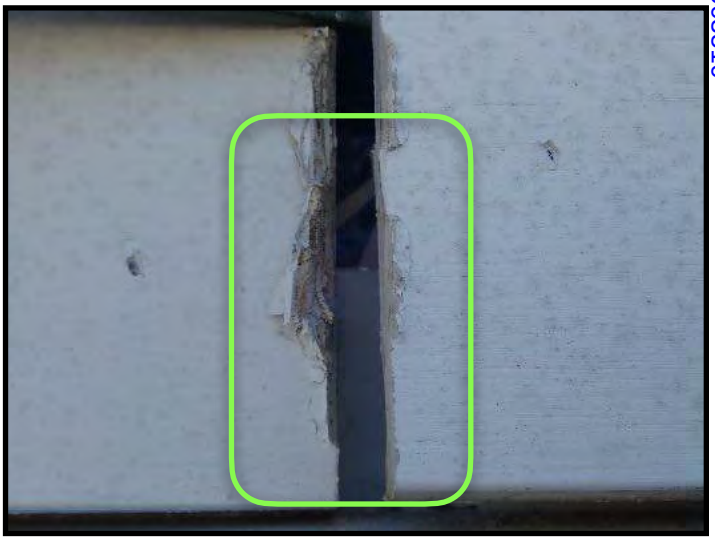
7. The weather resistive barrier was observed to be improperly integrated with the vertical leg of the metal flashing located at the top of the adhered masonry stone veneer at the first-to-second floor line (Photos 13 & 14).





Photos 11 & 12 ▪ Improper Integration of Weather Resistive Barrier and Metal Flashing at Board & Batten





Photos 13 & 14 ▪ Improper Integration of Weather Resistive Barrier and Metal Flashing at Horizontal Trim

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Adhered Masonry Stone Veneer

8. The adhered masonry stone veneer system was observed to have a weather resistive barrier installed behind a building felt layer with the metal mesh.

9. The weather resistive barrier was observed to be improperly integrated with the vertical leg of the metal flashing at the head of the garage opening and base of wall (Photos 15, 16, 17, & 18).

10. The building felt (with metal mesh) was observed to be properly integrated with the metal flashing.





Photos 15 & 16 ▪ Improper Integration of Weather Resistive Barrier and Metal Flashing at Garage Opening





Photos 17 & 18 ▪ Improper Integration of Weather Resistive Barrier and Metal Flashing at Base of Wall

11. REI performed localized destructive testing to observe the second floor parallel-chord wood joists (i.e., I-joists) at four (4) locations (Figure 7 - Provided by JCC Building, Inc.).

    11.a. Living Room ▪ Destructive Test 1 (TH1)

    11.b. Dining Room ▪ Destructive Test 2 (TH2)

    11.c. Kitchen ▪ Destructive Test 3 (TH3)

    11.d. Sitting Room ▪ Destructive Test 4 (TH4)

Living Room ▪ Destructive Test 1 (TH1)

12. Destructive Test 1 was performed at a recessed light fixture in the gypsum ceiling panel located in the living room (Photo 19).

13. Parallel chord wood I-joists were identified to be fourteen inch (14") BCI 5000 manufactured by Boise Cascade.

14. Circular openings had been cut through the web with diameters ranging from approximately eight inches to nine inches (8" to 9") for the flexible HVAC ducts (see Photos 20 & 21 below - Provided by JCC Building, Inc.)

15. The vertical distance from the top of the circular openings to the bottom surface of the top flange measured to be from approximately zero inches (i.e., intimate contact) to one inch (1") (see Photos 22 & 23 below - Provided by JCC Building, Inc.).

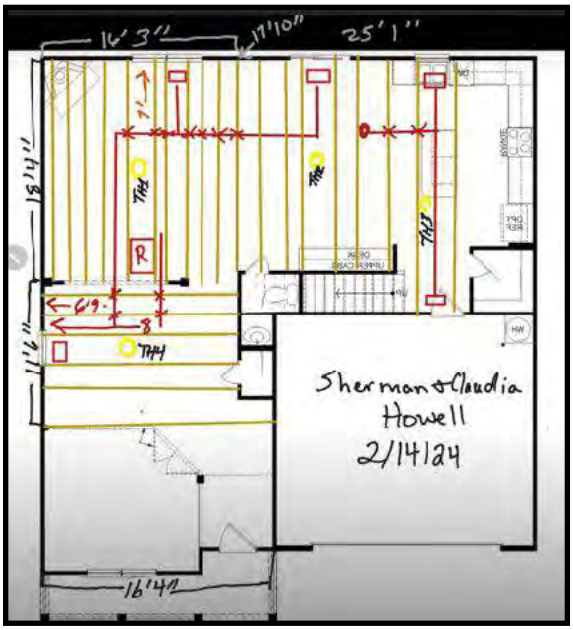


Figure 7 ▪ Relative Locations of Interior Destructive Testing
(Provided by JCC Building, Inc.)

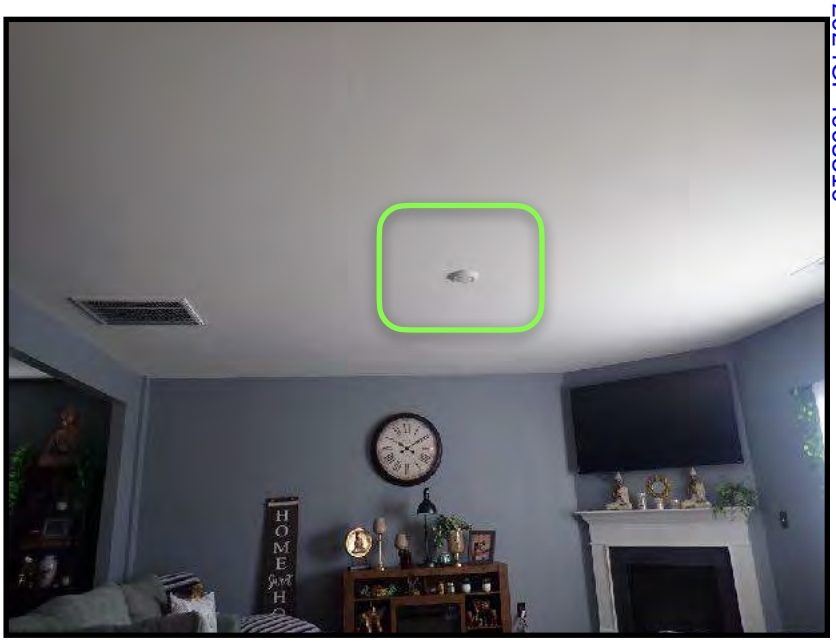


Photo 19 ▪ Location of Destructive Test 1 in the Living Room

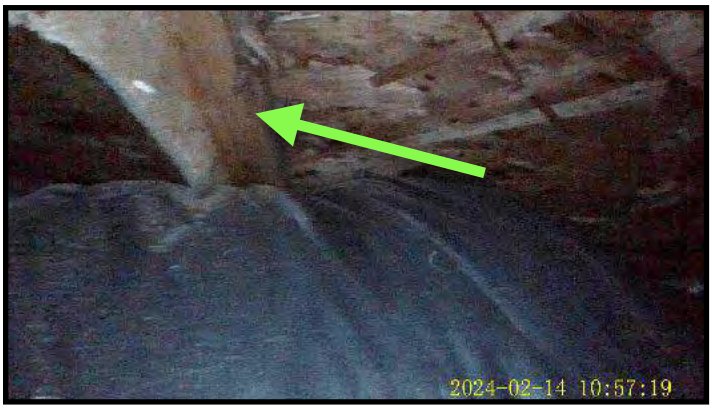
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Photos 20 & 21 ▪ As-Built Conditions of Wood I-Joists (Provided by JCC Building, Inc.)





Photos 22 & 23 ▪ Circular Cut Adjacent to Top Flange (Provided by JCC Building, Inc.)

16. Destructive Test 2 was performed at a recessed light fixture in the gypsum ceiling panel located in the dining room (Photo 24 - Provided by JCC Building, Inc.).

17. Circular openings had been cut through the web with diameters ranging from approximately eight inches to nine inches (8” to 9”) for the flexible HVAC ducts (see Photo 25 below - Provided by JCC Building, Inc.)

18. The vertical distance from the top of the circular openings to the bottom surface of the top flange was measured to be approximately one inch (1”) (see Photo 26 below - Provided by JCC Building, Inc.).

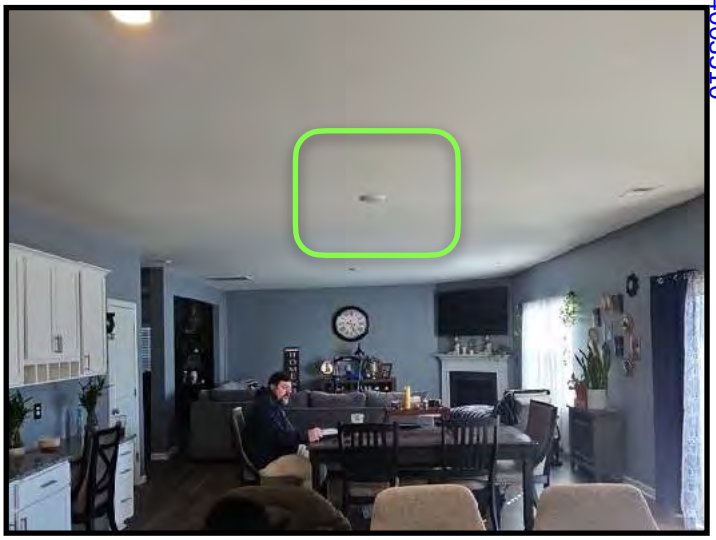


Photo 24 ▪ Location of Destructive Test 2 in the Living Room

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Photo 25 ▪ As-Built Conditions of Wood I-Joists (Provided by JCC Building, Inc.)



Photo 26 ▪ Circular Cut Adjacent to Top Flange (Provided by JCC Building, Inc.)

Kitchen ▪ Destructive Test 3 (TH3)

19. Destructive Test 3 was performed at a recessed light fixture in the gypsum ceiling panel located in the kitchen. A secondary opening was cut into the gypsum ceiling panel adjacent to the recessed light fixture (Photo 27).

20. An engineered analysis performed by Boise Cascade was observed to be attached to one (1) web of the wood I-joist members (Photo 28).

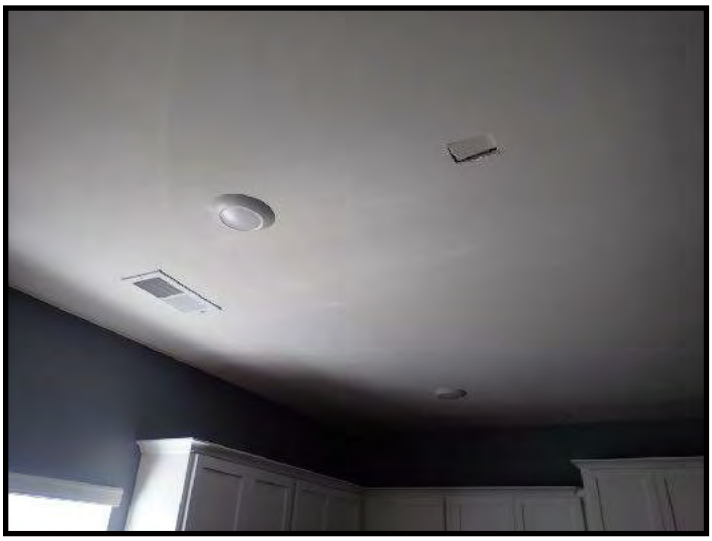


Photo 27 ▪ Location of Destructive Test 3 in the Kitchen

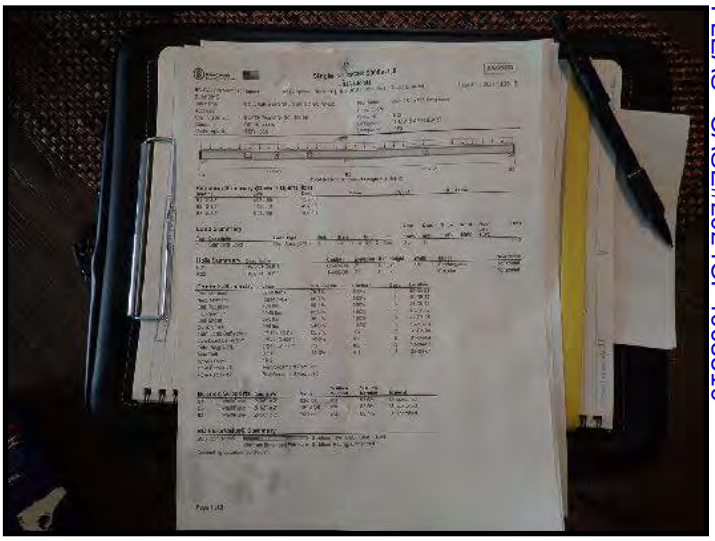


Photo 28 ▪ Boise Cascade Engineering Analysis Attached to I-Joist in Kitchen

Sitting Room ▪ Destructive Test 4 (TH4)

21. Destructive Test 4 was performed at a recessed light fixture in the gypsum ceiling panel located in the kitchen. Secondary openings were cut into the gypsum ceiling panel adjacent to the recessed light fixture (see Photo 29 below).

22. The vertical distance from the top of the circular openings to the bottom surface of the top flange was measured to be approximately one-half inch (½") (see Photo 30 below).

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23. Circular openings had been cut through the I-joist web with diameters ranging from approximately eight inches to nine inches (8” to 9”) for the flexible HVAC ducts (Photo 31 - Provided by JCC Building, Inc.)

24. An engineered analysis performed by Boise Cascade was observed to be attached to one (1) web of the wood I-joist members (Photo 32 - Provided by JCC Building, Inc).

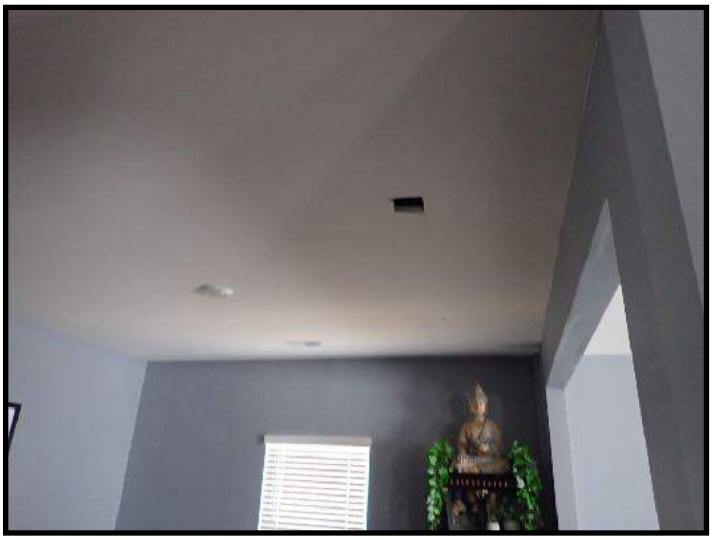


Photo 29 ▪ Location of Destructive Test 3 in the Kitchen



Photo 30 ▪ Circular Cut Adjacent to Top Flange



Photo 31 ▪ As-Built Conditions of Wood I-Joists (Provided by JCC Building, Inc.)

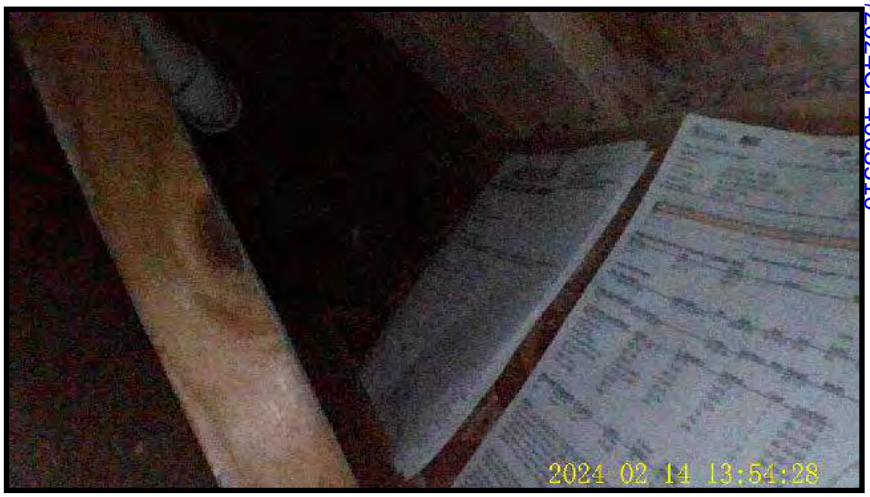


Photo 32 ▪ Boise Cascade Engineering Analysis Attached to I-Joist in Sitting Room (Provided by JCC Building, Inc.)

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REVIEW OF BUILDING CODE, STANDARDS, AND MANUFACTURER INFORMATION

REI reviewed the following building code, standards, and manufacturer information that are considered to be applicable at the time of original construction for the subject residence. Relevant excerpts from the applicable building code, standards and manufacturer information are provided below.

2018 South Carolina Residential Code

Applicable Roofing Code Sections

Chapter 9 *Roof Assemblies* provides provisions for the design, materials, construction, and quality of roof assemblies. Section R905.2 *Asphalt Shingles* provides information specific to the installation of asphalt shingles (i.e., architectural laminated shingles). Section R905.2.8.5 *Drip Edge* states that a drip edge is provided at the eave where required by the manufacturer (Figure 8).

R905.2.8.5 Drip edge.

A drip edge shall be provided at eaves and rake edges of asphalt shingle roofs where required by the manufacturer.

Figure 8 ▪ Section R905.2.8.5 of the 2018 SCRC

Applicable Truss Bracing Code Sections

Chapter 8 *Roof-Ceiling Construction* provides provisions for the design and construction of the roof-ceiling system for buildings. Section R802 *Wood Roof Framing* provides information specific to wood-based products that are used for load-supporting purposes. Section R802.10 *Bracing* states that trusses shall be braced to prevent rotation and provide lateral stability. Additionally, in the absence of specific bracing requirements, trusses shall be braced in accordance with accepted industry practice SBCA *Building Component Safety Information (BCSI) Guide to Good Practice for Handling, Installing & Bracing of Metal Plate Connected Wood Trusses* (Figure 9).

R802.10.3 Bracing.

Trusses shall be braced to prevent rotation and provide lateral stability in accordance with the requirements specified in the *construction documents* for the building and on the individual truss design drawings. In the absence of specific bracing requirements, trusses shall be braced in accordance with accepted industry practice such as the SBCA *Building Component Safety Information (BCSI) Guide to Good Practice for Handling, Installing & Bracing of Metal Plate Connected Wood Trusses*.

Figure 9 ▪ Section R802.10.3 of the 2018 SCRC

Applicable Exterior Wall Covering Sections

Chapter 7 *Wall Covering* provides provisions for the design and construction of the exterior wall coverings for buildings. Section R703 *Exterior Covering* provides information specific to the weather-resistant exterior wall envelope and flashing requirements. Section R703.1.1 *Water Resistance* states that the exterior wall envelope shall be constructed to prevent water accumulation and a means of drainage to the exterior (Figure 10).

R703.1.1 Water resistance.

The exterior wall envelope shall be designed and constructed in a manner that prevents the accumulation of water within the wall assembly by providing a water-resistant barrier behind the exterior cladding as required by Section R703.2 and a means of draining to the exterior water that penetrates the exterior cladding.

Figure 10 ▪ Section R703.1.1 of the 2018 SCRC

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Section R703.4 *Flashing* states that flashing shall be applied shingle-fashion in a manner to prevent water entry into the wall cavity or penetration of water to the building structural framing components (Figure 11).

Section R703.10.1 *Panel Siding* states that the panel siding shall be protected with caulking, or with battens or flashing, or be vertical or horizontal shiplap, or otherwise designed to comply with Section R703.1 (Figure 12).

R703.4 Flashing.

Approved corrosion-resistant flashing shall be applied shingle-fashion in a manner to prevent entry of water into the wall cavity or penetration of water to the building structural framing components. Self-adhered membranes used as flashing shall comply with AAMA 711. Fluid-applied membranes used as flashing in exterior walls shall comply with AAMA 714. The flashing shall extend to the surface of the exterior wall finish. Approved corrosion-

Figure 11 ▪ Section R703.4 of the 2018 SCRC

Section R703.12 *Adhered Masonry Veneer Installation* states that the adhered masonry stone veneer system shall be installed in accordance with Section R703.7.1 (i.e., metal lath attachment), Article 3.3C of TMS 602, or the manufacturer's installation instructions (Figure 13).

R703.10.1 Panel siding.

Fiber-cement panels shall comply with the requirements of ASTM C1186, Type A, minimum Grade II or ISO 8336, Category A, minimum Class 2. Panels shall be installed with the long dimension either parallel or perpendicular to framing. Vertical and horizontal joints shall occur over framing members and shall be protected with caulking, or with battens or flashing, or be vertical or horizontal shiplap, or otherwise designed to comply with Section R703.1. Panel siding shall be installed with fasteners in accordance with Table R703.3(1) or the approved manufacturer's instructions.

Figure 12 ▪ Section R703.10.1 of the 2018 SCRC

R703.12 Adhered masonry veneer installation.

Adhered masonry veneer shall comply with the requirements of Section R703.7.3 and the requirements in Sections 12.1 and 12.3 of TMS 402. Adhered masonry veneer shall be installed in accordance with Section R703.7.1, Article 3.3C of TMS 602 or the manufacturer's instructions.

Figure 13 ▪ Section R703.12 of the 2018 SCRC

Applicable Wood I-Joist Code Sections

Chapter 5 *Floors* provides the provisions for the design and construction of floor systems that will be capable of supporting minimum required design loads. Section R502.8 *Cutting, Drilling and Notching* provides information and limitations to the cutting, drilling, and/or notching of structural floor system. Section R502.8.2 *Engineered Wood Products* states that cutting, notching, and/or holes in wood I-joists are prohibited excepted where permitted by the manufacturer (Figure 14).

R502.8.2 Engineered wood products.

Cuts, notches and holes bored in trusses, structural composite lumber, structural glue-laminated members, cross-laminated timber members or I-joists are prohibited except where permitted by the manufacturer's recommendations or where the effects of such alterations are specifically considered in the design of the member by a *registered design professional*.

Figure 14 ▪ Section R502.8.2 of the 2018 SCRC

Chapter 13 *General Mechanical System Requirements* provides the provisions that govern the installation of mechanical systems not specifically covered in other chapters applicable to mechanical systems. Section M1308 *Mechanical Systems Installation* provides information regarding the installation the mechanical systems within light-frame construction assemblies. Section M1308.1 *Drilling and Notching* states that drilling, notching, and/or alteration of wood-framed structural members shall be in accordance with Section R502.8 (Figure 15).

M1308.1 Drilling and notching.

Wood-framed structural members shall be drilled, notched or altered in accordance with the provisions of Sections R502.8, R602.6, R602.6.1 and R802.7. Holes in load-bearing members of cold-formed steel light-frame construction shall be permitted only in accordance with Sections R505.2.6, R603.2.6 and R804.2.6. In accordance with the provisions of Sections R505.3.5, R603.3.4 and R804.3.3, cutting and notching of flanges and lips of load-bearing members of cold-formed steel light frame construction shall not be permitted. Structural insulated panels (SIPs) shall be drilled and notched or altered in accordance with the provisions of Section R610.7.

Figure 15 ▪ Section M1308.1 of the 2018 SCRC

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Chapter 26 *General Plumbing Requirements* provides the provisions that govern the installation of plumbing not specifically covered in other chapter applicable to plumbing systems. Section P2603 *Structural and Piping Protection* provides information regarding installation or repair of plumbing relative to the finished floors, walls, ceilings, tile work, or other parts of the building. Section P2603.2 *Drilling and Notching* states that drilling, notching, and/or alteration of wood-framed structural members shall be in accordance with Section R502.8 (Figure 16).

P2603.2 Drilling and notching.

Wood-framed structural members shall not be drilled, notched or altered in any manner except as provided in Sections R502.8, R602.6, R802.7 and R802.7.1. Holes in load-bearing members of cold-formed steel light-frame construction shall be made only in accordance with Sections R505.2.6, R603.2.6 and R804.2.6. In accordance with the provisions in Sections R505.3.5, R603.3.3 and R804.3.4, cutting and notching of flanges and lips of load-bearing members of cold-formed steel light-frame construction shall be prohibited. Structural insulated panels (SIPs) shall be drilled and notched or altered in accordance with the provisions of Section R613.7.

Figure 16 ▪ Section P2603.2 of the 2018 SCRC

ASTM D2665

ASTM International (ASTM) developed and produced the technical standard ASTM D2665 *Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste, and Vent Pipe and Fittings* [5]. The scope of this standard is to provide the requirements and test methods for materials, dimensions and tolerances, pipe stiffness, crush resistance, impact resistance, and solvent cement for poly (vinyl chloride) plastic drain, waste, and vent pipe and fittings.

Appendix Section X1.11 *Exposed Piping* states that plumbing vents exposed to sunlight shall be protected by water-base synthetic latex paints (Figure 17).

X1.11 *Exposed Piping*—Provide adequate support where piping is exposed to wind, snow, and ice loading. Plumbing vents exposed to sunlight shall be protected by water-base synthetic latex paints. Where surface temperatures exceed 140°F (60°C) piping shall be protected by means of shielding or some type of lightweight insulation. Exposure to sunlight during normal construction periods is not harmful. It is good practice to store pipe and fittings under suitable cover prior to installation.

Figure 17 ▪ Section X1.11 of the ATSM D2665

NRCA Guidelines for Asphalt Shingles

The National Roofing Contractors Association (NRCA) produced the technical document NRCA Guidelines for Asphalt Shingle Roof Systems dated 2017 [6]. The purpose of this document is to provide technical information and best industry practices with regard to the design, materials, and installation of asphalt shingle roof systems.

NRCA recommends the installation of a metal drip edge at the eave to provide a means of termination for the roof underlayment and shingles, in addition to, providing for efficient water-shedding and protection to the building components. Construction detail ASPH-1 depicts the integration of the metal drip edge with the roof underlayment and shingles (Figure 18).

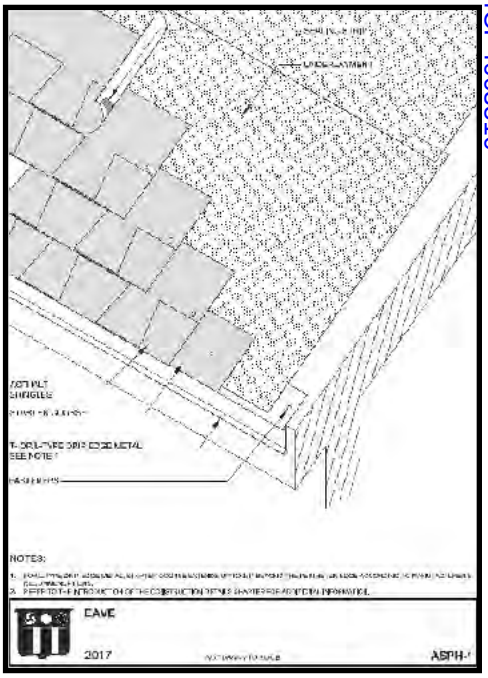


Figure 18 ▪ NRCA Detail ASPH-1

The Structural Building Components Association (SBCA) and the Truss Plate Institute (TPI) jointly produced the code-referenced technical document *Building Component Safety Information (BCSI) Guide to Good Practice for Handling, Installing, Restraining & Bracing of Metal Plate Connected Wood Trusses* dated March 2015 [7]. The purpose of this document is to provide recommendations for the handling, installing, restraining, and bracing of trusses that are consistent with accepted framing construction practices in the field.

Section BCSI-B3 *Permanent Restraint/Bracing of Chords & Web Members* states that diagonal bracing is required to restrain the continuous lateral restraint (i.e., lateral bracing) and transfer the cumulative force from the lateral bracing into the lateral force resisting system (i.e., roof or ceiling diaphragm)(Figure 19). It should be noted that SCRC Section R802.10.3 specifically references that BCSI document for metal plate connected wood truss bracing.

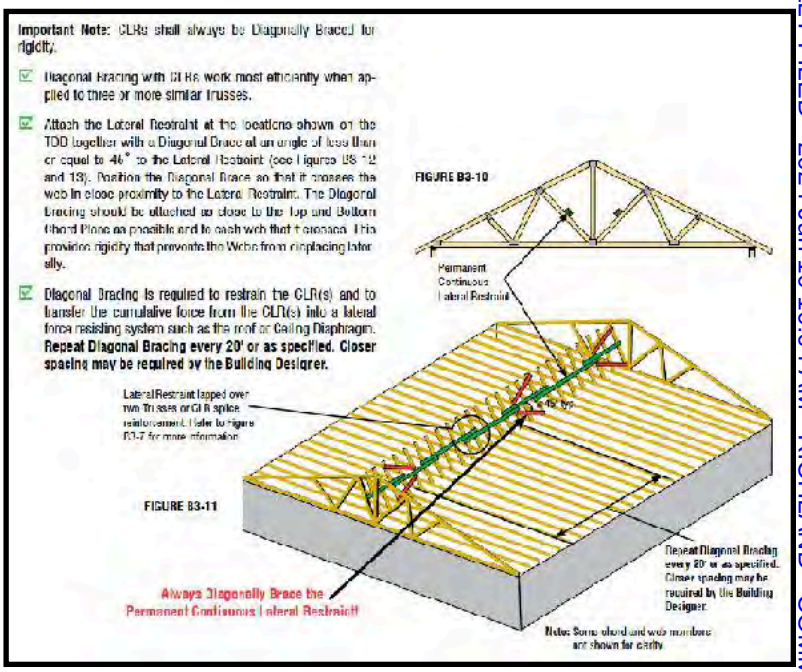


Figure 19 ▪ Section BSCI-B3 Permanent Bracing

James Hardie Manufacturer Information ▪ Vertical Board and Batten Fiber Cement Board Siding

REI believes that the vertical board and batten fiber cement board siding system installed at the subject residence is manufactured by James Hardie Building Products, Inc. (Hardie) [8]. Hardie developed and produced the document *HardiePanel® Vertical Siding HZ-10* installation instructions. Section *Clearance and Flashing Requirements* provides details that illustrate the installation of the weather resistive barrier over the vertical leg of the metal at trim and cladding transitions (Figure 20).

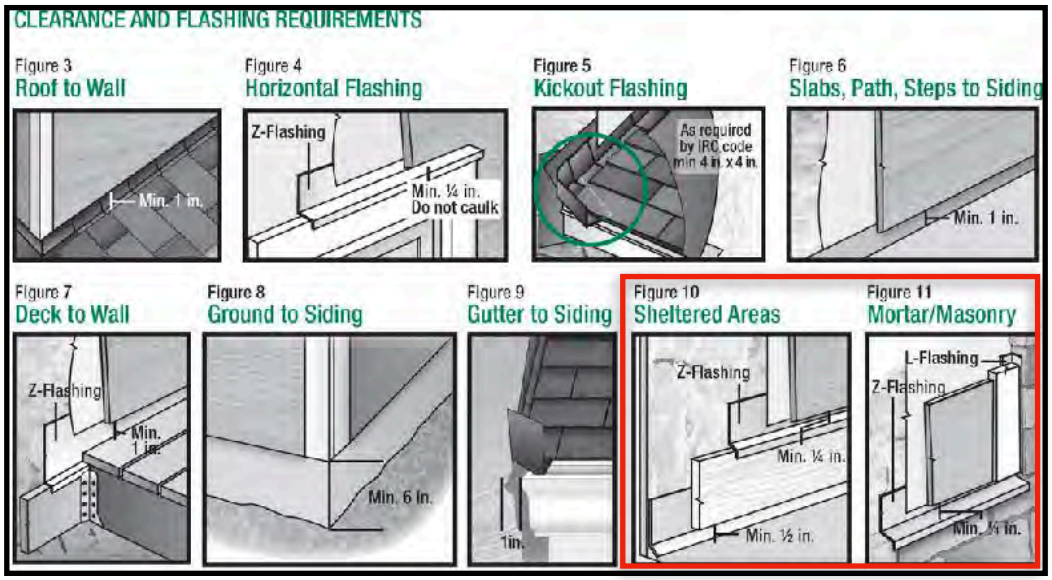


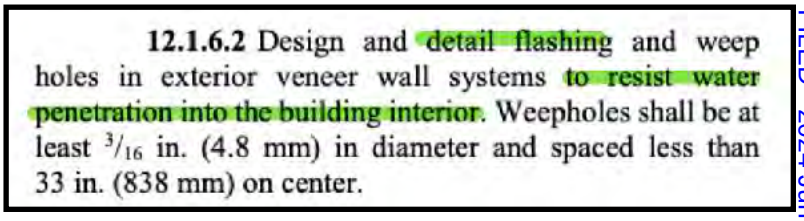
Figure 20 ▪ Flashing Requirements in HardiePanel® Vertical Siding Instructions

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TMS 402/602 Building Code Requirements and Specifications for Masonry Structures

The Masonry Society (TMS) produced the code-referenced industry standard TMS 402/602-16 *Building Code Requirements and Specification for Masonry Structures* dated October 9, 2016 [9]. This document provides information regarding the design and construction of masonry structures, in addition to, the minimum construction requirements for masonry in structures. Chapter 12 *Veneer* provides the requirements for design and detailing of adhered masonry veneer. Section 12.1.6.2 *General Design Requirements* states to design and detail the flashing and weep holes to resist water penetration into the building interior (Figure 21).

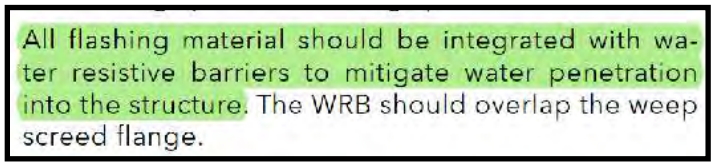


12.1.6.2 Design and detail flashing and weep holes in exterior veneer wall systems to resist water penetration into the building interior. Weepholes shall be at least $^{3}/_{16}$ in. (4.8 mm) in diameter and spaced less than 33 in. (838 mm) on center.

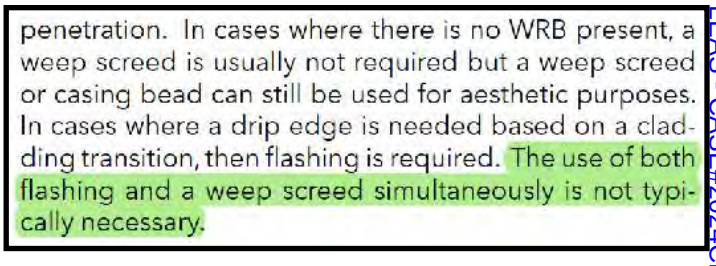
Figure 21 ▪ Section 12.1.6.2 of TMS 402/602

MVMA Installation Guide and Detailing

The Masonry Veneer Manufacturers Association (MVMA) produced the technical document *Installation Guide and Detailing Options for Compliance with ASTM C1780 for Adhered Manufactured Stone Veneer* dated March 2018 [10]. Section *Flashing/Weep Screeds/Casing Bead/Movement Joints* states that all flashing material should be integrated with the water resistive barrier (i.e., weather resistive barrier) to mitigate water penetration into the structure (see Figure 22 below). Additionally, MVMA states that the use of both flashing and a weep screed simultaneously is not typically necessary (see Figure 23 below).



All flashing material should be integrated with water resistive barriers to mitigate water penetration into the structure. The WRB should overlap the weep screed flange.



penetration. In cases where there is no WRB present, a weep screed is usually not required but a weep screed or casing bead can still be used for aesthetic purposes. In cases where a drip edge is needed based on a cladding transition, then flashing is required. The use of both flashing and a weep screed simultaneously is not typically necessary.

Figures 22 & 23 ▪ MVMA Flashing and Weep Screed Recommendations

ICC-ES Evaluation Report ▪ BCI Prefabricated Wood I-Joists

The ICC Evaluation Service (ICC-ES) and APA - the Engineered Wood Association (APA) produced the joint evaluation report ESR-1336 regarding the BCI prefabricated wood I-joists manufactured by Boise Cascade Wood Products, LLC [11]. This report was evaluated in compliance with the 2018 International Residential Code for prefabricated BCI joists with laminated veneer lumber flanges and oriented strand board (OSB) webs.

Section 4.0 *Design and Installation* provides information that includes, but is not limited to:

- Holes in the I-Joist Web
- Member Spans
- Deflection

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Section 5.0 *Conditions of Use* states that cutting or notching of the I-joist flanges is considered to be beyond the scope of the report (Figure 24).

5.0 CONDITIONS OF USE

The BCI Prefabricated Wood I-joists described in this report comply with, or are suitable alternatives to joists and rafters specified in, those codes listed in Section 1.0 of this report, subject to the following conditions:

5.1 BCI joists must be installed in accordance with this report and the manufacturer's installation details.

5.2 Drawings and design details verifying compliance with this report must be submitted to the code official when requested. The drawings and calculations must be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed.

5.3 Where one-hour or two-hour fire-resistance-rated construction is required, the construction must comply with this report.

5.4 Cutting or notching of BCI joist flanges is beyond the scope of this report.

Figure 24 ▪ Section 5.0 of ESR-1336

Boise Cascade Installation Guide

Boise Cascade Wood Products, LLC (Boise Cascade) produced the document *Eastern Installation Guide* dated April 1, 2019 [12]. The information provided within this document is relative to the design, installation, hole cutting of their engineered wood I-joist components and systems, and vibration performance tables.

Boise Cascade states that floor vibration by the end user (i.e., homeowner) is the most common complaint. Therefore, Boise Cascade developed floor performance criteria based on live load deflection limits to increase stiffness. For example, a wood I-joist designed with a live load deflection of L/480 would be thirty-three percent (33%) stiffer than a I-joist designed with live load deflection of L/360 (where L equals the length in inches). This guide provides floor vibration performance tables and a graphic depiction with a table for joist hole location and sizing requirements within the BCI wood I-joist (see Figures 25 & 26 below).

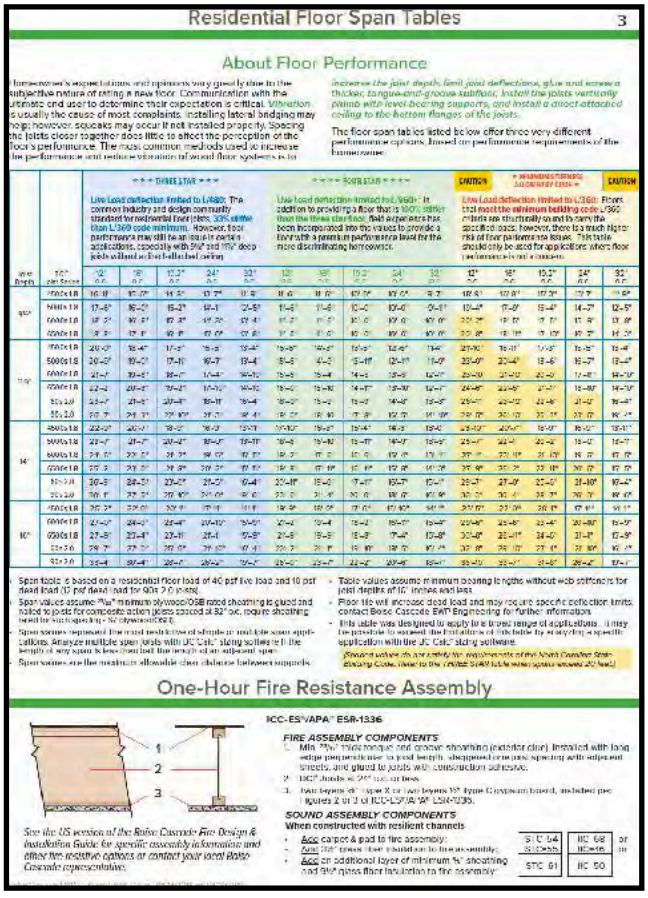


Figure 25 ▪ Boise Cascade Floor Performance

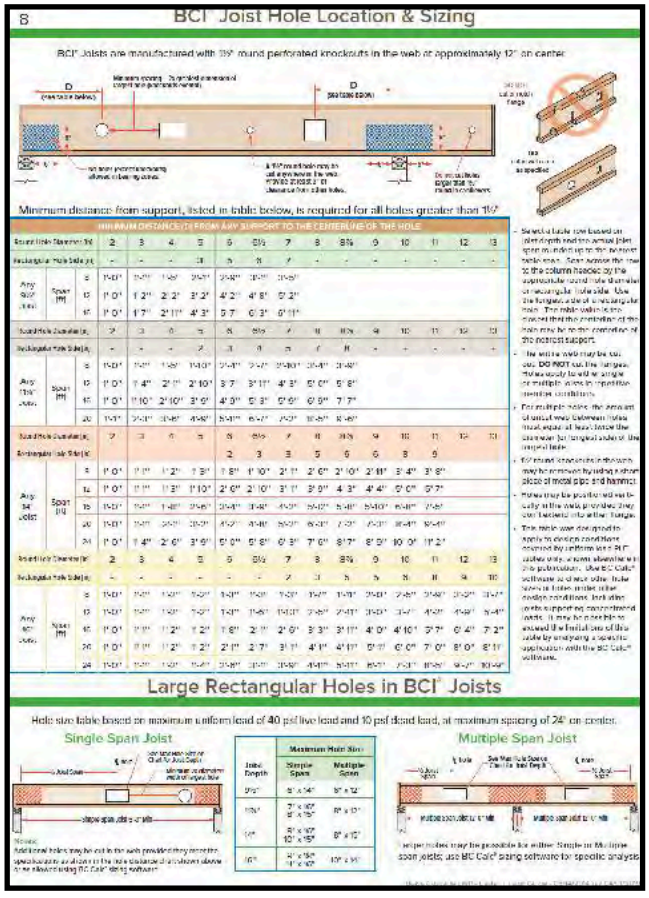


Figure 26 ▪ Boise Cascade Hole Location and Sizing

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REVIEW OF BOISE CASCADE ENGINEERING ANALYSIS

REI reviewed a structural engineering analysis that was performed by Ross J. Holt, P.E. of Boise Cascade dated August 20, 2021, and September 1, 2021. The engineering analyses proposed repairs to be performed at wood I-joist members located in the kitchen and sitting room areas. The engineering analyses specified that reinforcement repairs were required for the I-joists to be considered adequate at both the kitchen and sitting room areas.

- Kitchen - Reinforcement repairs required Hole 1 and Hole 2 (Figure 27)
- Sitting Room - Reinforcement repairs at top flange notch (Figure 28)

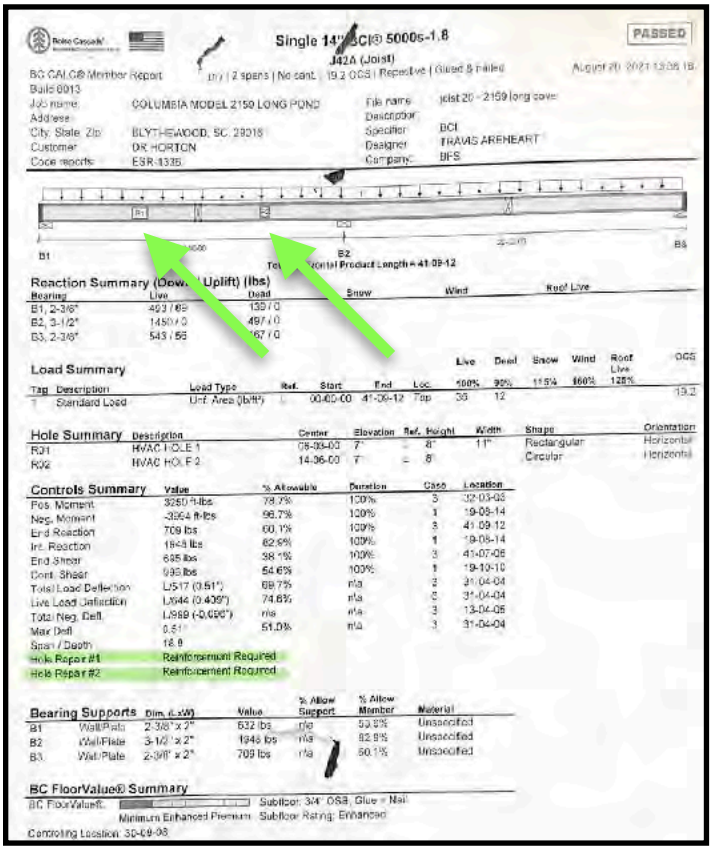


Figure 27 ▪ Boise Cascade Engineering Analysis of I-Joist Located in Kitchen

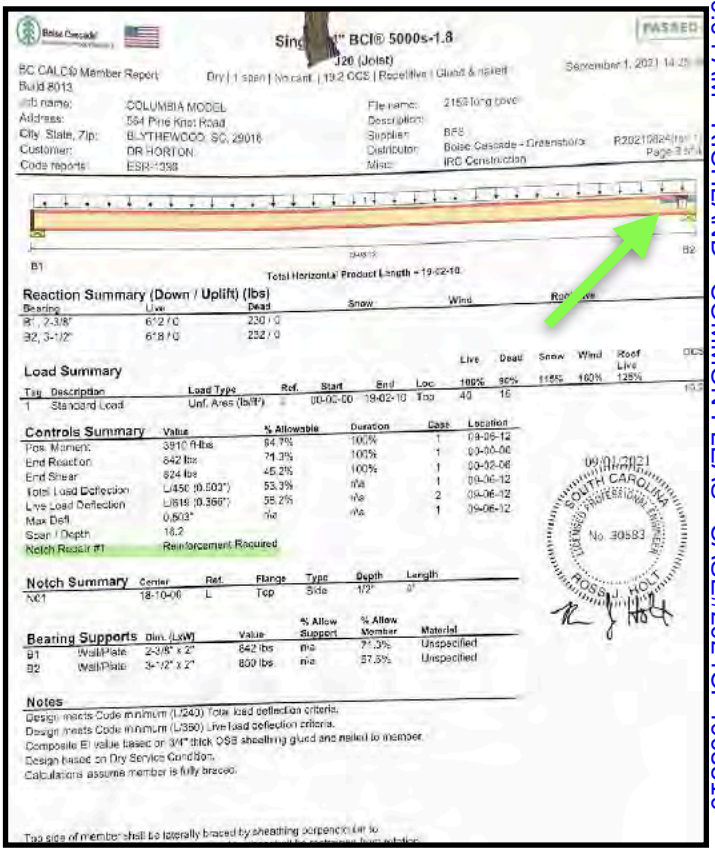


Figure 28 ▪ Boise Cascade Engineering Analysis of I-Joist Located in Sitting Room

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DISCUSSION

Based on the background information, visual survey with limited destructive testing, and review of the Boise Cascade engineering analysis, it is the opinion of REI, to a reasonable degree of engineering certainty, that construction deficiencies exist that require repair at the subject residence. Specifically, REI observed the following construction defects and/or issues at the subject residence (Table 2):

Building Component	Construction Defect and/or Issue	
Roof	R.1	Absence of Metal Drip at Eave
	R.2	Unprotected Plumbing Vent Pipe
Attic	A.1	Absence of Diagonal Bracing at Base Roof Trusses
	A.2	Absence of Diagonal Bracing at Piggyback Roof Trusses
	A.3	Inadequate Fastening of Wood Framing Connection at Base Roof Truss and Piggyback Roof Truss
Exterior Walls	EW.1	Improper Integration of Weather Resistive Barrier and Metal Flashing at Vertical Board & Batten Fiber Cement Siding
	EW.2	Improper Integration of Weather Resistive Barrier and Metal Flashing at Horizontal Fiber Cement Trim
	EW.3	Improper Installation of Adhered Masonry Stone Veneer Cladding
Interior Wood I-Joists	I.1	Evidence of Damage to I-Joist Flange
	I.2	Absence of Recommended Repairs at I-Joist

Table 2 ▪ Summary of Construction Defects & Issues at the Subject Residence

Roof ▪ Metal Drip Edge

The metal drip edge was observed to be absent at the eave of the roof. This condition can allow water to penetrate the building enclosure and cause damage to the roof deck and wood framing components. The 2018 SCRC states that a drip edge is provided where required by the manufacturer. Though REI has not identified the manufacturer of the asphalt shingles at the subject residence, the NRCA recommends the installation of a metal drip edge at the eave as a means of termination for the roof underlayment and shingles, as well as, to promote efficient water-shedding.

Roof ▪ Plumbing Vent Pipe

Unprotected polyvinyl chloride (PVC) vent pipes are subjected to ultra-violet (UV) light deterioration over periods of long-term exposure. Protection is typically provided by the application of a paint or lead pipe cover.

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Attic ▪ Diagonal Bracing

Diagonal bracing was not installed at the web members of the metal plate connected wood base trusses and piggyback trusses. The absence of web member diagonal bracing may cause the truss members (i.e., chords and webs) to buckle and fail when subjected to a code-prescribed loadings. At this time, REI has not received and/or reviewed truss design drawings that detail the location of the associated diagonal bracing. However, in the absence of truss design drawings, the referenced BCSI states that diagonal bracing is required to restrain the continuous lateral restraint (i.e., lateral bracing) and transfer the cumulative force from the lateral bracing into the lateral force resisting system (i.e., roof or ceiling diaphragm).

Attic ▪ Inadequate Fastening of Wood Framing Connection

The wood framing connection between the base roof truss and piggyback roof truss appeared to be inadequately fastening. At this time, REI has not received and/or reviewed truss design drawings that detail the connection. However, the applicable building code requires the truss fabricator/engineer to provide truss-to-truss connection details. Additionally, in the absence of truss design drawings, the applicable building code states that the design and construction of a building, and parts therefore, shall properly transfer loadings from their point of origin through the load-resisting elements to the foundation. The as-built condition does not adequately transfer code-prescribed loadings from the piggyback roof truss to the base roof truss.

Exterior Wall ▪ Vertical Board and Batten Fiber Cement Board Siding

The weather resistive barrier at the base of the vertical board and batten fiber cement board siding (i.e., first-to-second floor line) was observed to be improperly integrated with the flashing. Since this fiber cement board siding system is a drainage-type cladding, flashing is required at the base of wall to allow any incidental bulk water to exit to the exterior. The improper integration of the weather resistive barrier and flashing can allow water to penetrate behind the cement board siding system and adhered manufactured brick system, and cause damage to the wall sheathing and wood framing components.

Exterior Wall ▪ Adhered Masonry Stone Veneer

The adhered masonry stone veneer cladding was observed to be improper installed at the exposed areas of the first floor on the front elevation. Specifically, the weather resistive barrier (WRB) was observed to be improperly integrated with the flashing at the garage door header and base of wall. These conditions do not allow for the incidental bulk water that penetrates behind the adhered masonry stone veneer cladding to properly discharge to the exterior. Furthermore, the improper integration of the WRB and flashing at the garage door header will serve to trap incidental bulk water and cause damage to the wood framing components, if left in an uncorrected condition.

The adhered masonry stone veneer cladding was observed to be installed abutted to the garage door jambs without the installation of an engineered sealant joint. The engineered sealant joints allow for any differential movement due to temperature and/or moisture change between dissimilar materials and is part of the water management system.

Wood I-Joists

The HomeTeam inspection of the subject residence, which was performed during original construction, identified several issues with the wood I-joists that included, but not limited to, gaps at lateral supports, a cut top flange, and damage to a top flange. Subsequent to the HomeTeam inspection report, Boise Cascade performed an engineering analysis of several of the wood I-joists issues identified in the report.

The Boise Cascade engineering analysis, which was attached to the webs of the wood I-joists, demonstrated that the previously observed damage/issues of the wood I-joists would be considered structural adequate, if required repairs were performed. However, it is the understanding of REI that any cutting, notching, and/or damage to the top flange of a wood I-joist would require complete removal and replacement due to the compressive stresses from the simple beam configuration (i.e., supports at each end). REI did not observe the presence and/or evidence of repairs performed to the wood I-joists as required by Boise Cascade at the subject residence.

Boise Cascade developed a floor performance rating based on owner's expectations and opinions relative to a new floor system. The floor performance system is based on a live load deflections that serve to decrease the deflection to improve occupant desired performance. For example, if the code minimum live load deflection limit is L/360, a live load deflection limit of L/960 would decrease the deflection while increasing floor system stiffness.

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RECOMMENDED OUTLINE SCOPE OF REPAIR

REI recommends the following outline scope of repair to address the construction defects and issues observed at the subject residence. The recommended outline scope of repair should be performed by a qualified general contractor in accordance with the applicable building code, manufacturers literature, and accepted industry standards.

Roof

1. Inspect the roof eave for the installation of the roof underlayment and metal drip edge.
2. If the metal drip edge is observed to be absent or improperly installed.
   - 2.a. Install new eave metal drip edge in a weather lapped manner with the roof underlayment.
   - 2.b. Metal drip edge should be installed on the top surface of the roof deck.
   - 2.c. Roof underlayment should be installed over the top surface of the eave metal drip edge.

Diagonal Roof Base Truss and Piggyback Truss Bracing

1. Inspect the attic for the installation of diagonal truss bracing at all lateral brace lines.
2. Install new diagonal bracing as detailed in the BCSI industry standard, as determined to be necessary.

Roof Base Truss to Piggyback Truss Connection

1. Consult with a licensed professional engineer to perform a structural engineering analysis to determine the adequate connection between the base truss and piggyback truss.

Vertical Board & Batten Fiber Cement Board Siding

1. Remove fiber cement board siding at the first-to-second floor line on the front elevation.
2. Inspect the integration of the weather resistive barrier and horizontal aluminum flashing.
3. If weather resistive barrier is installed behind the vertical leg of the flashing.
   - 3.a. Remove the horizontal flashing. Salvage flashing for reinstallation.
   - 3.b. Cut and temporarily fold the weather resistive barrier upward to be integrated with horizontal flashing.
4. Inspect the wall sheathing for damage.
5. If exterior wall sheathing is damaged.

5.a. Remove damaged section of exterior wall sheathing.

5.b. Inspect wood framing members. Remove and replace damaged wood framing members, as determined to be necessary.

5.c. Replace damaged exterior wall sheathing. Install wood frame blocking at joints, as determined to be necessary.

6. If exterior wall sheathing is stained.

6.a. Treat exterior wall sheathing for microbial growth.

7. If exterior wall sheathing is not damaged or stained.

7.a. No repair is considered to be necessary.

8. Reinstall the existing aluminum horizontal flashing.

9. Install self-adhered flashing from the vertical leg of the horizontal flashing to the exterior surface of the wall sheathing.

10. Install the existing weather resistive barrier over the vertical leg of the horizontal flashing and new self-adhered flashing.

11. Reinstall the existing fiber cement board siding.

Adhered Masonry Stone Veneer

1. Completely remove and replace the exposed adhered masonry veneer system located on the first floor of the front elevation.*

2. Remove and replace the existing trim and flashing at the garage door openings and base of wall.

3. Inspect the wood framing components for water damage. Remove and replace wood framing components that exhibit wood damage.

4. Install new adhered masonry veneer system that is properly integrated with the garage door openings, base of wall, and existing building components.

4.a. General contractor is to reference the MVMA technical document *Installation Guide and Detailing Options for Compliance with ASTM C1780 for Adhered Manufactured Stone Veneer.*

* REI is recommending a complete removal and replacement of the exposed adhered masonry veneer system located on the first floor of the front elevation due to the limited remaining sections if localized repairs at the garage door opening and base of wall.

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Wood I-Joists

1. Remove the existing interior gypsum ceiling board in the kitchen, living room, and sitting room areas.

2. Inspect the existing wood I-joists for cutting, notching, and/or damage to the top flange.

3. Remove and replace existing wood I-joists that exhibit cutting, notching, and/or damage to the top flange.

   3.a. Assume two (2) wood I-joists to be removed and replaced.

4. Inspect the wood I-joists (without top flange cutting, notching, and/or damage) for previous repairs.

   4.a. Consult with the manufacturer Boise Cascade to determine if the previously identified Boise Cascade repairs are considered to still be the appropriate repair for the I-joists (without top flange cutting, notching, and/or damage) located in the kitchen, living room, and sitting room areas.

5. Install new gypsum ceiling board at areas where repairs are performed.

6. Prime and paint new gypsum ceiling board to match existing color and texture.

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CLOSING

This report and all associated opinions are provided to a reasonable degree of engineering certainty. In the event that additional relevant information becomes available, we respectfully reserve the right to amend the opinions expressed herein.

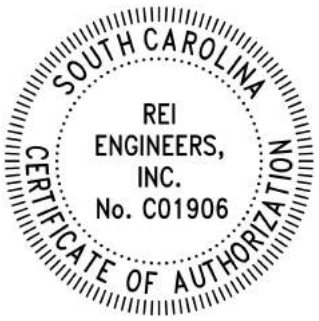
Please feel free to contact me if you have any questions or require additional assistance.

Sincerely,

REI Engineers, Inc.



John C. Wylie, P.E., RBEC, REWC, RWC, RRC, RRO
Senior Project Engineer





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(2) HomeTeam® Inspection Service Home Inspection Report - File Number: SC031862 - Address: 564 Pine Knot Rd, HomeTeam Inspection Services, Inc., Blythewood, South Carolina

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(4) 2018 South Carolina Residential Code, International Code Council (ICC), Country Club Hills, IL (First Printing: December 2019)

(5) ASTM D2665-14 Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste, and Vent Pipe and Fittings, ASTM International, West Conshohocken, PA (May 1, 2014)

(6) NRCA Guidelines for Asphalt Single Roof Systems, National Roofing Contractors Association (NRCA), Rosemont, IL (2017)

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(8) HardiPanel® Vertical Siding HZ-10, James Hardie Building Products, Inc., Chicago, IL (December 2019)

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(12) Eastern Installation Guide, Boise Cascade Wood Products, LLC, Auburn, GA (April 1, 2019)

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HomeTeam® INSPECTION SERVICE

HOME INSPECTION REPORT

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PLAINTIFF'S EXHIBIT

B



Home. Safe. Home.

HomeTeam® INSPECTION SERVICE

CONVENIENT BOOKINGS | EFFICIENT & INSPECTIONS FAST REPORTS

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WHAT IS A HOME INSPECTION?

The purpose of a home inspection is to visually examine the readily accessible systems and components of the home. The inspectors are not required to move personal property, materials or any other objects that may impede access or limit visibility. Items that are unsafe or not functioning, in the opinion of the inspector, will be described in accordance with the standards of practice by which inspectors abide.

WHAT DOES THIS REPORT MEAN TO YOU?

This inspection report is not intended as a guarantee, warranty or an insurance policy. Because your home is one of the largest investments you will ever make, use the information provided in this report and discuss the findings with your real estate agent and family to understand the current condition of the home.

OUR INSPECTIONS EXCEED THE HIGHEST INDUSTRY STANDARDS.

Because we use a team of inspectors, each an expert in his or her field, our inspections are performed with greater efficiency and more expertise and therefore exceed the highest industry standards. We are pleased to provide this detailed report as a service to you, our client.

WE BELIEVE IN YOUR DREAM OF HOME OWNERSHIP.

We want to help you get into your dream home. Therefore, we take great pride in assisting you with this decision making process. This is certainly a major achievement in your life. We are happy to be part of this important occasion and we appreciate the opportunity to help you realize your dream.

WE EXCEED YOUR EXPECTATIONS.

Buying your new home is a major decision. Much hinges on the current condition of the home you have chosen. That is why we have developed the HomeTeam Inspection Report. Backed by HomeTeam's experience with hundreds of thousands of home inspections over the years, the report in your hand has been uniquely designed to meet and exceed the expectations of today's homebuyers. We are proud to deliver this high-quality document for your peace of mind. If you have any questions while reviewing this report, please contact us immediately.

Thank you for allowing us the opportunity to serve you.



FAST



TRUSTED



ACCURATE

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HomeTeam INSPECTION SERVICE

FAST TRUSTED ACCURATE



Dear TJ Simmons,

On Monday, August 9, 2021 The HomeTeam Inspection Service made a visual inspection of 564 Pine Knot Rd, Blythewood, SC 29016. Enclosed please find a written, narrative report of our findings in accordance with the terms of our Inspection Agreement.

If we can be of any assistance, please feel free to call us at (803) 638-2190. Thank you for choosing HomeTeam.

Sincerely,

Evan & Jennifer Williams, Owners
HomeTeam Inspection Service
SC Home Inspector RBI 49107

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PREFACE

A home inspection is intended to assist in evaluation of the overall condition of the dwelling. The inspection is based on observation of the visible and apparent condition of the structure and its components on the date of the inspection. We will not render an opinion as to the condition of any systems or components of the structure that are concealed by walls, floors, drywall, paneling, suspended ceiling tiles, insulation, carpeting, furniture or any other items on the property at the time of the inspection.

The results of this home inspection are not intended to make any representation regarding the presence or absence of latent or concealed defects that are not reasonably ascertainable in a competently performed home inspection. No warranty or guaranty is expressed or implied.

You may be advised to seek a specialist's opinion as to any defects or concerns mentioned in the report. At that time, additional defects may be revealed that may not have been identified in the initial home inspection. This is part of the normal due diligence process.

If the age, condition or operation of any system, structure or component of the property is of a concern to you, we recommend that a specialist in the respective field be consulted for a more technically exhaustive evaluation.

This inspection report includes a description of any material defects* noted during the inspection, along with any recommendation that certain experts be retained to determine the extent of the named defects and other related defects and any corrective action that should be taken. Any material defect that poses an unreasonable risk to people on the property will be conspicuously defined as such. Any recommendations made to consult with other specialists for further evaluation as a result of our findings should be complete prior to the conclusion of the inspection contingency period. This may require an extension of the period. The Client warrants they will read the entire inspection report when received and shall promptly contact HomeTeam regarding any questions or concerns the Client may have regarding the inspection or the inspection report.

* Material Defect: A problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property, or one that involves an unreasonable risk to the people on the property. The fact that a structural element, system or subsystem is near, at or beyond the end of the normal useful life of such a structural element, system or subsystem is not by itself a defect.

The majority of home inspections are performed on pre-existing structures. Building techniques have changed dramatically over the years, and a home inspection is not designed to identify methods that were previously acceptable that may have been superseded by superior methods. We will not determine the cause of any condition or deficiency, or determine future conditions that may occur, including the failure of systems and components or consequential damage.

It is not uncommon to observe cracks or for cracks to occur in concrete slabs or exterior and interior walls. Cracks may be caused by curing of building materials, temperature variations and soil movement such as: settlement, uneven moisture content in the soil, shock waves, vibrations, etc. While cracks may not necessarily affect the structural integrity of a building, cracks should be monitored so that appropriate maintenance can be performed if movement continues at an abnormal rate. Proper foundation maintenance is key to the prevention of initial cracks or cracks enlarging. This includes, but is not limited to proper watering, foundation drainage and removal of vegetation growth near the foundation.

This report is intended for the sole, confidential, and exclusive use and benefit of the Client(s) under a written HomeTeam Inspection Agreement. This report is not intended for the benefit of, and may not be relied upon by, any other party. The disclosure or distribution of this report to the current owner(s) of the property inspected or to any real estate agent will not make those persons intended beneficiaries of this report. The HomeTeam Inspection Service has no liability to any party (other than the HomeTeam client named above, for whom this report was expressly prepared) for any loss, damage or expense (including, without limitation, attorney fees) arising from any claim relating to this report.

A home inspection bears conditions relevant to a specific time stamp and as conditions in a home can change from the time of the inspection to the time of closing, HomeTeam strongly recommends the client perform a thorough walk-through shortly prior to closing, turning on all faucets, flushing toilets, testing garbage disposals, turning on the furnace and air conditioner, and looking for any leakage, signs of water intrusion, stains, or other changes that may have occurred since the time of the inspection.

Any defects noted in the body of the report should be addressed by a professional in that field within the due diligence period. Additional assessments may uncover more extensive damage or needed repairs that a professional would have more significant knowledge of. .

All pictures that may be included are to be considered as examples of the visible deficiencies that may be present. If any item has a picture, it is not to be construed as more or less significant than items with no picture included.

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INTRODUCTION

Throughout this report, the terms “right” and “left” are used to describe areas of the home as viewed from the street. A system or component has a material defect if it is either unsafe or not functioning and cannot be replaced or rendered safe or functional for less than $1,000. The cosmetic condition of the paint, wall covering, carpeting, window coverings, to include drywall damage, etc., is not addressed. All conditions are reported as they existed at the time of the inspection. Routine maintenance and safety items are not within the scope of this inspection unless they otherwise constitute material, visually observable defects. Although some maintenance and/or safety items may be disclosed, this report does not include all maintenance or safety items and should not be relied upon for such items. When material defects are observed or minor repairs need to be made, we recommend you consult a qualified licensed professional. Cost estimates are advised prior to closing. All contractors should work for you, as their evaluation/observation may make you aware of findings not listed in this report.

A home inspection is not a home warranty, and HomeTeam strongly recommends purchasing a home warranty from a reputable company to cover items that will fail in the course of time.

****NOTE: We include photos to show examples of the defects noted on the property. These photos are a representative number and may not indicate all areas of the home with this type of defect.****





The approximate temperature at the time of the inspection was 85 to 90 ° F, and the weather was cloudy. The utilities were not installed at the time of the inspection.

LOT AND GRADE

The structure was situated on a level lot. The general grade around the structure appeared to be adequate to direct rain water away from the foundation, assuming normal drainage and downspout, gutter, and other systems are functioning properly.

STRUCTURE PRE-DRYWALL

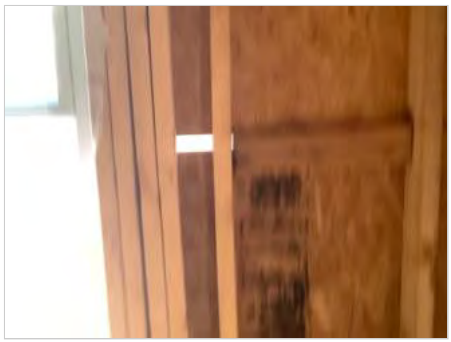
The inspected property consisted of a two story wood-framed structure in the pre-drywall phase of construction at the time of the inspection.

Gaps to the exterior should be sealed to to assist temperature regulation and avoid pest intrusion.












BCI joists are gapped or may require lateral support. Have assessed by a licensed contractor and repair as required.






by kitchen



in garage, appears it has rolled some

Some 2x4 studs appear to have damage over 25% or appear excessively warped. Have assessed by a licensed contractor and repair as required.

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Upstairs hall bathroom






Some BCI Joists appear to have flange damage. The joists should be assessed by a licensed contractor and repaired as required.





flange busted



Previous water intrusion was noted in areas of the home. This should be assessed by a licensed contractor to ensure that the intrusion has ceased and that no damage has occurred to the structure.



Upstairs

Braces that are partially attached should either be removed or secured to avoid damage to the structure.



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Over master suite

Exposed nails or screws were noted in areas where they may cause injury. Caution should be used in these areas if they cannot be removed or mitigated.



at attic entrance

ELECTRIC SERVICE

The underground electric service wire entered the structure on the left wall. The electric meter was located on the exterior wall.



HEATING SYSTEM

The heating system was inspected by a qualified HomeTeam professional. Periodic preventive maintenance is recommended to keep this unit in good working condition. Annual maintenance of the heating and cooling equipment is essential for safe and efficient performance, which will maximize the system's useful life. NOTE: Codes change for proper furnace installation. As a reminder, this is a visual and functional check of the system only. Whenever a furnace is replaced by a licensed HVAC technician it is necessary for him to bring the setup up to the then-current code. This may include altering the current configuration of the system. This is a functional test only; if a complete and exhaustive

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checkout of all of the components of the HVAC system is desired, or if your warranty company requires a specific inspection from their approved HVAC vendor list, contact a reputable and licensed HVAC company prior to closing.

The structure was heated by a Carrier natural gas forced air furnace, model number 58SB0A045E14--12, serial number 2021A15299 which is less than 1 years old. The unit was located in the attic of the structure. The flue vent appeared to be configured in such a way as to properly vent the flue gases.



HEATING SYSTEM

The heating system was inspected by a qualified HomeTeam professional. Periodic preventive maintenance is recommended to keep this unit in good working condition. Annual maintenance of the heating and cooling equipment is essential for safe and efficient performance, which will maximize the system's useful life. NOTE: Codes change for proper furnace installation. As a reminder, this is a visual and functional check of the system only. Whenever a furnace is replaced by a licensed HVAC technician it is necessary for him to bring the setup up to the then-current code. This may include altering the current configuration of the system. This is a functional test only; if a complete and exhaustive checkout of all of the components of the HVAC system is desired, or if your warranty company requires a specific inspection from their approved HVAC vendor list, contact a reputable and licensed HVAC company prior to closing.

The structure was heated by a Carrier natural gas forced air furnace, model number 58SB0A04TE14--12, serial number 0521A15398 which is less than one year old. The unit was located in the attic of the structure. The flue vent appeared to be configured in such a way as to properly vent the flue gases.





missing coils

The condensate line will press up against the sheetrock and may cause water staining. This should be insulated or protected to avoid water damage.

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The left side garage wall appears to be offset from foundation. A repair has been made, this should be assessed by a licensed contractor and repair if needed.





There will be normal temperature variations from room to room and level to level, most noticeable between levels. Airflow throughout the house may be balanced by adjusting any dampers in the supply ducts, or by adjusting the supply registers. Inspection of air and duct supply system for adequacy, efficiency, capacity or uniformity of the conditioned air to the various parts of the structure is beyond the scope of the home inspection. The air filter should be replaced or cleaned, as appropriate, on a regular basis to maintain the efficiency of the system.

Some of the insulation, sealant tape, and/or mastic on the ductwork is missing or damaged. All ductwork should be completely sealed and insulated for maximum efficiency.



Formal dining room



Formal dining room

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Some of the ductwork in the left front part of the house appears that it will be crushed when sheetrock is installed. Ensure ample flow through the ductwork after during installation of the sheetrock.





ROOF

The roof was a gable and hip design covered with asphalt/fiberglass shingles. Observation of the roof surfaces and flashing was performed by drone. There appeared to be one layer of shingles. The roof shingles exhibited no curling and light surface wear. We could not test for lifted edges because a drone had to be used for inspection.

These conditions indicate the roof shingles were in the first half of their useful life.

NOTE: Sometimes our opinion of a roof may differ from that of an insurance provider/adjuster or roofer. Some insurance providers/adjusters or roofers are more particular than others. We are there to state the overall condition of the roof; the roof is not considered to be defective unless there are visible leaks and/or material damage or wear that indicates failure is imminent. If we note any moderate to serious curling or surface wear, lifted edges, or evidence of a hail event, we recommend getting a second opinion or approval from your insurance provider regarding the roof. We do not make installation judgments regarding roof covering, appropriate pitch, etc.







The roof requires routine maintenance to preserve its integrity. This maintenance may include tarring over exposed nails, caulking seams, or removing debris. At the time of the maintenance, the roof should be further assessed for any additional repairs.











Loose, damaged, or rotted fascia was present on the exteriorof the structure. The fascia should be repaired to avoid water entry.




CHIMNEYS AND FLUES

The structure had two flue chases. Observation of the flue chases was made from the ground with the aid of a drone. The flashing around the roof penetration point appeared to be adequate.




GARAGE

The attached garage was designed for two cars

FOUNDATION

The foundation was constructed of a slab on grade. A single inspection cannot determine whether movement of a foundation has ceased. Any cracks should be monitored regularly.

The full slab was not visible at the time of the inspection because of carpet or other floor coverings. There were no

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indications of moisture present. There were no material defects observed on the visible portions of the slab. Please note that the condition of any utilities within or under a slab-on-grade, such as plumbing or ductwork, are not within the scope of the inspection. Due to the nature and expense of these items, HomeTeam recommends having drain lines scoped by a plumber. This is particularly important in older homes since drain line problems are hidden from view.

Small cracks were observed on the foundation. The cracks were 1/16" or less in width. The homeowner should monitor these cracks for any changes, and if changes are noted, should contact a structural repair company for further analysis. Below-grade cracks are highly susceptible to water intrusion during times of heavy rain. Water staining from previous water intrusion was not visible.



Kitchen





Office



ATTIC STRUCTURE

The attic area was accessed by ladder and was entered. The roof structure consisted of 2x4” and 2x6 " wood trusses spaced 24 " on center and OSB (waferboard) sheathing. There was no active moisture visible in the attic structure.

As with all aspects of the home inspection, attic and roof inspections are limited in scope to the visible and readily accessible areas. Due to configuration, parts of the attic were not accessible. Many areas of the roof are not visible from the attic especially near the base, where the largest volume of water drains. The presence or active status of roof leaks cannot be determined unless the conditions which allow leaks to occur are present at the time of the inspection, i.e., heavy rain combined with high winds. Please be aware that rain alone is not always a condition that causes a leak to reveal itself. The conditions that cause leaks to occur can often involve wind direction, the length of time it rains, etc.

Attic rafters/trusses or areas of sheathing are damaged and may require repair. The areas do not appear to have been damaged by prior water intrusion. The cause of the damage must be identified and corrected. HomeTeam recommends having the existing damage in the attic structure repaired and further evaluated at the time of repair.

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Truss fasteners may not installed according to manufacturer guidelines. These should be assessed and repaired by a qualified contractor.



fasteners have not been fully seated on some, a few areas mainly right front



fasteners have not been fully seated on some





at least one joist appears to be gapped over the 1/2" maximum left front









hangers are spread







Back left bedroom, truss plate removed

PLUMBING

The visible water supply lines throughout the structure were PEX pipe. Water shutoff valves are not tested as part of the home inspection since water shutoff valves that have not been operated for an extended period of time often leak after being operated, and we would not be able to repair a leaking valve during the home inspection.

The visible waste lines consisted of PVC pipe.

The plumbing pipe in the rear left corner appears pitted and only minimal glue was noted. This should be assessed by a licensed plumber and repaired if required.



WINDOWS AND DOORS

A representative number of accessible windows and doors were operated and found to be functional. The primary windows were vinyl-clad, single hung style, with double pane glass. All windows and exterior doors were operated and found to be functional. The exterior door locks should be changed or rekeyed upon occupancy. Possible problem areas may not be identified if the windows or doors have been recently painted. Exterior windows require routine caulking and maintenance to prevent water intrusion.

NOTE: The condition, presence, or absence of screens, storm windows and doors is outside the scope of the inspection. Storm windows improve energy efficiency, assist in preventing water intrusion, and slow the deterioration of some window frames.

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REASONABLE EXPECTATIONS REGARDING A PROFESSIONAL HOME INSPECTION:

There may come a time when you discover something wrong with the house, and you may be upset or disappointed with your home inspection. There are some things we'd like you to keep in mind.

Intermittent or concealed problems: Some problems can only be discovered by living in a house. They cannot be discovered during the few hours of a home inspection. For example, some shower stalls leak when people are in the shower, but do not leak when you simply turn on the tap. Some roofs and basements only leak when specific conditions exist. Some problems will only be discovered when carpets are lifted, furniture is moved or finishes are removed.

No clues: These problems may have existed at the time of the inspection, but there were no clues as to their existence. Our inspections are based on the past performance of the house. If there are no clues of a past problem, it is unfair to assume we should foresee a future problem.

We always miss some minor things: Some say we are inconsistent because our reports identify some minor problems but not others. The minor problems that are identified were discovered while looking for more significant problems. We note them simply as a courtesy. The intent of the inspection is not to find the $200 problems; it is to find the $1000 problems. These are the things that affect people's decisions to purchase.

Contractor's advice: A common source of dissatisfaction with home inspectors comes from comments made by contractors. Contractors' opinions often differ from ours. Don't be surprised when three roofers all say the roof needs replacement, when we said that the roof would last a few more years with some minor repairs.

"Last man in" theory: While our advice represents the most prudent thing to do, many contractors are reluctant to undertake these repairs. This is because of the "last man in" theory. The contractor fears that if he is the last person to work on the roof, he will get blamed if the roof leaks, regardless of whether or not the roof leak is his fault. Consequently, he won't want to do a minor repair with high liability, when he could re-roof the entire house for more money and reduce the likelihood of a callback. This is understandable.

Most recent advice is best: There is more to the "last man in" theory. It suggests that it is human nature for homeowners to believe the last bit of expert advice they receive, even if it is contrary to previous advice. As home inspectors, we unfortunately find ourselves in the position of "first man in" and consequently it is our advice that is often disbelieved.

Why didn't we see it?: Contractors may say, "I can't believe you had this house inspected, and they didn't find this problem." There are several reasons for these apparent oversights:

- **Conditions during inspection:** It is difficult for homeowners to remember the circumstances in the house at the time of the inspection. Homeowners seldom remember that it was snowing, there was storage everywhere or that the furnace could not be turned on because the air conditioning was operating, etc. It's impossible for contractors to know what the circumstances were when the inspection was performed.
- **This wisdom of hindsight:** When the problem manifests itself, it is very easy to have 20/20 hindsight. Anybody can say that the basement is wet when there is 2" of water on the floor. Predicting the problem is a different story.
- **A long look;** If we spent half an hour under the kitchen sink or 45 minutes disassembling the furnace, we'd find more problems, too. Unfortunately, the inspection would take several days and would cost considerably more.
- **We're generalists:** We are generalists; we are not specialists. The heating contractor may indeed have more heating expertise than we do. This is because we are expected to have heating expertise and plumbing expertise, structural expertise, electrical expertise, etc.
- **An invasive look:** Problems often become apparent when carpets or plaster are removed, when fixtures or cabinets are pulled out, and so on. A home inspection is a visual examination. We don't perform invasive or destructive tests.

Not insurance: In conclusion, a home inspection is designed to better your odds. It is not designed to eliminate all risk. For that reason, a home inspection should not be considered an insurance policy. The premium that an insurance company would have to charge for a policy with no deductible, no limit and an indefinite policy period would be considerably more than the fee we charge. It would also not include the value added by the inspection.
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	2024-CP-40-03510
Sherman and Claudia Howell,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
D.R. Horton, Inc.,	)	
	)	
Defendant.	)	**SUMMONS TO THIRD-PARTY COMPLAINT**
	)	
	)	
D.R. Horton, Inc.,	)	
	)	
Third-Party Plaintiff,	)	
vs.	)	
	)	
Jenkins Plumbing Company, LC, Caryl Mechanicals II, Inc., L&M Electric, Inc., Unique Stone Creations, M&L General Construction, Inc., Alpha Omega Construction Group, Inc., and ASC Services and Supply, Inc.,	)	
	)	
Third-Party Defendants.	)	

TO: NAMED THIRD-PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Third-Party Complaint contained in the Answer of D.R. Horton, Inc. to Plaintiff's Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Third-Party Complaint on the subscriber hereto at this office at 325 W. McBee Avenue, Suite 301, Greenville, South Carolina, 29601, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

[signature page follows]

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KENISON, DUDLEY & CRAWFORD, LLC

s/David L. Paavola
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August 9, 2024
Greenville, South Carolina

ELECTRONICALLY FILED - 2024 Aug 09 2:24 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4003510

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Sherman and Claudia Howell, Plaintiff, vs. D.R. Horton, Inc., Defendant.	)	IN THE COURT OF COMMON PLEAS 2024-CP-40-03510 **D.R. HORTON INC.'S ANSWER AND THIRD-PARTY COMPLAINT**
D.R. Horton, Inc., Third-Party Plaintiff, vs. Jenkins Plumbing Company, LC, Caryl Mechanicals II, Inc., L&M Electric, Inc., Unique Stone Creations, M&L General Construction, Inc., Alpha Omega Construction Group, Inc., and ASC Services and Supply, Inc., Third-Party Defendants,	)	

TO: ATTORNEYS FOR PLAINTIFF AND THIRD-PARTY DEFENDANTS:

D.R. Horton, Inc. ("Defendant" or "D.R. Horton") hereby asserts a third-party complaint and answers the Complaint of Plaintiffs Sherman and Claudia Howell ("Plaintiff"), as set forth below, by denying each and every allegation not specifically admitted, demanding strict proof thereof, and further responding as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted is denied.

2. Upon information and belief, Defendant admits the allegations of Paragraph 1 of the Complaint.

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3. Defendant admits the allegations of Paragraph 2 of the Complaint.

4. Paragraphs 3 and 4 of the Complaint call for legal conclusions which can neither be admitted nor denied. To the extent a response is required, Defendant denies same.

5. Defendant admits the allegations of Paragraphs 5 and 6 of the Complaint.

6. Defendant is without information or belief sufficient to admit or deny the allegations of Paragraphs 7 through 9 of the Complaint and, therefore, denies same.

7. Paragraphs 10 and 11 of the Complaint call for legal conclusions which can neither be admitted nor denied. To the extent a response is required, Defendant denies same.

8. Defendant denies the allegations of Paragraphs 12 through 14 of the Complaint.

9. Responding to Paragraphs 15 through 19, Defendant refers to inspection reports and email communications, which speak for themselves, and denies any allegations inconsistent therewith.

10. Responding to Paragraph 20, Defendant refers to the referenced report, which speaks for itself and denies any allegations inconsistent therewith.

11. Defendant denies the allegations of Paragraphs 21 through 25 of the Complaint.

12. Responding to Paragraph 26 of the Complaint, Defendant refers to the purchase and sale agreement, which speaks for itself, and denies any allegations inconsistent therewith.

13. Defendant denies the allegations of Paragraphs 27 through 28.

14. Defendant is without information or belief sufficient to admit or deny the allegations of Paragraphs 29 and 30 of the Complaint, and, therefore, denies same.

15. Paragraphs 31 through 33 of the Complaint call for legal conclusions which can neither be admitted nor denied. To the extent a response is required, Defendant denies same.

16. Defendant is without information or belief sufficient to admit or deny the allegations of Paragraphs 34 and 35 of the Complaint, and, therefore, denies same.

17. Defendant denies the allegations of Paragraph 36 of the Complaint.

18. Paragraphs 37 and 38 of the Complaint call for legal conclusions which can neither be admitted nor denied. To the extent a response is required, Defendant denies same.

19. Defendant is without information or belief sufficient to admit or deny the allegations of Paragraph 39 of the Complaint, and, therefore, denies same.

20. Defendant denies the allegations of Paragraphs 40 through 43 of the Complaint.

21. Paragraph 44 of the Complaint is an administrative paragraph to which no response is required. To the extent a response is required, Defendant realleges and reasserts its answers and defenses to the prior allegations of the Complaint.

22. Defendant denies the allegations of Paragraphs 45 through 47 (including subparts) of the Complaint.

23. Paragraph 48 of the Complaint is an administrative paragraph to which no response is required. To the extent a response is required, Defendant realleges and reasserts its answers and defenses to the prior allegations of the Complaint.

24. Defendant denies the allegations of Paragraphs 49 through 52 (including subparts) of the Complaint.

25. Paragraph 53 of the Complaint is an administrative paragraph to which no response is required. To the extent a response is required, Defendant realleges and reasserts its answers and defenses to the prior allegations of the Complaint.

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26. Responding to Paragraphs 54 through 56 of the Complaint, Defendant refers to the purchase and sale agreement, which speaks for itself, and denies any allegations inconsistent therewith.

27. Defendant denies the allegations of Paragraphs 57 through 59 of the Complaint.

28. Paragraph 60 of the Complaint is an administrative paragraph to which no response is required. To the extent a response is required, Defendant realleges and reasserts its answers and defenses to the prior allegations of the Complaint.

29. Defendant denies the allegations of Paragraphs 61 through 72 (including subparts) of the Complaint.

30. Paragraph 73 of the Complaint is an administrative paragraph to which no response is required. To the extent a response is required, Defendant realleges and reasserts its answers and defenses to the prior allegations of the Complaint.

31. Responding to Paragraphs 74 and 75 of the Complaint, Defendant refers to the purchase and sale agreement, which speaks for itself, and denies any allegations inconsistent therewith.

32. Defendant denies the allegations of Paragraphs 76 through 79 of the Complaint.

33. Paragraph 80 of the Complaint is an administrative paragraph to which no response is required. To the extent a response is required, Defendant realleges and reasserts its answers and defenses to the prior allegations of the Complaint.

34. Defendant denies the allegations of Paragraphs 81 through 89 of the Complaint.

35. Paragraph 90 of the Complaint is an administrative paragraph to which no response is required. To the extent a response is required, Defendant realleges and reasserts its answers and defenses to the prior allegations of the Complaint.

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36. Defendant denies the allegations of Paragraphs 91 through 99 of the Complaint.

37. Defendant denies all remaining allegations of the Complaint, including Plaintiff's prayer for relief as set forth in the WHEREFORE Paragraph. Defendant prays that this against Defendant be dismissed.

FOR A SECOND DEFENSE
(Arbitration)

38. Defendant moves to dismiss this action pursuant to Rule 12(b)(6) SCRCP, or alternatively, stay this action as the Contract entered into by the parties contains a binding and enforceable arbitration agreement. Therefore, this Court does not have jurisdiction to hear this matter. Thus, Defendant alleges that this action should be stayed pending arbitration agreements made with Defendant regarding this matter.

FOR A THIRD DEFENSE
(Lack of Standing)

39. Plaintiff lacks standing to make the claims asserted against Defendant in this action.

FOR A FOURTH DEFENSE
(Failure to State a Claim or Cause of Action)

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

41. Plaintiff fails to state a cause of action against Defendant.

FOR A FIFTH DEFENSE
(Laches, Estoppel, Waiver)

42. That all claims asserted against Defendant are barred by the equitable doctrines of laches, waiver, and/or estoppel.

FOR A SIXTH DEFENSE
(Spoliation)

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

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FOR A SEVENTH DEFENSE
(Unclean Hands)

Plaintiff's claims against Defendant are barred by the Doctrine of Unclean Hands.

FOR AN EIGHTH DEFENSE
(Negligence of Others)

44. Defendant alleges that the direct and proximate cause of Plaintiff's damages, if any, were the negligence, gross negligence, wanton and reckless conduct of some other person or corporation, and accordingly, Defendant is not liable to Plaintiff.

FOR A NINTH DEFENSE
(Contributory/Comparative Negligence)

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

FOR A TENTH DEFENSE
(Offset)

46. Defendant is entitled to offset in the amount of any and all damages recovered by the Plaintiff from others for the same injuries and/or damages claimed in this suit.

FOR AN ELEVENTH DEFENSE
(Statute of Limitations and Repose)

47. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and/or statute of repose.

FOR A TWELFTH DEFENSE
(Mitigate Damages)

48. Defendant alleges that Plaintiff had an obligation to mitigate damages but failed to do so.

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FOR A THIRTEENTH DEFENSE
(Compliance with Industry Standards)

49. Any and all materials, work or services provided by Defendant met all relevant industry customs, practices and standards.

FOR A FOURTEENTH DEFENSE
(Acceptance of Work)

50. That the final completion and acceptance of the work undertaken by Defendant constituted a defense to all claims asserted by Plaintiff.

FOR A FIFTEENTH DEFENSE
(Proximate Cause)

51. Even if Defendant was negligent or in breach, Defendant alleges that Plaintiff's claims are barred due to the lack of proximate cause between Plaintiff's alleged damages and the alleged actions/inactions of Defendant.

FOR A SIXTEENTH DEFENSE
(Scope of Work)

52. Defendant's obligations to Plaintiff are limited to the services provided pursuant to Defendant's scope of work; therefore, to the extent that any of Plaintiff's claims include allegations against Defendant that are outside the scope of services and work performed by Defendant, those claims are barred.

FOR A SEVENTEENTH DEFENSE
(Limitation of Warranty)

53. Plaintiff's claims are, upon information and belief, barred as Plaintiff failed to make a claim against Defendant within the applicable warranty period and would be reduced to the extent that Defendant provided a limited warranty which was in lieu of all other warranties.

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FOR AN EIGHTEENTH DEFENSE
(Intervening/ Superseding Cause)

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

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

56. Defendant asserts that, even if it was negligent, any negligent acts were the result of negligent supervision by third parties, including those named in this action and unknown at this time.

FOR A NINETEENTH DEFENSE
(Legal Duty)

57. Defendant owed no legal duty as a matter of law to the Plaintiff.

FOR A TWENTIETH DEFENSE
(Punitive Damages)

58. Defendant would show that if the Plaintiff is making any claim for punitive damages, such violates the due process and equal protection laws of the United States Constitution and the Constitution of South Carolina.

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

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60. Defendant would show that any award of punitive damages is subject to the limitations set forth in S.C. Code § 15-32-530.

FOR A TWENTY-FIRST DEFENSE
(Workmanlike Manner)

61. Defendant asserts that all work performed was done in workmanlike manner and, therefore, no breach of warranty may exist.

FOR A TWENTY-SECOND DEFENSE
(Condition Precedent)

62. To the extent Plaintiff alleges Defendant has any obligation as to which full performance has not been rendered or excused, Plaintiff failed to satisfy all conditions precedent to said obligations or duties occurred and, therefore, Plaintiff's claims are barred.

FOR A TWENTY-THIRD DEFENSE
(Right to Cure)

63. Should Plaintiff have already repaired any of the alleged defects without first providing an opportunity to inspect and cure to Defendant, Defendant moves pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810, et seq.

FOR A TWENTY-FOURTH DEFENSE
(Additional Affirmative Defenses)

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

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FURTHER ANSWERING PLAINTIFF'S COMPLAINT AND BY WAY OF THIRD-PARTY COMPLAINT

65. Defendant repeats and re-alleges the foregoing paragraphs consistent with this cause of action as if fully stated verbatim herein.

66. Defendant contracted with Jenkins Plumbing Company, LC, Caryl Mechanicals II, Inc., L&M Electric, Inc., Unique Stone Creations, M&L General Construction, Inc., Alpha Omega Construction Group, Inc., and ASC Services and Supply, Inc., ("Subcontractors") to provide certain labor and materials (the "Work") concerning the home located at 564 Pine Knot Drive, Blythewood, South Carolina (the "Home") (the "Agreements").

67. The Home is the subject of Plaintiff's lawsuit.

68. Pursuant to the Agreements, the Subcontractors agreed to perform their work on the Home in a good and workmanlike manner.

69. Subcontractors were aware of the need and the importance of performing the Work in accordance with contract requirements, industry standards, and/or building code requirements so as to avoid construction defects.

70. Plaintiff has filed a Complaint against Defendant seeking damages related to the design and construction of the Home, alleging that i-joists, roof, flashing, roof trusses, siding, and stone veneer cladding were designed, constructed, or installed defectively.

71. Plaintiff's Complaint implicates Subcontractors' Work.

72. Plaintiff's allegations contend that the Work provided by Subcontractors was negligent and/or grossly negligent, such that if proven to be true, Subcontractors have failed to meet the requirements of the Agreements, including failing to construct the home and provide materials in accordance with contract requirements, industry standards, and/or building code requirements so as to avoid construction defects.

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73. The Agreements contained an indemnification clause, wherein the Subcontractors agreed to indemnify Defendant for claims and lawsuits related to or caused by Subcontractors' Work.

74. Defendant has fully satisfied and performed all requirements associated with the Agreements.

75. Although Defendant is without fault, by virtue of the alleged acts and omissions of Subcontractors, Defendant has been subjected to suit and to the costs, expenses, attorneys' fees, and other damages set forth more fully below.

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

76. Defendant repeats and re-alleges the foregoing paragraphs consistent with this cause of action as if fully stated verbatim herein.

77. Plaintiff has sued Defendant claiming damages related to the Work performed by Subcontractors.

78. Subcontractors contracted with Defendant to perform certain construction services and furnish certain materials for the Home. Subcontractors' Work on the Home for Defendant gave rise to contractual and common law duties in tort and/or warranty.

79. Plaintiff has alleged that these certain deficiencies in the Work of Subcontractors have caused damages.

80. Defendant is informed and believes that if, in fact, Plaintiff is entitled to recover under the allegations of the Complaint, that the allegations are the result of the wrongful acts omissions, negligence, gross negligence, and/or representations of Subcontractors, all of which are contrary to the Agreements and statutory and common laws of the State of South Carolina.

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81. To the extent, if any, that Defendant is held liable to Plaintiff in this action, such liability would be the direct and proximate result of the wrongful acts, errors, and/or omissions, negligence and/or gross negligence of the Subcontractors, which has damaged Defendant as it has been subjected to liability and has incurred consequential damages in incurring the attorneys' fees and costs necessary to defend this action.

82. Pursuant to the Agreements with Defendant, the Subcontractors agreed to insure, defend, and indemnify Defendant from damages arising out of the Subcontractors' Work on the Home.

83. Defendant is entitled to a judgment for full contractual indemnification from any liability Defendant is found to have to Plaintiff in this action, and Defendant would be entitled to damages for the acts, errors, and/or omissions, negligence and/or gross negligence of the Subcontractors, as described hereinabove, entitling Defendant to recover from Subcontractors its attorneys' fees, costs, and any and all other expenses associated with defending this action as well as any sums for which it may be held liable to Plaintiff, whether by judgment, compromise, settlement, or otherwise.

84. If Subcontractors' Work was defective, Subcontractors breached their contractual and common law duties to Defendant and caused it damages at the time Subcontractor performed their Work. Subcontractors' allegedly deficient work gave rise to causes of action in favor of Defendant against Subcontractors at the time the work was performed and caused Defendant damages, which would not become apparent for years. Those damages include extra workload, repair or repair costs of the defective work, previously unknown breaches of Defendant's common law duties, express and implied warranties, and contractual relationships with other parties, costs

of investigation, damage and harm to reputation, and potentially attorneys' fees and litigation costs incurred due to Subcontractor's defective, latent, and previously unknown errors.

85. The alleged acts or omissions of Subcontractors are the independent, active, primary, superseding, and/or intervening cause of damages allegedly suffered by Plaintiff, and any wrongful acts or omissions by Defendant, which are expressly denied, were passive and secondary only.

FOR A SECOND CAUSE OF ACTION
(Equitable Indemnification as to Subcontractors)

86. Defendant repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

87. Plaintiff has sued Defendant claiming damages related to the Home and such claims include allegations based upon the Work performed by Subcontractors.

88. Defendant has denied all substantive allegations against it that were made by Plaintiff.

89. A sufficient special relationship exists between Defendant and Subcontractors.

90. Defendant is informed and believes that if, in fact, Plaintiff is correct in its allegations that construction defects or product defects exist, those defects existed at the time of Subcontractors' work and Defendant was and is entitled to recover against Subcontractors for the cost of that defective work if the result of the wrongful acts, omissions, negligence, gross negligence, and/or representations of Subcontractor, all of which are contrary to the statutory and common laws of the State of South Carolina.

91. To the extent, if any, that Subcontractors' work or products were defective or that Defendant is held liable to Plaintiff in this action, damages and/or liability would be the direct and proximate result of the alleged wrongful acts, errors, and/or omissions, negligence and/or gross

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negligence of Subcontractors, which have damaged Defendant as it has an alleged obligation to repair or pay for a repair of the defective conditions or has been subjected to liability and has incurred consequential damages in incurring the attorneys' fees and costs necessary to defend this action.

92. To the extent, if any, that Defendant is held liable to Plaintiff in this action, the alleged acts or omissions of Subcontractor are the independent, active, primary, superseding, and/or intervening causes of damages allegedly suffered by Plaintiff, and any wrongful acts or omissions by Defendant, which are expressly denied, were passive and secondary only.

93. Defendant is entitled to a judgment for full common law indemnification from Subcontractor for any liability Defendant is found to have to Plaintiff in this action, and Defendant would be entitled to damages for the acts, errors, and/or omissions, negligence and/or gross negligence of Subcontractors as afore described, entitling Defendant to recover from Subcontractors including, but not limited to, its attorneys' fees, costs, any and all other expenses associated with defending this action as well as any sums for which it may be held liable to Plaintiff, whether by judgment, compromise, settlement, or otherwise, extra workload, repair or repair costs of the defective work, previously unknown breaches of Defendant's common law duties, express and implied warranties, and contractual relationships with other parties, costs of investigation, and damage and harm to reputation.

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

94. Defendant repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

95. Subcontractors were contractually responsible for performing the requirements in the Agreements correctly.

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96. To the extent that Plaintiff proves that the Work was not performed correctly, Subcontractors materially breached the Agreements in failing to perform the Work in accordance with contract requirements, industry standards, and/or building code requirements so as to avoid construction defects.

97. Defendant is entitled to judgment against Subcontractors for breach of contract plus costs, expenses, attorneys' fees, and other damages associated therewith.

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

98. Defendant repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

99. Subcontractors made express warranties that any materials, installation, and workmanship they performed at the Home were proper as required by the Agreements, applicable building codes, and industry standards.

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

101. As a direct, foreseeable and proximate result of Subcontractor's breach of express warranties, Defendant has been damaged in that it was deprived of the benefit of the bargain, has and will suffer substantial damages in defending this action by Plaintiff, and has suffered damaged to its professional reputation among other damages herein.

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

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FOR A FIFTH CAUSE OF ACTION
(Breach of Implied Warranties as to Subcontractors)

103. Defendant repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

104. Subcontractors made implied warranties, specifically, warranties of workmanlike service, habitability, merchantability and fitness for a particular purpose.

105. If materials, installation, workmanship, and/or work requirements were not in accordance with contract requirements, industry standards, and/or building code requirements, then Subcontractors have materially breached the implied warranties of workmanlike service, habitability, merchantability and fitness for a particular purpose by failing to provide the proper results required under the Agreements.

106. Subcontractors were aware that Defendant's intention was to build the Home in accordance with contract requirements, industry standards, and/or building code requirements so as to avoid construction defects.

107. Subcontractors were aware that Defendant was relying on their expectations under the Agreements to be met.

108. Since the Agreements contained requirements to build the Home in accordance with contract requirements, industry standards, and/or building code requirements so as to avoid construction defects, Defendant relied on Subcontractors to meet these requirements.

109. As a direct, foreseeable and proximate result of Subcontractors' breach of implied warranties, Defendant has been damaged in that it was deprived of the benefit of the bargain, has and will suffer substantial damages in defending this action by Plaintiff, damages in the amount necessary to repair any construction deficiencies, and has suffered damaged to its professional reputation among other damages herein.

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110. Defendant is entitled to judgment against Subcontractors for breach of the implied warranties of workmanlike service, habitability, merchantability and fitness for a particular purpose, along with costs, expenses, attorneys' fees, and other damages associated therewith.

FOR A SIXTH CAUSE OF ACTION
(Negligence/Gross Negligence/Recklessness as to Subcontractors)

111. Defendant repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

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

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

114. Defendant have been damaged as a direct and foreseeable and proximate result of Subcontractor's negligence/gross negligence/recklessness, in that, among other damages, Defendant was deprived of the benefit of the bargain, has and will suffer substantial damages in defending this action by Plaintiff, and has suffered damages to its professional reputation, and Defendant is entitled to judgment against Subcontractors for its damages, including costs, expense, attorneys' fees, and other damages associated therewith and set forth herein.

FOR A SEVENTH CAUSE OF ACTION
(Compel Arbitration)

115. Defendant repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

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116. Valid and enforceable agreements exist between Plaintiff, Defendant, and Subcontractors.

117. Such agreements contain binding and enforceable arbitration agreements.

118. This Court does not have jurisdiction to hear this matter.

119. This action should be staying pending arbitration.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant D.R. Horton, Inc. prays for:

(a) Dismissal of Plaintiff's Complaint and all causes of action contained therein, with prejudice, and an award to Defendant of its attorneys' fees, costs, and other expenses incurred in defending this action;

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

(c) On Defendant's Third, Fourth, and Fifth Causes of Action, judgment for Defendant and against Subcontractors in an amount to be determined at trial;

(d) On Defendant's Sixth Cause of Action, judgment for Defendant and against Subcontractors awarding actual, special, consequential and punitive damages in an amount to be determined at trial;

(e) On Defendant's Seventh Cause of Action, an Order compelling the arbitration claims and staying this action pending such arbitration;

(f) Attorneys' fees;

(g) Costs of this action; and

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

[signature page follows]

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KENISON, DUDLEY & CRAWFORD, LLC

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August 9, 2024
Greenville, South Carolina

ELECTRONICALLY FILED - 2024 Aug 09 2:24 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4003510

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Sherman and Claudia Howell, Plaintiff, vs. D.R. Horton, Inc., Defendant.	IN THE COURT OF COMMON PLEAS 2024-CP-40-03510 **DEFENDANT D.R. HORTON, INC.'S NOTICE OF AND MOTION TO STAY ACTION AND COMPEL ARBITRATION**
D.R. Horton, Inc., Third-Party Plaintiff, vs. Jenkins Plumbing Company, LC, Caryl Mechanicals II, Inc., L&M Electric, Inc., Unique Stone Creations, M&L General Construction, Inc., Alpha Omega Construction Group, Inc., and ASC Services and Supply, Inc., Third-Party Defendants,	

TO: ATTORNEYS FOR PLAINTIFF AND THIRD-PARTY DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE THAT Defendant D.R. Horton Inc. ("D.R. Horton") by and through its undersigned counsel, will move this Court for an Order to Stay this Action and Compel Arbitration pursuant to the South Carolina Uniform Arbitration Act (S.C. Code § 15-48-10, *et seq.*), the Federal Arbitration Act (9 U.S.C. §1, *et seq.*), and the grounds set forth in this Motion. Said Motion will be heard within ten (10) days or at such time and place as may be set by the Court thereafter in the Court of Common Pleas, State of South Carolina, County of Richland, of which you will be notified.

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D.R. Horton moves pursuant to the terms of signed contractual agreements for an Order to Stay this Action and Compel Arbitration. In support of this motion, D.R. Horton shows the court as follows:

1. On or around December 29, 2021, Plaintiffs Sherman and Claudia Howell ("Plaintiffs") entered into a contract with D.R. Horton (the "Homeowner Contract") for the purchase of a home located at 564 Pine Knot Road, Blythewood, South Carolina (the "Home").

2. The Homeowner Contract provides that: PURCHASER AND SELLER SHALL SUBMIT TO BINDING ARBITRATION ANY AND ALL DISPUTES WHICH MAY ARISE BETWEEN THEM REGARDING THIS AGREEMENT AND/OR THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY DISPUTES REGARDING: (A) SELLER'S CONSTRUCTION AND DELIVERY OF THE HOME …."

3. When entering into the Homeowner Contract, Plaintiffs each initialed beneath this provision.

4. Jenkins Plumbing Company, LC, Caryl Mechanicals II, Inc., L&M Electric, Inc., Unique Stone Creations, M&L General Construction, Inc., Alpha Omega Construction Group, Inc., and ASC Services and Supply, Inc. (collectively, "Subcontractors") entered into independent contractor agreements ("ICAs") with D.R. Horton for Subcontractors to provide certain labor and materials.

5. The ICAs provide that "[a]ll disputes…shall be subject to Alternative Dispute Resolution…." including mediation and arbitration.

6. Plaintiffs have filed the underlying action, asserting claims against D.R. Horton for alleged defective work/materials during the construction of the Home.

7. D.R. Horton has filed a Third-Party Complaint, asserting claims against Subcontractors under the ICAs and related to the alleged defective work/materials during the construction of the Home.

8. D.R. Horton has not engaged in any discovery since the filing of this action.

9. D.R. Horton requests that this action now be submitted to arbitration, as required by the Homeowner Contract and the ICAs, and that this matter be stayed pending the resolution of the claims between the parties, including, but not limited to, discovery in the case.

Prior to the filing of this Motion, the undersigned consulted with Plaintiffs' counsel prior to filing this motion in an effort to resolve the motion. Counsel for Third-Party Defendants have not appeared in this case.

This Motion is supported by the pleadings on file with this Court, both federal and state laws and statutes, and whatever memoranda of law or certified documents that may be submitted to this Court.

KENISON, DUDLEY & CRAWFORD, LLC

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August 9, 2024
Greenville, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Sherman and Claudia Howell, Plaintiff, vs. D.R. Horton, Inc., Defendant	)	CASE NO. 2024-CP-40-03510
D.R. Horton, Inc. Third-Party Plaintiff, vs. Jenkins Plumbing Company, LLC, Caryl Mechanicals II, Inc., L&M Electric, Inc., Unique Stone Creations, M&L General Construction, Inc., Alpha Omega Construction Group, Inc., and ASC Services and Supply, Inc. Third-Party Defendants.	)	

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT D.R. HORTON, INC.'S MOTION TO STAY ACTION AND COMPEL ARBITRATION

Plaintiffs, Sherman and Claudia Howell ("Plaintiffs" or the "Howells"), submit this Memorandum in Opposition to the Motion to Stay this Action and Compel Arbitration ("Motion") of Defendant D.R. Horton, Inc. ("Defendant" or "D.R. Horton"). The Motion should be denied for the same reasons the Circuit Court in *Zitek et al. v. D.R. Horton, Inc., et al*. refused to compel arbitration under the same type of agreement. **Exhibit A**, Order Denying D.R. Horton Arbitration Motion, Case No. 2019-CP-04-1942 (S.C. Com. Pl.) (Hon. J. Cordell Maddox, Jr. January 27, 2021) (Anderson County); *see also, Upchurch v. D.R. Horton*, 2005 WL 5621497, at *3 (S.C. Com. Pl.) (Hon. James R. Barber, III, September 28, 2005, Order Denying D.R. Horton's Arbitration Motion) (Richland County) ("The arbitration clause did not survive the closing.").

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In *Zitek*, the Circuit Court held that the doctrine of merger bars the enforceability of the arbitration provision in Defendant's form contract. Separately, the Circuit Court ruled that Defendant's arbitration provision is unconscionable and unenforceable. This Court should deny D.R. Horton's Motion for the same reasons.

FACTS

Plaintiffs own a D.R. Horton built home located in the Villages at Long Cove Subdivision in Blythewood, South Carolina ("Residence" or "Home'). Plaintiffs signed D.R. Horton's form purchase and sale agreement for the Residence on December 29, 2021 that is attached hereto as **Exhibit B** ("Agreement"). The Agreement contains a one-sided, unconscionable arbitration provision that significantly favors the Defendant.[1]

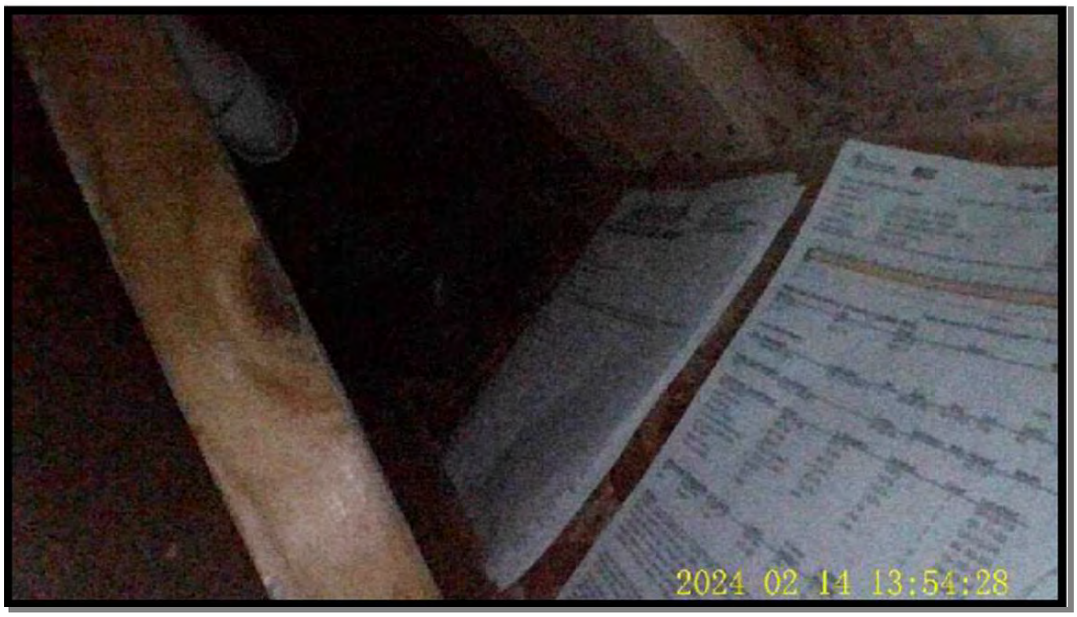
Before Plaintiffs purchased the Residence, D.R. Horton tried to sell the property to Thomas Simmons and his wife, other prospective buyers. Compl. ¶¶ 13-16; **Exhibit C**, Affidavit of Thomas Simmons**,** ¶ 2. Mr. Simmons informed D.R. Horton of defects in the installation of the I-Joists supporting the second floor of the Home. *Id*. at 13-19; Ex. C, ¶ 8. The Richland County Inspector required D.R. Horton to repair the defects, and the manufacturer of the I-Joists prepared a scope of repair. Compl., ¶¶ 13-16, 20-23 Ex. C, ¶ 10. The scope of repair was stapled to the defective I-Joists and drywalled over, with no repairs completed. **Exhibit D**, Affidavit of John Wylie, P.E., ¶ 5. The Simmons terminated the purchase agreement with D.R. Horton, because they were not given an opportunity to verify that the repairs to the I-Joists were made before the drywall was installed. Compl., ¶24; Ex. C, ¶ 21.

[1] The copy of the Agreement the Howells possess is not signed by an authorized D.R. Horton representative and D.R. Horton has not yet submitted a fully executed copy of the Agreement for the Court's consideration.

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Later, D.R. Horton contracted to sell the Residence to the Howells. Compl., ¶¶ 25-26. Before closing, the Howells asked D.R. Horton why the prospective buyers did not buy the Home. Compl., ¶ 29. In response, D.R. Horton told the Howells words to the effect that the prospective buyer "could not get financing." *Id*.; **Exhibit E**, Affidavit of Sherman Howell, ¶ 4. This was a lie. Compl., ¶ 30; Ex. E, ¶ 9. The Howells received a deed from D.R. Horton and closed on the property on or about February 3, 2022. *See* **Exhibit F** ("Deed").[2]

After closing, the Howells noticed that when walking on the second story of the Home, the floor vibrated. Ex. D, Ex. 2, p. 3. The Howells' attorneys hired John Wylie, P.E. to perform destructive testing and a visual inspection. Ex. D, ¶ 2. Engineer Wylie inspected the structural I-Joists between the first and second floors of the Home. He found the manufacturer's scope of repair stapled over the defective I-Joists , as reflected in the photograph below. Ex. D, ¶ 5. None of the recommended repairs had been completed. Ex. D, ¶¶ 7-8.



Compl., ¶ 35; Ex. D, ¶ 5.

[2] Recorded at Deed Book 2713, Page 3737 in the Richland County Register of Deeds Office.

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Page 1 of the Agreement provides that it is subject to arbitration "pursuant to the South Carolina Uniform Arbitration Act, Sections 14-48-10 *et seq.*, South Carolina Code of Laws (1976, As Amended)."[3] The arbitration provision that D.R. Horton is attempting to enforce is at the bottom of page 6 and top of page 7 of this 39-page Agreement:

> **15. MANDATORY BINDING ARBITRATION.** PURCHASER AND SELLER SHALL SUBMIT TO BINDING ARBITRATION ANY AND ALL DISPUTES WHICH MAY ARISE BETWEEN THEM REGARDING THIS AGREEMENT AND/OR THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY DISPUTES REGARDING: (A) SELLER'S CONSTRUCTION AND DELIVERY OF THE HOUSE; (B) SELLER'S PERFORMANCE UNDER ANY PUNCH LIST OR INSPECTION AGREEMENT; AND (C) **THE LIMITED WARRANTY PURSUANT TO SECTION 14 ABOVE**. THE ARBITRATION SHALL TAKE PLACE IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED. THE PROCEEDING SHALL BE CONDUCTED PURSUANT TO THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION AND, TO THE EXTENT POSSIBLE, UNDER RULES WHICH PROVIDE FOR AN EXPEDITED HEARING. THE FILING FEE FOR THE ARBITRATION SHALL BE PAID BY THE PARTY FILING THE ARBITRATION DEMAND, BUT THE ARBITRATOR SHALL HAVE THE RIGHT TO ASSESS OR ALLOCATE THE FILING FEES AND ANY OTHER COSTS OF THE ARBITRATION AS A PART OF THE ARBITRATOR'S FINAL ORDER. THE ARBITRATION SHALL BE BINDING AND FINAL, AND EITHER PARTY SHALL HAVE THE RIGHT TO SEEK JUDICIAL ENFORCEMENT OF THE ARBITRATION AWARD. **NOTWITHSTANDING ANY OTHER PROVISION HEREIN, ANY DISPUTES ARISING UNDER THE LIMITED WARRANTY SHALL BE MEDIATED, ARBITRATED AND/OR JUDICIALLY RESOLVED PURSUANT TO THE TERMS, CONDITIONS, PROCEDURES AND RULES OF THE LIMITED WARRANTY**. . . .

Exh. A, pp. 6-7 (emphasis added).

Paragraph 14 of the Agreement, incorporated by reference into the arbitration provision, describes D.R. Horton's putative warranties and unconscionably attempts to disclaim any of D.R. Horton's warranties and relieve D.R. Horton of all liability for "monetary damages of any kind."

[3] The notice that the claim is subject to arbitration on the first page of the Agreement is incorrect, in that the South Carolina Uniform Arbitration Act can be found in Title 15, not Title 14, of the South Carolina Code.

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14. WARRANTIES AND DISCLAIMER.

a. **Ten-Year Limited Warranty**. Seller shall provide Buyer with a written, ten-year limited warranty on the House administered by Residential Warranty Corporation ("*RWC*") which shall be effective as of the Closing Date. The terms and conditions of, and exclusions from, the ten-year limited warranty shall be as set forth in that document published by RWC entitled, "LIMITED WARRANTY, 10 YEAR LIMITED WARRANTY FOR NEW HOMES," and referred to herein as the "*Limited Warranty*." At Closing, Seller shall deliver to Buyer the documentation necessary for Buyer to obtain the actual Limited Warranty for the House from RWC.

b. Manufacturers' Warranties. At Closing, Seller shall assign to Purchaser all warranties, expressed or implied, which are given by the manufacturer of any appliance or product installed in the House.

c. Disclaimer and Limitation on Seller's Liability. THE LIMITED WARRANTY GIVEN TO PURCHASER BY SELLER PURSUANT TO SUBSECTION 14a ABOVE IS TO THE EXCLUSION OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND **SELLER HEREBY DISCLAIMS ANY AND ALL SUCH OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF HABITABILITY, MERCHANTABIITY OR FITNESS FOR A PARTICULAR PURPOSE**. IN ADDITION, SELLER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING THE PAST, PRESENT OR FUTURE CONDITION OR USE OF ANY LANDS OR AREAS SURROUNDING THE PROPERTY OR IN THE VICINITY OF THE PROPERTY. **AFTER CLOSING, SELLER SHALL HAVE NO LIABILITY OR OBLIGATION TO PURCHASER OF ANY NATURE WHATSOEVER** EXCEPT AS PROVIDED IN THIS SECTION 14 OF THIS AGREEMENT, IN SECTION 9(d) ABOVE AND IN SELLER'S DEED TO PURCHASER. EXCEPT AS OTHERWISE PROVIDED IN THE LIMITED WARRANTY, **SELLER SHALL NOT BE LIABLE FOR ANY REASON, UNDER ANY CIRCUMSTANCES, TO PURCHASER OR ANYONE CLAIMING THROUGH PURCHASER FOR MONETARY DAMAGES OF ANY KIND, INCLUDING SECONDARY, CONSEQUENTIAL, PUNITIVE, GENERAL, SPECIAL, OR INDIRECT DAMAGES.**

Exh. A, p. 6 (emphasis added).

The Agreement does not contain a survival clause that applies to the arbitration provision. It does not say D.R. Horton's warranty disclaimers do not apply in certain jurisdictions. Likewise, the Deed from D.R. Horton to the Howells contains no arbitration or similar provision.

LAW & ANALYSIS

Trial courts decide whether a valid agreement to arbitrate exists. *See, e.g.*, *Coinbase, Inc. v. Suski*, 144 S. Ct. 1186, 1193 (2024) (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69, 139 S. Ct. 524, 530 (2019)) ("The court determines whether a valid arbitration agreement exists.'"); *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 23, 644 S.E.2d 663, 667 (2007) ("The trial court should determine the threshold validity of the arbitration agreement."); S.C. Code Ann. § 15-48-20(a) (". . . if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue. . ."). The presumption in favor of arbitration does not extend to whether a valid arbitration agreement exists. *Wilson v. Willis*, 426 S.C. 326, 337, 426 S.E.2d 167, 173 (2019). "General contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause." *Simpson*, 373 S.C. at 24, 644 S.E.2d at 668.

Under the law, there is no valid agreement to arbitrate among the parties for two reasons. First, under the Doctrine of Merger, a fully executed deed supersedes all earlier agreements leading up to the execution of the deed. Second, even if this were not the case, the terms of the putative *arbitration agreement* are unconscionable and thus unenforceable as a matter of law.

A. Arbitration Clause Merged into Deed

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

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v. Landstrom, 281 S.C. 260, 264, 315 S.E.2d 130, 132 (Ct. App. 1984) *quoting Charleston & W. C. Ry. Co. v. Joyce*, 231 S.C. 493, 504, 99 S.E.2d 187 (1957). In other words, once parties execute a deed ". . . the written . . . agreement to convey is merged in the deed, the agreement to convey is discharged or is modified as indicated by the deed, the deed regulates the rights and liabilities of the parties, and [prior] agreement[s] [are] inadmissible." *Charleston & W. C. Ry. Co.*, 231 S.C. at 505, 99 S.E.2d at 193; *Wilson*, 281 S.C. at 264, 315 S.E.2d at 132 ("A deed executed [after a] contract for the sale of land supersedes that contract. . .").

South Carolina first recognized the merger doctrine in 1885, when St. Phillip's Church sought to enforce a provision in an agreement between it and Zion Presbyterian Church, in which the parties agreed that the purchase property must be home to a Presbyterian church. *St. Philip's Church v. Zion Presbyterian Church*, 23 S.C. 297, 300 (1885). Because the provision limiting the use of the land was included in a lease agreement between the parties but not included in the later deed, the Supreme Court of South Carolina refused to enforce the provision, holding that the two agreements "merged, and that the conditions annexed to the lease were extinguished" by the subsequent deed. *Id.* at 307.

As explained in greater detail below, this Court should follow the highly persuasive authority that comes from the weight of at least three sister Circuit Courts in this State that have refused to enforce arbitration provisions in D.R. Horton purchase agreements and found that the arbitration provisions in the purchase agreements were extinguished by the deed. *See, e.g.*, *Smith v. D.R. Horton, Inc.*, Case No. 2010-CP-18-641 (S.C. Com. Pl.) (Hon. Edgar A. Dickson Apr. 12, 2011, Order Denying D.R. Horton's Arbitration Motion) (Dorchester County) *aff'd by,* 403 S.C 10, 742 S.E.2d 37 (Ct. App. 2013), 417 S.C. 42, 48, 790 S.E.2d 1, 4 (2016); *Zitek.*, Case No. 2019-CP-04-1942 (S.C. Com. Pl.); *Upchurch*, 2005 WL 5621497, at *3 (S.C. Com. Pl.).

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"The party denying merger has the burden of proving by clear and convincing evidence that merger was not intended." *Carlson v. South Carolina State Plastering, LLC*, 404 S.C. 250, 260, 743 S.E.2d 868, 874 (Ct. App. 2013). "Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts *a firm belief* as to the allegations sought to be established." *Anonymous (M-156-90) v. State Bd. of Med. Examiners*, 329 S.C. 371, 375, 496 S.E.2d 17, 18 (1998) (internal citations and quotations omitted) (emphasis added).

In *Carlson*, the South Carolina Court of Appeals recognized that an arbitration clause in a purchase and sale agreement for a new home may merge into the deed, however the *Carlson* court ruled that the merger doctrine was inapplicable, because clear and convincing evidence was submitted that "the parties did not intend for the arbitration clause to be superseded by the subsequently-executed deed." *Id.* at 261, 732. S.E.2d at 874. This was because *both* the *Carlson* purchase agreement and its arbitration provision contained an explicit survival clause:

> "The covenants, disclaimers and agreements contained in this Agreement shall not be deemed to be merged into or waived by the instruments executed at Closing, **but shall expressly survive the closing** and continue to be binding upon both parties. In addition, the arbitration clause in the purchase agreement specifically state[d] that "**after closing**, every controversy or claim arising out of or relating to this Agreement . . . shall be settled by binding arbitration."

Id. (ellipsis original, emphasis added). Accordingly, the *Carlson* court concluded that these "clear and unambiguous terms" evidenced "clear and convincing . . . support[ ]" for a "finding that the parties did not intend for the arbitration clause to be merged into the deed at closing." *Id.*[4]

[4] In other contexts, where South Carolina courts have found that an arbitration provision "expressly survives" and is not merged, they have consistently applied the same "clear and convincing evidence" standard in evaluating the parties' intentions. *See, e.g.*, *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 355, 755 S.E.2d 450, 455 (2014) (concluding that language in the admission agreement that "recognize[d] the 'separatedness' of the [arbitration agreement] and the admission agreement" plus a clause allowing the arbitration agreement to "be disclaimed within thirty days of signing while the admission agreement could not" indicated the parties' intention

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On the other hand, D.R. Horton can point to no such "clear and convincing" evidence of the parties' mutual intent to avoid the application of the merger doctrine to the arbitration provision in the Agreement here.

In stark contrast to the purchase agreement in *Carlson*, the Agreement uses highly restrictive language that only those obligations which explicitly and "expressly survive[ ] the Closing" would be actionable. Ex. B, ¶ 18(c) ("from *and after the closing* each party shall have the right to pursue . . . the other party for breach of any covenant or agreement contained herein ***that expressly survives the Closing*** . . .") (emphasis added).

Those portions of the Agreement that "expressly survive[ ] the Closing" are limited to the following:

- **Paragraph 9(b)**: Discussing the Howells' indemnification of D.R. Horton for pre-Closing inspections - "Notwithstanding any other provision herein, Purchaser's indemnity of Seller pursuant to this Section ***shall survive Closing*** . . ."

- **Paragraph 9(d)**: Discussing D.R. Horton's obligations to make repairs to issues memorialized on a "Punch List" inspection conducted "[a]fter substantial completion of the House *but prior to Closing*" by the "Seller and Purchaser" - "Seller's obligation to correct, repair or replace any items that are listed on the Punch List ***shall survive closing***."

- **Paragraph 10**: Providing that the Howells "shall indemnify and hold Seller harmless from and against any and all liabilities, losses, costs, damages and expenses (including attorneys' fees and expenses and costs of litigation) that Seller may suffer or incur because of any claim by any broker, agent or finder, whether or not meritorious, for any compensation with regard to this transaction arising out of any acts or contracts of Purchaser" and that "the provisions of this Section ***shall survive closing*** . . ."

"that the common law doctrine of merger not apply"); *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 562-63, 813 S.E.2d 292, 302 (Ct. App. 2018) (determining an admission agreement and arbitration agreement did not merge because "the Admissions Agreement indicated it was governed by South Carolina law, whereas the Arbitration Agreement stated it was governed by federal law," "each document was separately paginated and had its own signature page," and "the Arbitration Agreement stated signing it was not a precondition to admission" evidenced the parties' intention the documents be construed as separate instruments).

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As such, D.R. Horton cannot shoulder its heavy burden of "clear and convincing" evidence. Even still, if there are any ambiguities in the Agreement regarding whether the arbitration provision survived merger with the deed, "it is well settled that ambiguities arising within the contract must be construed against the drafter." *S. Atlantic Financial Services, Inc. v. Middleton*, 349 S.C. 77, 84, 562 S.E.2d 482, 486 (Ct. App. 2002). "This rule applies with *particular force* involving a contract of adhesion." *Id.* (emphasis added).

In conclusion, any putative arbitration provision contained within the purchase agreement was extinguished once the deed for the Home was "execut[ed], deliver[ed], and accept[ed]. *Wilson*, 281 S.C. at 264, 315 S.E.2d at 132.[5] In 1885, the Supreme Court issued its seminal decision in *St. Philip's Church* and the Doctrine of Merger has been consistently affirmed for nearly 150 years since. More recently, in 2013, the Court of Appeals issued its ruling in *Carlson* showing just how a residential builder could draft an arbitration provision that survived closing. Sister Circuit Courts in *Zitek* and *Upchurch* also held that the D.R. Horton's form arbitration agreement merged into their buyers' deeds *well before* the Howells signed the Agreement in late-2021. D.R. Horton, a large and sophisticated company represented by talented South Carolina counsel was uniquely well positioned to re-draft their form arbitration provisions to ensure they could meet the "clear and convincing" standard under applicable South Carolina law—before the Howells' transaction.

[5] "[A] court should interpret [an] agreement so as to give effect to all of its provisions." *Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C. 554, 569, 772 S.E.2d 882, 890 (Ct. App. 2015). Paragraph 18(b) of the Agreement confirms the **pre-closing** utility of the arbitration provision relied on by D.R. Horton when it speaks to dispute resolution in the event of a "Seller's Default" that occur "**prior to Closing**." Paragraph 18(b) provides that in such a *pre-closing default*, Plaintiffs would be entitled to the return of their earnest money or that they could seek "specific performance of this Agreement . . . *by instituting mandatory binding arbitration of Purchaser's claim . . . in accordance with Section 15*," styled "Mandatory Binding Arbitration."

But, D.R. Horton elected not to do so. Unlike the arbitration clause in *Carlson,* the arbitration provision here is devoid of survival terms. Exh. A. And under the Agreement, only those provisions that "expressly survive[ ] the Closing," can be enforced. *Id.* at ¶ 18(c). Other provisions of the contract include survival language, evidencing the intention that some provisions would survive while others did not. Exh. A, ¶¶ 9(b); 9(d); 10. Accordingly, D.R. Horton has not met, and cannot meet, its burden of proof by clear and convincing evidence that the parties intended for the arbitration clause to survive closing.

Accordingly, this Court should deny D.R. Horton's Motion.

B. The Arbitration Provision is Unconscionable and Unenforceable

"[A]rbitration agreements [stand] on an equal footing with other contracts." *Goodwin v. Branch Banking & Tr. Co.*, 699 F. App'x 274, 275 (4th Cir. 2017). So, like all other contracts "generally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements . . . " *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 611, 879 S.E.2d 746, 755 (2022) *reh'g denied* (Nov. 17, 2022), *cert. denied,* 143 S. Ct. 2581 (2023); *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687, 116 S. Ct. 1652, 1656 (1996) (same).

At its core, unconscionability is defined "as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 403, 472 S.E.2d 242, 245 (1996). This general description of unconscionability applies to all contract terms, including arbitration provisions. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339, 131 S.Ct. 1740, 1746 (2011).

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Unconscionability must be evaluated under two prongs: (1) lack of meaningful choice; and (2) oppressive terms. *Simpson,* 373 S.C. at 25 644 S.E.2d at 668-69; *see also* 17A Am. Jur. 2d Contracts § 272 (characterizing these two prongs as procedural and substantive unconscionability, respectively); *see also id.* § 271 ("Generally, the doctrine of unconscionability protects against unfair bargains and unfair bargaining practices. . . .").

As analyzed below, the purported arbitration provision within the Agreement fails on both substantive (one-sided and oppressive terms) and procedural (lack of meaningful choice) grounds and is, thus, unconscionable and unenforceable. Accordingly, D.R. Horton's Motion should be denied.

i. D.R. Horton's Arbitration Agreement Contains One-Sided and Oppressive Terms

"[T]o avoid arbitration, a party must assert a contractual defense to the arbitration agreement itself, and not to the contract as a whole." *Smith*, 417 S.C. at 48, 790 S.E.2d at 4 (*citing Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 406, 87 S.Ct. 1801, 1807 (1967)).

In *Smith v. D.R. Horton*, the Supreme Court of South Carolina affirmed the holdings of the Circuit Court and Court of Appeals that D.R. Horton's form arbitration provision "attempt[ing] to disclaim implied warranty claims and prohibit *any* monetary damages [is] clearly one-sided and oppressive." 417 S.C. at 48, 790 S.E.2d at 4. The trial court in *Smith*, originally confronted with a motion to compel arbitration brought by D.R. Horton, viewed the warranties and arbitration sections of the purchase contract *as an inseparable whole*, finding they "referenced that certain disputes are to be resolved by mandatory binding arbitration along with an entire host of attempted waivers of important legal remedies." *Smith, 403 S.C. at 15*; 742 S.E.2d at 40.

The trial court held the sections' collective attempt to disclaim implied warranty claims was oppressive and unconscionable. *Id.* The trial court further found "perhaps even more stark

[were] the provisions in the Limitations of Liability . . . " in which D.R. Horton claimed it could not be liable for monetary damages of any kind. *Id.* For these reasons, the trial court concluded, and our Court of Appeals and Supreme Court affirmed, that the arbitration provision was wholly unconscionable and unenforceable based on the cumulative effect of the oppressive and one-sided provisions within the purchase contract.

Following the Supreme Court's ruling in *Smith*, D.R. Horton engaged in clever wordsmithing of its standard purchase agreements, no doubt intending to have its cake of preventing future homebuyers from pursuing vindication in a court of law, while keeping its corporate appetite for "one-sided and oppressive" terms satiated. While in *Smith*, Paragraph 14 of the purchase agreement was captioned "Warranties and Dispute Resolution," here, D.R. Horton has maintained Paragraph 14, now called, "Warranties and Disclaimer," while adding Paragraph 15 expressly styled "Mandatory Binding Arbitration." Those Paragraphs incorporate each other by reference. Otherwise, the putative arbitration, warranty, and limitation of liability provisions in this case are nearly identical to the purchase and sale agreement in *Smith*, and as whole, dictate how disputes between D.R. Horton and its purchasers are to be adjudicated.

Although D.R. Horton's putative arbitration provision has graduated from being separated as a "sub-paragraph" to a paragraph separate from the one disclaiming warranties and limiting liability, this new form does not change its function.

Instead, the arbitration provision remains "intertwin[ed]," *Smith*, 417 S.C. at 48, 790 S.E.2d at 4, with the "clearly one-sided and oppressive" terms purporting to "disclaim[ ] all other warranties, expressed or implied" and allegedly absolves D.R. Horton of responsibility for "monetary damages of any kind." *Smith*, 417 S.C. at 55; 790 S.E.2d at 5.

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The following comparison of the purchase agreement in *Smith* with the Agreement illustrates:

Howells' Paragraph 15	**Paragraph 14(g) in *Smith v. D.R. Horton***
Purchaser and Seller shall submit to binding arbitration any and all disputes which may arise between them regarding this contract and/or the property, including but not limited to any disputes regarding: (a) Seller's construction and delivery of the house; (b) Seller's performance under any Punch List or Inspection Agreement; and (c) **the limited warranty pursuant to Section 14 above**. . . Notwithstanding any other provision herein, **any disputes arising under the limited warranty shall be mediated, arbitrated, and/or judicially resolved to the terms, conditions, procedures, and rules of the Limited Warranty.**	Purchaser and Seller each agree that, to the maximum extent allowed by law, they desire to arbitrate all disputes between themselves. The list of disputes which shall be arbitrated in accordance with this paragraph include, but are not limited to: (1) any claim arising out of Seller's construction of the home; (2) Seller's performance under any Punch List or Inspection Agreement; (3**) Seller's performance under any warranty contained in this Agreement**. . . If the arbitration arises out of a claim arising **under the RWC Warranty, the rules, terms and conditions in the RWC Warranty** . . . **control.**
Howells' Paragraph 14(c)	**Paragraph 14(i) in *Smith v. D.R. Horton***
The Limited Warranty given to purchaser by seller pursuant to subsection 14a above is to the exclusion of all other warranties, expressed or implied, and Seller hereby **disclaims any and all such other warranties**, express or implied, including but not limited to any warranty of habitability, merchantability or fitness for a particular purpose. . . After closing, seller shall have no liability or obligation to purchaser of any nature whatsoever except as provided except as provided in this section 14 of this agreement . . . Except as otherwise provided in the limited warranty, **seller shall not be liable for any reason, under any circumstances, to purchaser . . . for monetary damages of any kind, including secondary, consequential, punitive, general, special or indirect damages.**	**Except for** the RWC Warranty . . . Title Warranties, and . . . any warranties imposed by law, which cannot be disclaimed, Seller makes no other warranty of any kind, **all other such warranties are hereby disclaimed** . . . Seller makes no warranty as to merchantability or fitness for a particular purpose, either express or implied . . . **Seller shall not be liable for monetary damages of any kind, including secondary, consequential, punitive, general, special or indirect damages.**

Just as the Supreme Court concluded in *Smith*, "the arbitration agreement" here broadly encompasses the entirety of Paragraphs 14 and 15. *Smith,* 417 S.C. at 48, 790 S.E.2d at 4. D.R.

Horton did not intend for its purported arbitration provision to stand alone or else it would not have incorporated by reference such "one-sided and oppressive" terms. Therefore, these sections as a whole—including the paragraphs relating to arbitration and those relating to warranties—"must be read [together] to understand the scope of the warranties and how different disputes are to be handled." *Id.*: *see also Bluffton Towne Ctr.,* 412 S.C. at 569, 772 S.E.2d at 890 (Ct. App. 2015) ("[a] court must gather the parties' intention from the contents of the entire agreement, not from any particular clause therein.").

The crux of the holding in *Smith* was that the arbitration clause limited all monetary remedies and left owners with one remedy, repair or replacement of the home, which was at the discretion of D.R. Horton. By incorporating Paragraph 14 by reference, the same one-sided, oppressive terms are contained in the Howells' arbitration provision.[6] Under the Agreement, the Howells, like the plaintiffs in *Smith*, "are left with no remedy at all because it leaves the relief at the whim of D.R. Horton while simultaneously allowing no monetary recuperation, when as is here, the repairs are simply inadequate." *Smith*, 417 S.C. at 50, 790 S.E.2d at 4.

Accordingly, this Court should find that, just like the functionally identical arbitration agreement in *Smith*, the arbitration agreement here is substantively unconscionable.

ii. The Howells lacked Meaningful Choice

"Lack of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue." *Simpson v. MSA of Myrtle Beach,* 373

[6] Indeed, if anything, the purported arbitration agreement here is even more closely intertwined with its preceding passage for its specific reference to "the limited warranty pursuant to Section 14 above" vice the more general language of "any warranty contained in this Agreement" contained in the *Smith* purchase agreement.

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S.C. 14, 25 644 S.E.2d 663, 668-69 (2007) (citations omitted). When "In determining whether a contract was tainted by an absence of meaningful choice," courts should consider,

> the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause.

Simpson, 373 S.C. at 25, 644 S.E.2d at 669 (citations omitted); *see also* 17A Am. Jur. 2d Contracts § 272 ("Other factors to be considered include the use of sharp practices or high-pressure tactics, the sophistication or wealth of the parties, the relative scarcity of the subject matter of the contract, the age of the parties, who drafted the contract, whether the terms were explained to the weaker party, and whether alterations in the printed terms were possible.").

"[U]nder general principles of state contract law, an adhesion contract is a standard form contract offered on a 'take-it-or-leave-it' basis with terms that are not negotiable." *Simpson.* 373 S.C at 26-27, 644 S.E.2d at 669. In circumstances involving adhesion contracts, an absence of meaningful choice is readily apparent based upon the lack of bargaining power. The South Carolina Supreme Court recently recognized that national homebuilders engage in "'consumer transaction[s] which [are] essentially contract[s] of adhesion" and that they "may be examined by the courts with *special scrutiny* to assure that it is not applied in an unfair or unconscionable manner against the party who did not participate in its drafting.'" *Damico*, 437 S.C. at 614, 879 S.E.2d at 756 (2022), (quoting 17 C.J.S. Contracts § 9) (emphasis added). In the analysis of the lack of meaningful choice in *Smith*, the Supreme Court highlighted that it had previously "'taken judicial cognizance of the fact that the modern buyer of new residential housing is normally in an unequal bargaining position as against the seller.'" *Smith*, 417 S.C. at 50; 790 S.E.2d at 4 (citing *Kennedy v. Columbia Lumber & Mfg. Co*., 299 S.C. 335, 343, 384 S.E. 2d 730, 735-36 (1989).

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Here, as in *Smith*, "there is no indication . . . that the [Plaintiffs] enjoyed a substantially stronger bargaining position against D.R. Horton than the average homebuyer, or that they were represented by independent counsel" in negotiating the Agreement. 417 S.C. at 50, 790 S.E.2d at 4. Likewise, just as in *Smith*, here the record demonstrates Plaintiffs had no meaningful choice in accepting the arbitration provision, as it was embedded in a purchase and sale agreement 39 pages in length that was offered on a take it or leave it basis by D.R. Horton. *Id*.; Exh. A. Also, like the transaction in *Smith*, the Plaintiffs' purchase of their Home had little business concern to D.R. Horton, "as they are a single client to a corporation that constructs houses in twenty-seven states." *Id*. at 50, 790 S.E.2d at 5.[7]

The cumulative effect of the arbitration, disclaimers, and limitation of liability provisions is significant if enforced. These one-sided terms purportedly limit any monetary damages that Plaintiffs can recover; leave the repairs at D.R. Horton's discretion; require Plaintiffs (the only parties likely to bring claims under the Agreement) to pay the arbitrator fee; and commit Plaintiffs to waive their right to a jury trial as to claims against D.R. Horton—a party that committed fraud by lying multiple times in the transaction, in a case that involves significant construction defects and repair costs. Exh. A, ¶ ¶ 14-15.

The enclosed Affidavit of Plaintiff Sherman Howell (Ex. E) states that:

- The Howells have no experience in real estate, construction, or the law and they were unrepresented by counsel at the time they signed the Agreement. ¶ 10.

[7] As of the filing of this Brief, D.R. Horton's investor relations webpage now asserts it "has operations in 121 markets in 33 states across the United States." *See* PermaLink: https://perma.cc/2S8Q-MUM7.

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- D.R. Horton proclaims itself as "America's Largest Homebuilder," is a highly sophisticated builder, who has constructed and entered into purchase and sale agreements for nearly 1,000,000 homes in the United States. ¶ 13.
- Paragraphs 14 and 15 of the Agreement were not explained to the Howells before they signed. ¶ 11.
- At the time, homes available for sale were limited and the Howells did not have many alternatives that met their timeline and needs. ¶ 6.
- The home is a significant investment vehicle for the Howells' that has now been compromised due to the structural defects in the Home. ¶ 7.

Additionally, D.R. Horton lied about defects in the completed Home to unload it on Plaintiffs after the former buyers terminated their agreement. ¶ ¶ 8-9. The former prospective buyers, the Simmons, attest that D.R. Horton knew about the defects, represented that they were repaired (a lie), drywalled over the purported "repairs" so that they could not easily be inspected, Ex. C, ¶ ¶ 8-18, all before lying to the Howells about the reason for the Simmons' termination. Without truthful information about the condition of the house, the Howells lacked meaningful choice in deciding whether the arbitration agreement was fair.[8]

This Court should rule, as other South Carolina courts have held, that the Howells lacked meaningful choice when they entered into D.R. Horton's form Agreement, and therefore, the arbitration provision in the Agreement is procedurally unconscionable and unenforceable.

8 Fraud is a separate defense to the enforceability of an arbitration agreement that may be applicable here, as D.R. Horton's fraud did induce the Howells to enter the transaction. *See, e.g.*, *Three Valleys Mun. Water Dist. V. E.F. Hutton & Co*., *Inc.*, 925 F.2d 1136, 1140 (9th Cir. 1991) (citing Restatement (Second) Contracts § 7 comment b (1981)). Regardless, D.R. Horton's misrepresentations are further evidence of procedural unconscionability.

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iii. D.R. Horton's Unconscionable Provisions Should Not be Severed

D.R. Horton is likely to argue that the language in Paragraphs 14 and 15 that the Supreme Court ruled unconscionable in *Smith* can be severed to save the arbitration clause. This Court should not re-write the arbitration provision under the severability clause in the Agreement.

"[T]he general principle in this State is that it is not the function of the court to rewrite contracts for parties." *Simpson*, 373 S.C. at 34, 644 S.E.2d at 673. Instead, when confronted with an unconscionable provision, "the intent of the parties is best achieved by severing the arbitration clause in its entirety rather than 'rewriting' the contract by severing multiple unenforceable provisions." *Id.* at 35.

In *Damico v. Lennar Carolinas, LLC*, the Supreme Court emphasized the special quality of a consumer transaction "involv[ing] the purchase of a new home." 437 S.C. at 623, 879 S.E.2d at 761. This is because "South Carolina has a deeply-rooted and long-standing policy of protecting new home buyers." *Damico*, 437 S.C. at 621, 879 S.E.2d at 760. To honor a severability clause in a new home purchase agreement "would encourage sophisticated parties to intentionally insert unconscionable terms—that often go unchallenged—throughout their contracts, believing the courts would step in and rescue the party from its gross overreach," *id.* at 604, 879 S.E.2d at 751, "knowing that if the contract is found unconscionable, a narrower version will be substituted against an innocent, inexperienced homebuyer." *Id.* at 622, 879 S.E.2d at 760.

Accordingly, "[b]ecause most homebuyers simply comply with their arbitration agreements rather than challenging them in court . . . the law should provide a strong incentive for home builders *not* to overreach." *Id.* at 623, 879 S.E.2d at 761 (emphasis added) (internal quotations omitted). The Court concluded:

> Given that the subject matter of the contract involves new home construction, and South Carolina has an extensive history of expanding its common law on contracts

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> so as to protect new homebuyers, we find honoring the severability clause here—particularly because it goes to a material term of the arbitration agreement—would violate public policy. Our holding is based primarily upon two factors. First, the contract at issue is a contract of adhesion, in which it is "considerably doubtful" both parties truly intended a court to sever an unconscionable provision and enforce the remainder of the agreement. Second, with respect to the public policy considerations inherent in this type of consumer transaction (homebuying), "the likelihood that refusal to enforce the bargain or term will further [public] policy" is, we hope, high. *See* 17A Am. Jur. 2d *Contracts* § 238.

Damico, 437 S.C. at 624, 879 S.E.2d at 761; *see also Smith*, 403 S.C. at 16, 742 S.E.2d at 41 ("We conclude the arbitration clause . . . should not be severed from the numerous unconscionable provisions and particularly [D.R.] Horton's attempt to waive any seller liability for 'monetary damages of any kind . . .'"); *Goodwin v. Branch Banking & Tr. Co.*, 699 F. App'x 274 (4th Cir. 2017) (affirming district court's refusal to sever unconscionable terms of a putative arbitration agreement).

Despite the Supreme Court's admonitions to the contrary in *Damico* and *Smith,* D.R. Horton has continued its long-held pattern of insisting on one-sided and oppressive terms. Paragraphs 14 and 15, the terms that comprise the arbitration agreement in full, incorporate each other by reference and create an unconscionable result. Should this Court accept D.R. Horton's savings attempt, by permitting severance of parts of Paragraphs 14 and 15, the Court would implicitly grant its imprimatur on this type of behavior that the Supreme Court has previously held contrary to public policy.

Accordingly, this Court should not sever the unconscionable parts of Paragraphs 14 and 15 to salvage an unfair and one-sided arbitration provision in this home sale transaction and deny D.R. Horton's Motion.

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CONCLUSION

D.R. Horton's arbitration provision cannot be enforced because it was merged into the deed for Plaintiffs' Home; and even if this were not the case, the arbitration provision is unconscionable and unenforceable. Accordingly, this Court should deny D.R. Horton's Motion to Stay and to Compel Arbitration and grant such other relief as is just and proper.

Respectfully submitted,

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August 28, 2024
Columbia, South Carolina

EXHIBIT

“A”

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

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

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

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

BACKGROUND

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

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

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

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

PROCEDURAL HISTORY

[2] Dr. Whitlock tested the windows and masonry at several of these inspected homes. Whitlock Aff., para. 22.
[3]The class excludes any home owned by D.R. Horton and/or their affiliates; any home owned by the Judge, any Rose Hill home developed by persons other than D.R. Horton; any former Rose Hill homeowner; any current Rose Hill homeowner who previously released D.R. Horton; and, all persons who properly and timely opt out of the Class.

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

Both parties' Motions were scheduled to be heard on May 29, 2020.[5] On May 27, 2020, Horton filed its Opposing Memo to Class Certification and an Affidavit from a Horton Manager, Shawn Kruglewicz ("Kruglewicz"). Horton also filed a separate Motion to Compel Arbitration. On May 28, 2020, Zitek filed Dr. Whitlock's Reply Affidavit to Kruglewicz's Affidavit.

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

[4] Plaintiff represented that if the class were certified that John and Jane Does would not be added and that SCUPTA claims would not apply to the class.
[5] On May 19, 2020, Horton moved to Continue Zitek's Class Certification Motion, but Horton's Motion was denied.
[6] These homes included 25 Lucey Law Firm clients which were randomly selected and 22 or so other homeowners which were selected by Horton.
[7] On November 13, 2020, and after Horton received Zitek's discovery requests, Horton filed a Rule 26 Motion seeking to halt discovery given its pending Arbitration Motion.

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

ANALYSIS

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

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

A. Numerosity – Rule 23(a)(1)

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

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

[8] This hearing was originally scheduled for November 30, 2020, then for December 2, 2020, but it was moved to December 9, 2020 to ensure that the parties had enough time to make their respective arguments.
[9] *See also Salmonsen v. CGD,* 377 S.C. 442, 455, 661 S.E.2d 81, 88 (2008) (South Carolina favors class actions).
[10] *See also Newberg on Class Actions* § 3:12 ("[A] class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone.").

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

B. Commonality – Rule 23(a)(2)

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

C. Typicality – Rule 23(a)(3)

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

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

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

D. Adequacy – Rule 23(a)(4)

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

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

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

II. Horton's Opposition to Class Certification is Overruled

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

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

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

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

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

III. Arbitration is Unenforceable Under the Doctrine of Merger

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

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

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

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

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

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

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

IV. The Two Merger Doctrine Exceptions Do Not Apply

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

A. Contrary Intent Exception

First, the Court finds the "contrary intent" exception to the Merger Doctrine does not apply because Horton has not clearly shown that Paragraph 15 was intended to survive closing. Under this exception, "the party denying merger has the burden of proving by clear and convincing evidence that merger was not intended." *Hughes v. Greenville Country Club,* 283 S.C. 448, 451,

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

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

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

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

B. Part Performance Exception

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

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

[16] These facts distinguish this case from *Carlson v. S.C. State Plastering*, 404 S.C. 250, 743 S.E.2d 868 (Ct. App. 2013). There, the purchase agreement had a survival clause and the arbitration provision stated that it applied "after closing".
[17] To be clear, there was a total of three different arbitration provisions, and Horton does not seek to compel either of the other two arbitration provisions which were contained in the two written warranties.
[18] Zitek's purchase agreement indicates that Horton's other rights and obligations end at "Closing". *See, e.g.*, Zitek Purchase Agreement Paras. 5, 6, 8, 9, 12, 14(a), 16, 18.

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

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

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

A. Absence of Meaningful Choice/Adhesion Contract

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

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

B. Oppressive Terms

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

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

The arbitration provision consists of Paragraphs 14 and 15 because, like *Smith*, cross-references "intertwine" these provisions. *Smith,* 417 S.C. at 49, 790 S.E.2d at 4.[20] The only pertinent differences between *Smith* and here is that Horton relocated (1) its express arbitration clause from Paragraph 14(g) to Paragraph 15; and (2) its disclaimers from Paragraph 14(i) to Paragraph 14(c). However, the relocation of these provisions does not negate *Smith's* applicability. A comparison of Smith's paragraphs to Zitek's paragraphs shows that they contain the same cross-references.[21]

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

C. <u>Severability</u>

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

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

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

[20] *See also Mirmow v. Great Southern Homes, Inc.*, 2019 WL 7611604, *2 (S.C. Com. Pl.) (Judge Kessley Dec. 9, 2019 Order Denying Arb. Motion) (Lexington County) (finding the arbitration agreement in limited warranty unconscionable under *Smith* based on "related" warranty and liability disclaimers).
[21] *See* Pl. Memo. Opposing Arb., p. 13 (charts showing similarities between Smith's and Zitek's paragraphs).

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

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

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

CONCLUSION

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

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

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

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

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

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

AND IT IS SO ORDERED!

Anderson, South Carolina
_____, 2021

_____
The Honorable Cordell Maddox
Presiding Judge for the 10th Circuit

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

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Anderson Common Pleas

Case Caption: Natalie Zitek VS D.R. Horton, Inc. , defendant, et al

Case Number: 2019CP0401942

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

EXHIBIT

“B”

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HOME PURCHASE AGREEMENT

NOTE: THIS CONTRACT PROVIDES FOR MANDATORY BINDING ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTIONS 14-48-10 ET SEQ., SOUTH CAROLINA CODE OF LAWS (1976, AS AMENDED).

In consideration of the reciprocal covenants stated herein, **D.R. Horton, Inc.** ("Seller") and **Sherman Howell and Claudia Howell** (collectively, "Purchaser") agree as follows:

1. CONVEYANCE. Seller shall sell to Purchaser and Purchaser shall purchase from Seller all that certain parcel or tract of land located in **RICHLAND** County, **SC**, with a street address of **564 Pine Knot Road, BLYTHEWOOD, SC 29016**, more particularly described as Lot: **159**, in **The Villages at Long Cove** Subdivision (the "Lot"), together with all improvements thereon and all appurtenances thereto collectively referred to as the "Property."

In Process

2. PURCHASE PRICE AND METHOD OF PAYMENT. Subject to adjustment as may be provided herein, the Purchase Price for the Property shall be **Three Hundred Sixty Seven Thousand Seven Hundred Forty and 00/100 Dollars ($367,740.00)** to be paid in cash as provided herein. The terms of the subsection (a or b) checked below shall also apply.

○ **a. No Financing Contingency.**

Purchaser shall pay to Seller the Purchase Price in cash at Closing (See Section 16 below). Within five (5) business days of the Effective Date, Purchaser shall provide documentation to Seller that will verify to Seller's reasonable satisfaction that Purchaser has the available funds necessary to purchase the Property according to the terms of this Agreement. If Purchaser does not provide such documentation to Seller within that time period, then Seller may at its option terminate this Agreement by providing written notice to Purchaser of termination, in which event Seller shall retain the Earnest Money (see Section 4 below) and neither party shall have any further obligation or liability to the other hereunder.

Ø **b. Financing Contingency**

(1) Purchaser shall use its best efforts to obtain a loan in the principal amount of no more than **%** of the Purchase Price, reduced to the next lowest hundred dollars, (the "Loan") to be secured by a first priority mortgage on the Property. The proceeds of the Loan, together with the balance of the Purchase Price, shall be paid to Seller by Purchaser in cash or other immediately available funds at Closing.

(2) Purchaser shall apply for the Loan within three (3) business days after the Effective Date. **Failure by Purchaser to apply for the Loan within that time-period or to pursue approval of the Loan diligently thereafter shall constitute a material breach of this Agreement by Purchaser**. Within seven (7) days after the Effective Date, Purchaser shall provide Seller with written evidence from Purchaser's lender confirming that Purchaser has been prequalified for the Loan (the "Prequalification Letter"). Within twenty-one (21) days of the Effective Date, Purchaser shall provide Seller with a letter from Purchaser's lender confirming that the Loan has been conditionally approved (the "Conditional Approval Letter"). Within thirty (30) days after the Effective Date, Purchaser shall provide Seller with a letter from Purchaser's lender confirming that the Loan has been fully and finally approved, with no conditions or contingencies (the "Final Approval Letter"). If Purchaser fails to provide the Prequalification Letter, the Conditional Approval Letter or the Final Approval Letter to Seller by the respective deadlines stated above, then Seller, at Seller's option, may terminate this Agreement upon written notice to Purchaser, in which event the Earnest Money shall be refunded to Purchaser if Purchaser is not in breach of this Agreement, and thereafter neither party shall have any further liability or obligation to the other hereunder.

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(3) Purchaser acknowledges that there are many different loan programs available from many different lenders. If the loan approval obtained by Purchaser contains any contingencies, Seller may require the satisfaction of those contingencies within the time period specified for obtaining the Final Approval Letter and terminate this Agreement if those contingencies are not waived or satisfied within that time; in which event, the Earnest Money shall be refunded to Purchaser, and neither party shall thereafter have any further liability or obligation to the other hereunder

(4) Purchaser acknowledges that there are many different loan programs available from many different lenders. Purchaser understands and acknowledges that certain loan/credit approvals are only valid for up to one hundred twenty (120) days. Purchaser shall update loan/credit approval documentation as needed in order to maintain current loan approval up until the date of closing. Purchaser agrees to execute all papers and perform all other actions necessary to obtain the Loan and to accept the Loan if approved by lender. Purchaser shall, in addition to the payment of principal and interest upon the Loan, pay at Closing such amounts as may be required by the lender to establish or maintain an escrow for insurance, property taxes or private mortgage insurance.

(5) **FOR FHA/VA LOANS ONLY:**

(i) **FHA Amendatory Clause.** If Purchaser applies for and obtains a commitment for an FHA-insured loan, then, notwithstanding any other provisions of this Agreement, Purchaser shall not be obligated to complete the purchase of the Property or to incur any penalty, by forfeiture of earnest money or any other deposit, or otherwise, unless Purchaser has been given, in accordance with HUD/FHA requirements, a written statement by the Federal Housing Commissioner or a Direct Endorsement lender setting forth the appraised value of the Property of not less than $367,740.00. Purchaser shall have the privilege and option of proceeding with consummation of the Agreement without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or condition of the Property. Purchaser should satisfy himself/herself that the price and condition of the Property are acceptable.

In Process

(ii) **Escape Clause for VA Loans:** It is expressly agreed that, if Purchaser applies for and obtains a commitment for a VA-guaranteed mortgage loan, then, notwithstanding any other provisions of the Agreement, Purchaser shall not incur any penalty, by forfeiture of earnest money or any other deposit, or otherwise, nor shall Purchaser be obligated to complete the purchase of the Property if the Purchase Price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. Purchaser shall, however, have the privilege and option of proceeding with the consummation of the Agreement without regard to the amount of the reasonable value established by the Department of Veterans Affairs (Authority: 38 U.S.C. 501, 3703(c)(1)).

(iii) **Additional Funding:** Purchaser agrees that, should Purchaser elect to complete the purchase of the Property at an amount in excess of the appraised value, Purchaser shall pay such excess amount in cash from a source Purchaser agrees to disclose to the FHA or VA (as applicable) and that Purchaser represents will not be from borrowed funds, except as approved by the FHA or VA (as applicable).

3. FINANCIAL INFORMATION. Purchaser acknowledges that Purchaser's financial situation may affect Purchaser's ability to obtain a loan and/or purchase this Property. Purchaser further acknowledges that it is important for the Seller to know Purchaser's financial situation and Purchaser's ability to obtain financing. Purchaser hereby grants permission for the Seller to contact any mortgage company or financial institution to which Purchaser may apply for a loan and to discuss Purchaser's financial situation and prospects of obtaining a loan. Purchaser hereby authorizes any mortgage company or financial institution from which Purchaser may seek a loan to discuss Purchaser's financial status with the Seller and to provide the Seller with any documentation or information regarding said financial status, including but not limited to Purchaser's credit score. **Purchaser hereby authorizes and directs the settlement agent conducting the Closing to disclose to Seller the type of mortgage loan obtained by Purchaser (e.g., FHA, VA, USDA, Conventional) to purchase the Property**.

4. DEPOSITS.

a. Earnest Money. The parties acknowledge that, as of the Effective Date, Purchaser has deposited with Seller earnest money in the amount shown below (the "Initial Deposit"). Purchaser shall deliver to Seller additional deposits of earnest money in the amounts shown below by the due dates shown below (the "Additional Deposits"). The Initial Deposit and any Additional Deposits are hereinafter referred to as the "Earnest Money," both individually and collectively. Failure by Purchaser to pay any Additional Deposit by the applicable due date shall constitute a material breach of this Agreement by Purchaser. The schedule of Earnest Money deposits is as follows:

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Earnest Deposits					
Due Date	Collection Date	Payment Type	Check Number	Deposit Amount	Collection Amount
12/29/2021				$3,600.00	$3,600.00
	12/29/2021	Check	4384		$3,600.00
			Total	**$3,600.00**	**$3,600.00**

The Earnest Money shall be deposited with Seller in its general account upon execution of this Agreement by Seller. Purchaser acknowledges that the Earnest Money will be commingled with other funds of Seller and may be used by Seller for any purpose.

b. Disbursement. The Earnest Money shall be retained by Seller except as otherwise expressly stated in this Agreement. At Closing, the Earnest Money shall be credited to Purchaser against the Purchase Price; otherwise, the Earnest Money shall be disbursed as provided herein. If any dispute arises between Purchaser and Seller as to the final disposition of all or part of the Earnest Money, Seller may, but shall not be required to, interplead all or any disputed part of the Earnest Money into a court of competent jurisdiction. If Seller interpleads the Earnest Money into a court, Seller shall be entitled to recover the costs of such interpleader, including reasonable attorney's fees incurred in connection with the interpleader, from the Earnest Money.

c. Deposits of VA Borrowers.

i. Purchaser Notice Regarding Mortgage Loan. Purchaser hereby represents that it [*SELECT ONE*] ⊗ **DOES** / ○ **DOES NOT** intend to apply for and obtain a mortgage loan guaranteed by the U.S. Department of Veterans Affairs (a "*VA Loan*") to purchase the Property. **IF PURCHASER DOES NOT CURRENTLY INTEND TO OBTAIN A VA LOAN, BUT LATER DECIDES TO OBTAIN A VA LOAN, PURCHASER SHALL PROMPTLY NOTIFY SELLER IN WRITING**.

ii. Trust Account; Disbursement. Notwithstanding any other provision of this Agreement, if Purchaser obtains a VA Loan, then the Earnest Money, Option Money (hereinafter defined), and all other sums deposited by Purchaser pursuant to this Agreement (collectively, the "*Deposits*") shall be deposited in a trust account that is safeguarded from the claims of creditors of Seller until the Deposits are (A) disbursed at Closing or (B) otherwise applied or disbursed in accordance with the terms of this Agreement.

5. SURVEY. At Closing, Seller shall provide Purchaser with a plat of survey of the Lot performed by an independent, licensed surveyor, showing all structures and other improvements located on the Property as of the date of the survey (the "Survey"). At Closing, Purchaser shall pay Seller a reasonable fee of Three Hundred and Fifty Dollars ($350.00) for obtaining and providing the Survey (the "Survey Fee"). Seller makes no warranty or representation whatsoever regarding the quality, accuracy or reliability of the Survey. Seller makes no warranty or representation whatsoever regarding the quality, accuracy or reliability of any survey of the Property obtained for the benefit Purchaser pursuant to this subsection, and Purchaser shall look solely to the surveyor for same. Purchaser acknowledges that any title insurance policy issued in favor of Purchaser may contain an exception from coverage for all matters that would be revealed by a current survey of the Property.

6. WARRANTY OF TITLE. Seller shall convey insurable fee simple title in and to the Property to Purchaser at Closing by special or limited warranty deed (the "Deed"), subject to: (a) zoning ordinances affecting the Property; (b) utility, drainage and other easements, deed restrictions or other conditions or restrictions of record upon which do not prevent use or enjoyment of the Lot or the House constructed thereon; (c) subdivision covenants, conditions and restrictions; (d) all matters shown on the final plat for the subdivision where the Property is located; (e) all prior conveyances of all rights, titles and interests to all oil, gas, water, petroleum, natural gas, coal, lignite and other minerals and hydrocarbons, and all geothermal energy and resources, located in whole or in part on, in or under the Lot and/or that may be produced or extracted from the Lot; and (f) any matters that would be shown or revealed by a current survey of the Lot. As used in this Agreement, "insurable fee simple title" shall mean title which a title insurance company licensed to do business in South Carolina will insure at its regular rates, subject only to its standard exceptions and those exceptions listed in subsections (a) through (e) above.

7. TITLE EXAMINATION. Purchaser shall have until ten (10) days prior to the Closing Date (as defined in Section 16 below) to examine title to the Property and to furnish Seller with a written statement of any exceptions to insurable title. If Purchaser does not

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serve Seller with notice of exception to insurable title prior to that date, Purchaser shall have waived any objection to title to the Property as it existed as of the Effective Date. If Purchaser does serve such notice on Seller prior to that date, the notice shall specify and itemize the exceptions to insurable title. If Seller does not remove any exceptions to insurable title within a reasonable time, Purchaser shall have the right to terminate this Agreement and to receive a refund of the Earnest Money and Option Money (as defined in Exhibit A attached hereto), if any, paid to Seller. Under no circumstances shall Seller be obligated or required to remove or cure any exception to title to the Property that is a permissible exception to insurable title as defined in Section 6 above.

8. DESTRUCTION. If the home built on the Lot (the "House") is either totally destroyed or substantially damaged (as determined by Seller in its sole discretion) before Closing, either party may terminate this Agreement by written notice to the other within ten (10) days after the date of such destruction. From and after the Closing (see Section 16 below), all risk of loss to the Property shall be upon Purchaser.

9. INSPECTION.

a. Procedure. Prior to Closing, Seller shall have the right to deny access to the Lot to any person at any time, as Seller determines in its sole discretion. However, Purchaser or a professional home inspector contracted by Purchaser shall have the right to enter upon the Property at reasonable times during normal business hours solely for the purpose of inspecting, examining, testing and surveying the Property, solely at Purchaser's expense, provided that any such inspection must meet the following requirements and conditions (collectively, "Inspections"):

(1) Inspections by Purchaser:

(a) All Inspections by Purchaser must be scheduled through Seller's sales agent for the Subdivision. These Inspections must be scheduled at least seven (7) days in advance, must be in accordance with Seller's production schedule and must take place during the following timeframe: Monday through Friday, 11 a.m. to 6:00 p.m.

In Process

(b) Seller or its appointed representative shall have the right to accompany Purchaser during the Inspections.

(2) Inspections by an independent professional home inspector:

(a) All Inspections by a professional home inspector must be scheduled through the Community Construction Superintendent at least seven (7) days in advance and must take place during normal working hours (Mon. – Fri. 8:00AM to 4:00PM). All requests for appointments to conduct an Inspection shall be subject to the Community Construction Superintendent's production schedule. NO INSPECTIONS WILL BE ALLOWED THAT HAVE NOT BEEN SCHEDULED WITH THE COMMUNITY CONSTRUCTION SUPERINTENDENT AT LEAST SEVEN (7) DAYS IN ADVANCE. SELLER WILL NOT DELAY CONSTRUCTION OR CLOSING TO ACCOMMODATE INSPECTIONS.

(b) Seller or its appointed representative shall have the right to accompany the home inspector during the Inspection.

(c) The home inspector must maintain all business licenses required by state and local law and must be: (i) either a licensed professional engineer, or (ii) a full-time home inspector and a member of the American Society of Home Inspectors, Inc. Furthermore, if the home inspector intends to use a drone at any time on or around the Property, the home inspector must be licensed by the Federal Aviation Administration to operate the drone. The home inspector must provide the Community Construction Superintendent with proof of all licenses and certifications required by this subsection (c) prior to, and as a requirement for, making an appointment for the Inspection.

(d) The home inspector must furnish Seller with proof that the home inspector has: (i) worker's compensation insurance in accordance with applicable law; (ii) errors and omissions insurance with coverage of no less than $300,000 per occurrence; (iii) general liability insurance with coverage of no less than $300,000.00 per occurrence; and (iv) if the home inspector intends to use a drone at any time on or around the Property, aviation liability insurance with coverage of no less than $1,000,000.00 per occurrence. The home inspector must provide the Community Construction Superintendent with proof of all insurance coverages required by this subsection (d) prior to, and as a requirement for, making an appointment for the Inspection.

(3) **Failure by Purchaser to follow the procedures set forth in this subsection shall constitute a material breach of this Agreement. Unauthorized entry onto the Lot or unauthorized activities upon the Lot by Purchaser, its agents or**

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contractors shall constitute a material breach of this Agreement by Purchaser. Purchaser specifically acknowledges that Purchaser may not, under any circumstances, install or construct any equipment, fixtures, structures or other improvements upon the Lot, or modify any of the existing equipment, fixtures, structures or other improvements, at any time and any such unauthorized activities shall constitute a material breach of the Agreement by Purchaser. Purchaser shall not interrupt or otherwise interfere with sales or construction within the Subdivision. Upon completion of any Inspection, Purchaser shall restore the Property to its condition prior to the Inspection.

(4) THE CLOSING SHALL NOT BE DELAYED DUE TO PURCHASER'S FAILURE TO SCHEDULE AND CONDUCT ALL INSPECTIONS SUFFICIENTLY IN ADVANCE OF CLOSING TO ALLOW SELLER TO ADDRESS ISSUES, IF ANY, IDENTIFIED BY THE INSPECTIONS.

b. **Purchaser's Indemnity**. Purchaser assumes all responsibility for the acts of Purchaser, Purchaser's agents, contractors or representatives in exercising Purchaser's rights under this Section, and shall indemnify and hold Seller harmless, to the extent permitted by applicable law, from any loss or expense Seller may suffer as a result of any claim or damage which arises directly or indirectly out of Purchaser's exercise of its rights under this Section. Notwithstanding any other provision herein, Purchaser's indemnity of Seller pursuant to this Section shall survive Closing and the termination of this Agreement for any reason.

c. **Inspection Results**. In the event any inspection by Purchaser or its agents or contractors reveals a purported defect in the Property, Purchaser shall provide Seller with written notice of the claim of defect. If a professional home inspection was performed, the home inspector must prepare a report (including references to any applicable code sections). Purchaser shall deliver to Seller a true and complete copy of any report produced by the home inspector within forty-eight (48) hours of receipt of such report by Purchaser. If Seller determines that Purchaser's claim of defect is valid, Seller shall correct or repair the defect. If Seller determines the claim of defect is not valid, Seller shall notify the Purchaser of that determination within thirty (30) days of receipt of the written notice of claim of defect. Notwithstanding any other provision herein, Seller shall not be required to correct or repair any defect in construction that does not constitute a violation of: (1) the building code of the governing jurisdiction in which the Property is located, or (2) the building guidelines and standards of the provider of the Limited Warranty pursuant to Section 14(a) below. The issuance of a certificate of occupancy, temporary certificate of occupancy, or final inspection certificate for the Property by the applicable governing authority shall be conclusive evidence of compliance with applicable building codes and other applicable regulations and shall constitute substantial completion of the House.

d. **Walkthrough; Punch List**: After substantial completion of the House but prior to Closing, Seller and Purchaser will meet at the Property to conduct a walkthrough inspection and orientation, in accordance with Seller's standard practices (the "Initial Walkthrough"). At the conclusion of the Initial Walkthrough, Purchaser and Seller shall prepare and sign a written list of items on the Property that the parties agree should be corrected, repaired or replaced (hereinafter, the "Punch List"). No items may be added to the Punch List after the Initial Walkthrough. Seller shall thereafter correct, repair or replace the items listed on the Punch List. Under no circumstances shall Seller be required to correct, repair or replace any items on or of the Property that are not listed on the Punch List signed by Seller. Within a reasonable amount of time after the Initial Walkthrough but prior to Closing, Seller and Purchaser shall meet at the Property to conduct a second walkthrough inspection (the "Final Walkthrough") in order to confirm which items on the Punch List have been corrected, repaired or replaced. At the conclusion of the Final Walkthrough, the parties will prepare and sign an updated Punch List reflecting the current status of each item thereon. Seller's obligation to correct, repair or replace any items that are listed on the Punch List shall survive Closing. UNDER NO CIRCUMSTANCES SHALL CLOSING BE DELAYED DUE TO SELLER'S FAILURE TO COMMENCE OR COMPLETE CORRECTION, REPAIR OR REPLACEMENT OF ANY ITEMS ON A PUNCH LIST. UNDER NO CIRCUMSTANCES SHALL FUNDS BE ESCROWED AT CLOSING TO COVER THE COST OF CORRECTION, REPAIR OR REPLACEMENT OF ANY ITEMS ON A PUNCH LIST. If Purchaser appoints a third party to conduct the Initial Walkthrough on Purchaser's behalf, such appointee must also conduct the Final Walkthrough on behalf of Purchaser.

10. REAL ESTATE BROKER AND COMMISSION. SELLER'S SALES AGENTS ARE LICENSED REAL ESTATE AGENTS IN SOUTH CAROLINA. **D.R. Horton, Inc., (Firm# 22422)** an affiliate of Seller, is the listing broker and will be paid a commission by Seller upon Closing (as hereinafter defined). Purchaser acknowledges that Seller's sales agents represent Seller only and do not represent Purchaser or have any duty to Purchaser. Purchaser represents to Seller that Purchaser has not employed any real estate broker, agent or finder in connection with this Agreement, other than **Tonya Peay**, an agent of **Realty One Group** and (collectively, "Co-Broker"). Purchaser shall indemnify and hold Seller harmless from and against any and all liabilities, losses, costs, damages and expenses (including attorneys' fees and expenses and costs of litigation) that Seller may suffer or incur because of any claim by any broker, agent or finder, whether or not meritorious, for any compensation with regard to this transaction arising out of any acts or contracts of Purchaser, other than the Co-Broker named above. Notwithstanding any other provision herein, the provisions of this Section shall survive Closing or termination of this Agreement for any reason. Purchaser acknowledges receipt of a copy of the disclosure titled

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"Agency Relationships in Real Estate" Disclosure.

11. NO RELIANCE. Purchaser acknowledges that it has not relied upon the advice or representations, if any, of Seller or Seller's salespersons or other agents with regard to the legal and tax consequences of this Agreement or the terms and conditions of any proposed financing of the purchase of the Property. Purchaser acknowledges that if such matters are of concern to Purchaser, Purchaser must obtain independent, professional advice regarding them.

12. WOOD INFESTATION REPORT. At the time of Closing, Seller shall provide Purchaser with a letter or a soil treatment report from a pest-control company licensed in South Carolina certifying that the Lot has been treated within one (1) year of the date of Closing for subterranean termite infestation. If required by Purchaser's lender, Purchaser may obtain at Seller's expense a South Carolina Wood Infestation Report performed by a pest-inspection company licensed in South Carolina.

13. HAZARDOUS SUBSTANCES. Purchaser acknowledges that Seller makes no representation or warranty with respect to the presence or absence of toxic waste, radon, hazardous materials or other undesirable substances on the Property. SELLER HEREBY DISCLAIMS ANY LIABILITY OR RESPONSIBILITY FOR THE PRESENCE OF ANY SUCH SUBSTANCES IN, ON, UNDER OR ABOUT THE PROPERTY.

14. WARRANTIES AND DISCLAIMER.

a. Ten-Year Limited Warranty. Seller shall provide Buyer with a written, ten-year limited warranty on the House administered by Residential Warranty Corporation ("*RWC*") which shall be effective as of the Closing Date. The terms and conditions of, and exclusions from, the ten-year limited warranty shall be as set forth in that document published by RWC entitled, "LIMITED WARRANTY, 10 YEAR LIMITED WARRANTY FOR NEW HOMES," and referred to herein as the "*Limited Warranty*." At Closing, Seller shall deliver to Buyer the documentation necessary for Buyer to obtain the actual Limited Warranty for the House from RWC.

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b. Manufacturers' Warranties. At Closing, Seller shall assign to Purchaser all warranties, expressed or implied, which are given by the manufacturer of any appliance or product installed in the House.

c. Disclaimer and Limitation on Seller's Liability. THE LIMITED WARRANTY GIVEN TO PURCHASER BY SELLER PURSUANT TO SUBSECTION 14a ABOVE IS TO THE EXCLUSION OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND SELLER HEREBY DISCLAIMS ANY AND ALL SUCH OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF HABITABILITY, MERCHANTABIITY OR FITNESS FOR A PARTICULAR PURPOSE. IN ADDITION, SELLER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING THE PAST, PRESENT OR FUTURE CONDITION OR USE OF ANY LANDS OR AREAS SURROUNDING THE PROPERTY OR IN THE VICINITY OF THE PROPERTY. AFTER CLOSING, SELLER SHALL HAVE NO LIABILITY OR OBLIGATION TO PURCHASER OF ANY NATURE WHATSOEVER EXCEPT AS PROVIDED IN THIS SECTION 14 OF THIS AGREEMENT, IN SECTION 9(d) ABOVE AND IN SELLER'S DEED TO PURCHASER. EXCEPT AS OTHERWISE PROVIDED IN THE LIMITED WARRANTY, SELLER SHALL NOT BE LIABLE FOR ANY REASON, UNDER ANY CIRCUMSTANCES, TO PURCHASER OR ANYONE CLAIMING THROUGH PURCHASER FOR MONETARY DAMAGES OF ANY KIND, INCLUDING SECONDARY, CONSEQUENTIAL, PUNITIVE, GENERAL, SPECIAL, OR INDIRECT DAMAGES.

Initials DS SH _____ DS CH _____ _____

Buyer Co-Buyer Seller

15. MANDATORY BINDING ARBITRATION. PURCHASER AND SELLER SHALL SUBMIT TO BINDING ARBITRATION ANY AND ALL DISPUTES WHICH MAY ARISE BETWEEN THEM REGARDING THIS AGREEMENT AND/OR THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY DISPUTES REGARDING: (A) SELLER'S CONSTRUCTION AND DELIVERY OF THE HOUSE; (B) SELLER'S PERFORMANCE UNDER ANY PUNCH LIST OR INSPECTION AGREEMENT; AND (C) THE LIMITED WARRANTY PURSUANT TO SECTION 14 ABOVE. THE ARBITRATION SHALL TAKE PLACE IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED. THE PROCEEDING SHALL BE CONDUCTED PURSUANT TO THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION AND, TO THE EXTENT POSSIBLE, UNDER RULES WHICH PROVIDE FOR AN EXPEDITED HEARING. THE FILING FEE FOR THE ARBITRATION SHALL BE PAID BY THE PARTY FILING THE ARBITRATION DEMAND, BUT THE ARBITRATOR SHALL HAVE THE RIGHT TO ASSESS OR ALLOCATE THE FILING FEES AND ANY OTHER COSTS OF THE ARBITRATION AS A PART OF THE ARBITRATOR'S FINAL ORDER. THE ARBITRATION SHALL BE BINDING AND FINAL, AND EITHER

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PARTY SHALL HAVE THE RIGHT TO SEEK JUDICIAL ENFORCEMENT OF THE ARBITRATION AWARD. NOTWITHSTANDING ANY OTHER PROVISION HEREIN, ANY DISPUTES ARISING UNDER THE LIMITED WARRANTY SHALL BE MEDIATED, ARBITRATED AND/OR JUDICIALLY RESOLVED PURSUANT TO THE TERMS, CONDITIONS, PROCEDURES AND RULES OF THE LIMITED WARRANTY. NOTWITHSTANDING THE FOREGOING, SELLER SHALL HAVE THE RIGHT TO INTERPLEAD ALL OR ANY PART OF THE EARNEST MONEY INTO A COURT OF COMPETENT JURISDICTION AS PROVIDED FOR IN SECTION 4 HEREIN.

Initials	DS SH	DS CH	
	Buyer	Co-Buyer	Seller

16. CLOSING. The following shall constitute the "Closing": (a) receipt by the settlement agent of all funds necessary to close the transaction, (b) receipt by the settlement agent of the fully executed Deed for immediate recording in the office of the clerk of court or register of deeds, as applicable, (c) execution of the Closing Disclosure by Purchaser, Seller and the settlement agent, and (d) payment to Seller of the net proceeds of sale due to Seller. The date on which the Closing Disclosure is executed by all parties is referred to herein as the "Closing Date." Closing shall not be complete until Seller has received full payment of the Purchase Price. Keys to and possession of the Property will not be delivered to Purchaser until the Closing is complete. Closing shall be scheduled and conducted as follows:

a. Closing Date. Seller shall give Purchaser notice of the final date and time of Closing (the "Closing Date") at least three (3) business days prior to Closing. PURCHASER'S FAILURE TO CLOSE BY THE CLOSING DATE SET BY SELLER SHALL CONSTITUTE A MATERIAL BREACH, ENTITLING SELLER TO TERMINATE THIS AGREEMENT AND RETAIN THE EARNEST MONEY AND ANY OPTION MONEY. Seller shall exercise good faith and due diligence in completing construction of the House; however, SUBJECT ONLY TO THE PROVISIONS OF THIS SUBSECTION, SELLER SHALL HAVE SOLE DISCRETION IN DETERMINING THE CLOSING DATE. After the Closing Date has been set by Seller, the parties may agree in writing to extend the Closing Date at any time. Subject only to the provisions of Section 27 below, Closing shall occur no later than that date which is two (2) years after the date that Purchaser signs this Agreement.

b. Purchaser Failure to Close. PURCHASER'S FAILURE TO CLOSE BY THE CLOSING DATE SET BY SELLER SHALL CONSTITUTE A MATERIAL BREACH, ENTITLING SELLER TO TERMINATE THIS AGREEMENT AND RETAIN THE EARNEST MONEY AND ANY OPTION MONEY. If Purchaser fails to close as required by the terms of this Agreement, Seller shall have the right, in Seller's sole discretion, to either: (1) terminate this Agreement due to Purchaser's default or (2) extend the Closing Date. Seller's election to extend the Closing Date pursuant to this subsection b. shall not be construed as a waiver of Purchaser's default.

c. Exchange at Closing. At Closing, Seller shall deliver to Purchaser the Deed for the Property, a certificate of occupancy for the house located on the Property issued by the applicable governmental authority, and, if applicable, a certificate of final approval by the FHA or VA. At Closing, Purchaser shall pay to Seller the Purchase Price in full.

d. Place of Closing. The Closing shall take place at the office of the closing attorney selected by Purchaser in South Carolina, or at such other place as the parties may agree in advance. The Purchaser hereby selects **HANNAH, KIM, MCDONNELL & ASSOCIATES PA (CLMBA, 2442 DEVINE STREET, COLUMBIA, SC** to handle the Closing of the transaction contemplated in this Agreement.

e. Closing Costs. Seller shall pay the cost of the Termite Certification. Except as may be prohibited by FHA or VA regulations, Purchaser shall pay for all other costs related to the Closing, including but not limited to cost of any title search, all recording fees, deed and transfer tax (deed stamps) imposed by the State of South Carolina upon the recording of the Deed, the costs for preparation of the Deed, any capital contribution, any administrative fee or transfer fee charged by the Association (in addition to any assessments or charges set forth in Section 20 below), the Survey Fee, and any costs and expenses associated with Purchaser's financing of Purchaser's acquisition of the Property.

f. Prorations. All real property taxes for the current year, homeowner association dues and assessments for the current assessment period (but not homeowner association capital assessments due at or after the Closing) and hazard insurances premiums (if applicable), shall be prorated as of the Closing Date, using the most accurate information available on the Closing Date.

17. UTILITIES AND PERSONAL PROPERTY. Purchaser shall transfer all utilities into Purchaser's name within twenty-four (24) hours after Closing (excluding weekends and holidays). Purchaser shall not move any personal property onto the Property

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prior to Closing.

18. DEFAULT; REMEDIES. The remedies specified below shall be the sole and exclusive remedies available to the parties in the event of breach of this Agreement prior to Closing or termination of this Contract, and shall be to the exclusion of all other remedies at law or in equity.

a. Purchaser's Default. If Purchaser defaults on any of its obligations hereunder prior to Closing or termination of this Contract, Seller's sole and exclusive remedy shall be to terminate this Agreement by written notice to Purchaser; whereupon, Seller shall retain all Earnest Money and Option Money (if any) paid by Purchaser to Seller as liquidated damages. Thereafter, neither party shall have any further liability or obligation to the other hereunder.

b. Seller's Default. If Seller defaults on any of its obligations hereunder prior to Closing or termination of this Contract, Purchaser's sole and exclusive remedy shall be either: (a) to terminate this Agreement by written notice to Seller, whereupon Purchaser shall be entitled to recover all Earnest Money and Option Money (if any) paid to Seller, or (b) to seek specific performance of this Agreement by serving written notice of default on Seller and by instituting mandatory binding arbitration of Purchaser's claim of default and demand for specific performance in accordance with Section 15 above. Notwithstanding the foregoing, subject to the provisions of Section 27 below and provided that Seller has not terminated this Agreement as a result of breach by Purchaser, if Seller is obligated by this Agreement to build a single-family residence on the Lot and Seller fails to complete construction of the residence within two (2) years of the date Purchaser signs this Agreement, then Purchaser may pursue whatever remedies it may have against Seller at law or in equity.

c. Post-Closing and Post-Termination Remedies. Notwithstanding subsections a and b above, from and after the Closing or any termination of this Contract, each party shall have the right to pursue its actual (but not consequential or punitive) damages against the other party for breach of any covenant or agreement contained herein that expressly survives the Closing or termination of this Contract.

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19. TIME/DATE. The Effective Date of this Agreement shall be the date of signing of this Agreement by Seller. **Time is of the essence** as to the occurrence of all events, the satisfaction of all conditions and the performance of all obligations hereunder.

20. RESTRICTIVE COVENANTS; HOMEOWNERS ASSOCIATION. Purchaser acknowledges receipt of a copy of that certain declaration of covenants, conditions and restrictions for **The Villages at Long Cove** Subdivision, together with all amendments thereto (collectively, the "Declaration"). Purchaser acknowledges that the Property is subject to the Declaration and that, upon purchase of the Property, Purchaser shall personally be subject to all the provisions of the Declaration, including but not limited to provisions requiring membership in and payment of assessments to any homeowners association for the Subdivision (the "Association").

(a) HOA Assessments and Charges: Purchaser further acknowledges that the current regular assessment due to the Association is estimated to be **$365.00** annually. Purchaser acknowledges that, in addition to the regular assessment, Purchaser will be required to pay to the Association the following charges at Closing (***check and complete if applicable***):

(i) ☐ a capital contribution in the amount of **$0.00**;

(ii) ☒ an initial fee in the amount of **$200.00**;

(iii) ☒ a processing transfer fee in the amount of **200.00**.

(b) Master Declaration/Master Association: ***Check as applicable*:**

☐ Master Declaration & Master Association: Purchaser acknowledges that, in addition to the Declaration, the Property is subject to a recorded Master Declaration. Purchaser acknowledges receipt of a copy of the Master Declaration, together with all amendments thereto (collectively, the "Master Declaration"). Purchaser acknowledges that, upon purchase of the Property, Purchaser shall personally be subject to all provisions of the Master Declaration, including but not limited to provisions requiring membership in and payment of assessments to any master homeowners association for the Subdivision (the "Master Association"). The current regular assessment (i.e., dues) due to the Master Association (if any) is estimated to be **$0.00** per year. In addition to the regular assessment, Purchaser will be required to pay an initial fee or capital contribution to the Master Association at Closing in the amount of **$0.00**.

☐ The Lot is not subject to a Master Declaration.

(c) Purchaser Acknowledgement. PURCHASER ACKNOWLEDGES THAT THE DECLARATION (AND THE MASTER

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DECLARATION, IF APPLICABLE) MAY BE AMENDED FROM TIME TO TIME AS PROVIDED THEREIN, AND THAT THE AMOUNTS TO BE PAID BY PURCHASER TO THE ASSOCIATION (AND MASTER ASSOCIATION, IF APPLICABLE) MAY CHANGE AT ANY TIME.

21. SUCCESSORS AND ASSIGNS; INTERPRETATION. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their heirs, successors, administrators, executors and assigns. Purchaser shall not have the right to assign Purchaser's interest in this Agreement. As required by context herein, the singular shall include the plural, and the neuter shall include the masculine and the feminine.

22. ENTIRE AGREEMENT; AMENDMENT. This document contains the sole and entire agreement between the parties hereto with regard to the Property. All prior discussions have been merged into this Agreement. No representation, statement, promise or inducement shall be binding upon either party hereto unless specifically stated in this Agreement. This Agreement may not be modified except by a writing signed by both parties.

23. SEVERABILITY. If any provision of this Agreement shall be declared invalid or unenforceable by laws applicable thereto, or unenforceable as to certain parties, then the performance of such provision shall be excused by the parties hereto and the remaining provisions of this Agreement shall remain in full force and effect.

24. NO-WAIVER. Any failure or delay of Purchaser or Seller to enforce any term of this Agreement shall not constitute a waiver of such term, it being explicitly agreed that such a waiver must be specifically stated in a writing delivered to the other party in compliance with Section 28 below. Any such waiver by Purchaser or Seller shall not be deemed to be a waiver of any other breach or of a subsequent breach of the same or any other term.

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25. ADDENDA AND EXHIBITS.

a. Addenda. The following Addenda are attached hereto and incorporated herein:
- ☑ Addendum 1, Builder's Referral Incentives and Contributions Addendum
- ☑ Addendum 2, Construction Addendum and Disclosures
- ☒ Addendum 3, Current Residence Contingency
- ☒ Addendum 4, Co-Broker Commission Addendum
- ☐ Addendum 5, Alternative Incentive Addendum
- ☒ Addendum 6, Special Stipulations
- ☐ Addendum 7, Model House
- ☑ Addendum 8, Variations in Materials and Components
- ☐ Community-Specific Addenda

b. Exhibits. The following Exhibits are attached hereto and incorporated herein:
(1) Exhibit A, Home Features and Options
(2) Exhibit B, Stages of Construction

26. NOTICE. Except when specifically provided otherwise herein**,** any notices required to be given hereunder must be in writing. Notice shall be deemed delivered upon receipt or refusal if deposited in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid, properly addressed to the party to be served. Notice shall also be deemed given if delivered to the address for service of notice shown below by Federal Express, UPS or other nationally recognized overnight carrier service, with no signature or receipt required. Notice to Purchaser also shall be deemed given if delivered to the email address for service of notice shown under Purchaser's signature. Each party warrants that its correct mailing address for service of notice is shown below. Purchaser warrants that its correct telephone number and email address are shown below. A party may change its address for service of notice by giving the other party written notice of the change of address.

27. EXCUSED DELAYS. Notwithstanding any other provision herein, if Seller is delayed in performing any of its obligations hereunder or meeting any specified completion dates by labor disputes, fire, delays in deliveries, adverse weather conditions, unanticipated damage to or destruction of the Property, governmental controls or moratoria, acts of God or any other causes beyond Seller's reasonable control, then the time-period specified herein for performance of such obligation and/or meeting such completion date shall be extended a sufficient number of working days to enable and allow Seller to perform and/or complete the obligation.

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28. OFFER. This instrument shall be regarded as an offer by the first party to sign until fully executed by both parties, at which time it shall become binding on both parties.

29. ELECTRONIC SIGNATURES AND TRANSMISSIONS. This Agreement may be executed by electronic means via DocuSign. Such signatures shall be deemed to constitute originals for all purposes hereunder. In addition, if either party transmits executed documents in electronic format via facsimile or email, then the other party may rely upon such documents as if they were executed originals.

WHEN SIGNED BY BOTH PARTIES, THIS DOCUMENT WILL BECOME A BINDING CONTRACT IMPOSING LEGALLY ENFORCEABLE OBLIGATIONS UPON YOU. SELLER'S SALES REPRESENTATIVE DOES NOT HAVE AUTHORITY TO EXECUTE THIS CONTRACT ON BEHALF OF SELLER OR OTHERWISE BIND SELLER. IF YOU DO NOT FULLY UNDERSTAND THIS DOCUMENT OR IF YOU DO NOT FEEL IT MEETS YOUR NEEDS, YOU SHOULD CONSULT A SOUTH CAROLINA REAL ESTATE ATTORNEY BEFORE SIGNING IT.

(Signatures on the Following Page)

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IN WITNESS WHEREOF, the parties hereto have executed this Home Purchase Agreement on the dates indicated below.

PURCHASER:

DocuSigned by:
Sherman Howell
07B891A20B7D430...
12/29/2021

Buyer: Sherman Howell Date

DocuSigned by:
Claudia Howell
D93629FC3AAF456...
12/29/2021

Co-Buyer: Claudia Howell Date

Purchaser's Current Mailing Address:
465 Fairford Rd
Blythewood, SC 29016
US
Purchaser's Home Phone:
Mobile Phone: (803) 908-3319
Work Phone:
Purchaser's Email: howellsherman32@gmail.com

Co-Buyer's Current Mailing Address:
465 Fairford RdBlythewood, SC 29016
Co-Buyer's Home Phone:
Mobile Phone: (803) 429-2962
Work Phone:
Co-Buyer's Email: cbowers803@gmail.com

SELLER:

D.R. Horton, Inc.

_____ _____
Date

Seller's Address:
8025 Arrowridge Blvd, Charlotte, NC, 28273

For Internal Purposes Only:
Seller's Sales Representative:

DocuSigned by:
Wayne V Valsecchi
E5D1E3E307AB493...
12/29/2021

Sales Rep: Wayne Vincent Valsecchi Date

WVValsecchi@drhorton.com

Sales Rep License Number: **48944**

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EXHIBIT A
HOUSE FEATURES AND OPTIONS

Community: **The Villages at Long Cove** Lot: **2159**
Plan/Elevation: **Columbia Carolina**
Address: **564 Pine Knot Road, BLYTHEWOOD, SC 29016**

1. OPTIONS SELECTIONS. Purchaser has selected the features, options and upgrades listed below (collectively, the "*Options*") to be included in the House. Seller will include the Options in the House at the prices indicated below. In the event Seller omits the installation of any Option in the House, Seller's responsibility for such omission shall be limited to a refund of the applicable price or allowance stated below. Any such omission shall not invalidate this Agreement, constitute a breach of its terms or give rise to any claim for damages against Seller.

The Options are as follows:

Selected Options

00 – Structural Options

Option #	Rev. #	Rev. Date	User	Qty.	Unit Price	Ext. Price	
ARBBOXRT	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
ARB REQUIREMENTS FRONT ELEVATION BOX ROOF RETURNS							
ARB required box roof returns on front elevations							
ARBOVERH	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
ARB REQUIREMENTS ROOF OVERHANG							
ARB required 1' roof overhang on all sides							
ARBPITCH	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
ARB REQUIREMENTS PLAN SPECIFICPITCH CHANGES							
ARB Required minimum roof pitch for Columbia: 8/12							
R0000000	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
SMOOTH WALLS AND CEILINGS							
R0000035	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$2,250.00	$2,250.00	P
Color:			**Location:**				
OPTIONAL STUDY							
R0000046	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
OPTIONAL KITCHEN DESK-GRANITE TOP							
R0000112	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
10' X 12' REAR CONCRETE PATIO							
R0000CAR	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
CAROLINA SERIES SPECIFICATION							
R0000DRH	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
DRH SERIES							

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Sub-Total **$2,250.00**

01 – Custom Options

Option #	Rev. #	Rev. Date	User	Qty.	Unit Price	Ext. Price	
01000000	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 750.00	$ 750.00	P
Color:			**Location:**				
POS CUSTOM OPTION 3rd irrigation zone							

Sub-Total **$ 750.00**

12 – Fireplaces

Option #	Rev. #	Rev. Date	User	Qty.	Unit Price	Ext. Price	
R1200005	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
GAS FIREPLACE W/ MANTEL/SLATE SURROUND							

Sub-Total **$ 0.00**

13 – Plumbing

Option #	Rev. #	Rev. Date	User	Qty.	Unit Price	Ext. Price	
R1300005	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
GAS WATER HEATER							
R1300006	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
TANKLESS WATER HEATER							
R1300040	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
SHOWER IN OWNER'S BATH							
R1300045	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
DOUBLE BOWL SINK IN OWNER'S BATH							
R1300050	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
DOUBLE BOWL SINK IN HALL BATH							
R1300060	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$2,500.00	$2,500.00	P
Color:			**Location:**				
DELUXE OWNER'S BATH PACKAGE							

Sub-Total **$2,500.00**

15 – Electrical

Option #	Rev. #	Rev. Date	User	Qty.	Unit Price	Ext. Price	
R1500030	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
GARAGE DOOR OPENER - 2 REMOTES							

Sub-Total **$ 0.00**

25 – Appliances

Option #	Rev. #	Rev. Date	User	Qty.	Unit Price	Ext. Price	
R2503121	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				

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WHIRLPOOL S.S. GAS RANGE APPLIANCE PACKAGE

Sub-Total **$ 0.00**

39 – Flooring-Laminate

Option #	Rev. #	Rev. Date	User	Qty.	Unit Price	Ext. Price	
R3830020	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
FIRST FLOOR FLOORING - REVWOOD							

Sub-Total **$ 0.00**

56 – Window Treatments

Option #	Rev. #	Rev. Date	User	Qty.	Unit Price	Ext. Price	
R5600005	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$1,350.00	$1,350.00	P
Color:			**Location:**				
BLINDS							

Sub-Total **$1,350.00**

70 – Structural Interior

Option #	Rev. #	Rev. Date	User	Qty.	Unit Price	Ext. Price	
R7000005	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
VAULTED CEILING OWNERS BEDROOM							

In Process

Sub-Total **$ 0.00**

97 – Color Options

Option #	Rev. #	Rev. Date	User	Qty.	Unit Price	Ext. Price	
R9700091	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
INTERIOR WALL & CEILING PAINT COLOR - SW6070 HERON PLUME							

Sub-Total **$ 0.00**

99 – All Options

Option #	Rev. #	Rev. Date	User	Qty.	Unit Price	Ext. Price	
R00000R3	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				

CAROLINA TRADITIONS PACKAGE

This Option adds the following features, where applicable, per Plan; 1. 9' 1st Floor Ceiling Height 2. Granite Countertop W/ Ceramic Tile Backsplash in Kitchen. 3. 4 puck lights in Kitchen in lieu of Flourescent Light. 4. Garage Door Hardware, 1 Set per Door 5. Open Railing with Black Metal Balusters in place of Knee Wall on First Floor Stairwell, per plan.

Sub-Total **$ 0.00**

AR – Area Cost

Option #	Rev. #	Rev. Date	User	Qty.	Unit Price	Ext. Price	
AR526490	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
LONG COVE - DRH-E							

Sub-Total **$ 0.00**

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EX – Exterior

Option #	Rev. #	Rev. Date	User	Qty.	Unit Price	Ext. Price	
EX001060	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$4,900.00	$4,900.00	P
Color:			**Location:**				
10X12 REAR COVERED PORCH-SLAB							

Sub-Total **$4,900.00**

SW – Structured Wiring

Option #	Rev. #	Rev. Date	User	Qty.	Unit Price	Ext. Price	
SWDEAKOS	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
DEAKO LIGHT SWITCHES (WHOLE HOME)							
SWHOMCON	0	12/29/2021	Wayne Vincent Valsecchi	1.0000	$ 0.00	$ 0.00	P
Color:			**Location:**				
HOME IS CONNECTED (SMART HOME PACKAGE)							

Sub-Total **$ 0.00**
Total: **$11,750.00**

Color Selections

In Process

97 – Color Options

Option #	Color	Rev. #	Rev. Date	User
EXTERIOR PACKAGE D HARDI SIDING		0	12/29/2021	
The Following Colors are to be Installed on the Home Where the Applicable Material is Shown by Plan & Elevation: BRICK = COASTAL BLUFF STONE = Asher FRONT DOOR & SHUTTERS = Chocolate HARDI LAP SIDING = Khaki Brown HARDI 4" SIDING = Navajo Beige HARDI SHAKE SIDING = Mountain Sage HARDI BOARD & BATTEN SIDING = Khaki Brown FASCIA, SOFFIT & TRIM = White				
Location:				
Notes:				
INTERIOR COLOR PACKAGE 2 - DRH		0	12/29/2021	
The following colors are to be installed in the home where the applicable product is utilized: CABINETS = WHITE SHAKER REVWOOD FLOORING = NUTMEG CHESTNUT GRANITE TOPS = CALEDONIA CERAMIC TILE BACKSPLASH = GRAY VINYL FLOORING = SILVER SCREEN CARPET = TEMPLE STONE				
Location:				
Notes:				

Base Price	**$349,990.00**
Plus Lot Premium	**+ $7,000.00**
Plus Options Selected To Date	**+ $11,750.00**
Minus Option Incentive	**<$1,000.00>**
Minus Special Discount	**$ 0.00**
Total Purchase Price	**$367,740.00**

2. OPTION MONEY. The parties hereby acknowledge that Purchaser has paid to Seller **$ 0.00** towards the cost of the Options, and Purchaser shall make additional payments towards the cost of the Options in the amounts shown in the table below by the due dates shown in the table below. Such payments towards the cost of the Options, and any and all future payments made by Purchaser for options in advance of Closing, are collectively referred to in this Agreement as "*Option Money*."

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(No option deposits found.)

Option Money paid to Seller shall not be held in escrow and shall be nonrefundable to Purchaser, except in the event of material breach of this Agreement by Seller or as otherwise provided in this Agreement. Upon Closing, all Option Money previously paid to Seller shall be credited to Purchaser against the Purchase Price. Any change to the Options shall be subject to additional charges, as set forth in Addendum 2 to the Agreement.

PURCHASER:

DocuSigned by:
Sherman Howell
07B891A20B7D430...

Buyer: Sherman Howell — 12/29/2021 Date

DocuSigned by:
Claudia Howell
D93629FC3AAF456...

Co-Buyer: Claudia Howell — 12/29/2021 Date

DocuSigned by:
Wayne V Valsecchi
E5D1E3E307AB493...

Sales Rep: Wayne Vincent Valsecchi — 12/29/2021 Date

SELLER:
D.R. Horton, Inc.

_____ _____
Date

For Internal Purposes Only:

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EXHIBIT B
STAGES OF CONSTRUCTION

This Exhibit is attached and made part of the Home Purchase Agreement ("Agreement") by and between **D.R. Horton, Inc.**, as Seller, and **Sherman Howell and Claudia Howell**, as Purchaser, for the purchase and sale of Lot **2159**, Block **2159**, of **The Villages at Long Cove** Subdivision (the "Property").

☐ **PRE-SALE CONTRACTS ONLY:** THE FOLLOWING OPTIONS ARE ONLY AVAILABLE IF INCLUDED ON EXHIBIT A AT THE TIME THE AGREEMENT IS EXECUTED:

Sunroom (per-plan)	Screen Porch (per plan)	3 car garages
Side-entry garage	Floor plan options	Foundation type (slab or basement)
Plan Elevation	3rd floor/bonus room option	Kitchen island
Media rooms	Bay window (per plan)	4th/5th Bedroom
French/Patio/Atrium doors	Sitting room options	Additional fireplaces
Garden or Jetted tubs	Deluxe bath options	9' basement ceilings
Laundry tubs	Garage service doors	Arches at any opening

Purchasers Initials:

Initials DS SH _____ Buyer DS CH _____ Co-Buyer

☐ **HOME ALREADY STARTED BY SELLER.** NONE OF THE OPTIONS LISTED IN THE CHART ABOVE CAN BE SELECTED OR REMOVED.

The parties hereby agree that the box checked below indicates the current stage of construction of the House. **ALL OPTIONS ABOVE THE MARKED STAGE OF CONSTRUCTION ARE NOT AVAILABLE TO BE SELECTED BY PURCHASER.** Purchaser acknowledges that, as construction of the House progresses, further options will be foreclosed as noted below.

In Process

☐ **00 - 2 Weeks Prior to Trench (Construction Approval to Start)**
- Cabinets, Cabinet Knobs and Laminate Countertop
- Open Rail
- Venting Microwave or Range Hood
- All Electrical Items: Cable, Phone, Structured Wiring, Intercom System, Recessed Can Lights, Eyeball Lights, Coach Lights, Wall Sconces, Speaker Pre-wires
- Oak tread staircases
- Appliance Upgrade – Built-ins, Electric Ranges

☐ **02 - Pour Slab**
- Brick and Mortar Colors
- All Exterior Colors
- No Additional Gas Lines, Fireplace, Range

☐ **03 - Snap 1st Floor (Frame Start)**

☐ **04 – Frame Roof/Attic**
- Fireplace Surrounds - Marble, Tile
- Interior Paint Colors
- Any Interior Trim.
- All Flooring - Vinyl, Tile, Carpet and Hardwoods
- Upgraded Light Fixtures

☐ **05 – Plumbing Rough**
- Plumbing Fixtures
- Granite Countertops
- Framed Mirrors

☐ **06 - Insulation**
- Appliance Upgrade and/or Color Changes

☐ **07 – Cabinet Install**

☐ **08 – Plumbing Trim**
- Closet Organizers
- Lead Glass Front Door

☐ **09 – Carpet Install**

☐ **10 – Final Inspection**

☐ **11 – Certificate of Inspection**

☐ **12 – Quality Control**
- Washer (Optional)
- Dryer (Optional)
- Refrigerator (Optional)

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- Lead Glass Window Insert (per Plan)
- Blinds
- Screens

☒ **13 – Buyer Walkthrough**

Purchaser:

DocuSigned by:
Sherman Howell
07B891A20B7D430...

12/29/2021

Buyer: Sherman Howell Date

DocuSigned by:
Claudia Howell
D93629FC3AAF456...

12/29/2021

Co-Buyer: Claudia Howell Date

SELLER:
D.R. Horton, Inc.

_____ _____
Date

For Internal Purposes Only:

DocuSigned by:
Wayne V Valsecchi
E5D1E3E307AB493...

12/29/2021

Sales Rep: Wayne Vincent Valsecchi Date

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

ADDENDUM 1
BUILDER'S REFERRAL BRICA INCENTIVES AND CONTRIBUTIONS ADDENDUM

This **ADDENDUM** is attached to and made a part of that Home Purchase Agreement between **D.R. Horton, Inc.**, as Seller, and **Sherman Howell and Claudia Howell** as Purchaser (the "Purchase Agreement"), regarding that parcel of real estate located in **RICHLAND** County, **SC**, briefly described as Lot **159**, in **The Villages at Long Cove** subdivision, and referred to in the Purchase Agreement as the "Lot." All terms defined in the main text of the Purchase Agreement shall have the same meanings when used in this Addendum. This Addendum, together with the Purchase Agreement, constitutes the sole and entire agreement between Seller and Purchaser with regard to any incentives, allowances, adjustments, credits, discounts, rebates or other contributions of any kind or amount (collectively, the "Referral Incentives and Contributions") made, or to be made, **by Seller to Purchaser in connection with Seller's referral of Purchaser to SELLER'S PREFERRED MORTGAGE LENDER(S) DESCRIBED BELOW ("PREFERRED LENDER"),** and there are no agreements regarding such Referral Incentives and Contributions, whether written or unwritten, expressed or implied, between the parties except as set forth in this Addendum. In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of the main text of the Purchase Agreement, the terms and provisions of this Addendum shall control.

Purchaser acknowledges receipt of that document entitled "Notice of Seller's Business Affiliations" (the "Affiliation Notice"), and Purchaser confirms its understanding that Seller has an affiliation with **DHI MORTGAGE COMPANY, LTD**. **("DHI MORTGAGE")** and that Purchaser is not required to use this affiliated company or any Preferred Lender (described below) as a condition of Purchaser's purchase of the Property or Purchaser's access to settlement services in connection with the purchase of the Property. The parties state, acknowledge and agree as follows:

1. Seller shall provide for the benefit of Purchaser the Referral Incentives and Contributions listed in Section 2 below, provided that Purchaser chooses to use PREFERRED LENDER to finance the purchase of the Property and provided that each and all of the following occur:

a. Purchaser applies to PREFERRED LENDER for a mortgage loan to finance the purchase of the Property within the timeframe required under Section 2(b) of this Purchase Agreement;

b. Purchaser's loan application is approved by PREFERRED LENDER, and PREFERRED LENDER actually funds the loan and finances the purchase of the Property;

c. Purchaser closes on the purchase of the Property on or before the final date and time for Closing set by Seller pursuant to subsection 16a of the Purchase Agreement; and

d. Purchaser uses the closing attorney recommended by Seller to act as settlement agent and close the purchase of the Property.

2. Provided that all the conditions set forth in Section 1 above are satisfied and met in a timely manner, Purchaser shall be entitled to a contribution from Seller towards Purchaser's closing costs in an amount up to **$4,000.00**. This contribution, up to the applicable limit, shall be applied against closing costs actually charged to Purchaser, in the following order (as applicable): Origination Charge, Origination Fee, Upfront Unfinanced Mortgage Insurance (if applicable).

If any of the maximum amount of contribution remains unapplied after payment of all of the above listed closing costs, then the remainder shall be applied against other usual and customary closing costs actually charged to Purchaser by other settlement service providers. Notwithstanding the foregoing: (i) any contribution by Seller to Purchaser's closing costs shall be subject to Purchaser's loan program and any lender guidelines or restrictions, (ii) no portion of the maximum amount of contribution may be applied as a credit to, or in partial payment of, the Purchase Price of the Property or disbursed to Purchaser, and (iii) any unapplied portion of the maximum amount of contribution shall be forfeited by Purchaser.

3. ***Preferred Lender.*** **The Preferred Lender relating to this Builder's Referral Incentive and Contributions Addendum is DHI Mortgage. More information regarding DHI Mortgage is available at: www.dhimortgage.com**.

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Purchaser's decision to use any lender other than PREFERRED LENDER will not affect any concessions, incentives or discounts offered by Seller for the purchase of the Property *other than* the closing cost contribution and builder options allowance (if any) described in Sections 2 and 3 above.

IN WITNESS WHEREOF, THE UNDERSIGNED, HAVING READ AND REVIEWED THIS ADDENDUM, HAVE SIGNED THIS ADDENDUM ON THE DATE SHOWN BELOW.

Purchaser:

DocuSigned by:
Sherman Howell
07B891A20B7D430...

12/29/2021
Buyer: Sherman Howell — Date

DocuSigned by:
Claudia Howell
D93629FC3AAF456...

12/29/2021
Co-Buyer: Claudia Howell — Date

Seller:

D.R. Horton, Inc.

_____ _____
Date

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Buyer: **Sherman Howell and Claudia Howell** / Community: **The Villages at Long Cove** / Lot: **159**
Address: **564 Pine Knot Road** / Project#: **526490000** / Sales Agent: **Wayne Vincent Valsecchi** / Internal #
Lender: **PREFERRED** MORTGAGE FINANCIAL / Lender Agent: **BUTLER, MARILYN**

Project: The Villages at Long Cove
Lot: 159
526492159

ADDENDUM 2
CONSTRUCTION ADDENDUM & DISCLOSURES

This Addendum is attached to and made a part of that Home Purchase Agreement (the "Agreement") between **Sherman Howell and Claudia Howell** as Purchaser and **D.R. Horton, Inc.**, as Seller, regarding that parcel of land located in **RICHLAND** County, **SC**, briefly described as Lot **159**, in **The Villages at Long Cove** and referred to in the Agreement as the "Lot." All terms defined in the main text of the Agreement shall have the same meanings when used in this Addendum. Purchaser and Seller further agree as follows:

1. CONSTRUCTION OF HOUSE. Prior to Closing, Seller shall construct or complete construction of a single-family Ø detached O townhouse residence (the "House") on the Lot. Seller shall not be required to commence construction of the House unless and until: (a) the Loan has been approved by Purchaser's lender to Seller's satisfaction (if the Agreement contains a Financing Contingency); (b) Purchaser has paid all amounts then due to Purchaser's lender (if any) and to Seller; and (c) all contingencies to Purchaser's performance hereunder have been satisfied or removed to Seller's satisfaction. Seller's obligation to construct the House shall be contingent on Seller's ability: (a) to place the House on the Lot without obtaining variances from any set-backs or other dimensional requirements, and (b) to construct the House on the Lot without incurring abnormal costs for foundation, slab or structural support walls. If Seller determines that either of these contingencies cannot be satisfied to Seller's satisfaction, then Seller may terminate this Agreement upon written notice to Purchaser, in which event the Earnest Money and Option Money (if any) shall be refunded to Purchaser.

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2. HOUSE PLAN. Seller shall construct the House according to the **Columbia Carolina** Plan, Elevation **C**, including those features and options listed on Exhibit A to the Agreement, Ø on a slab / O over a basement (the "Base Plan"). Purchaser hereby acknowledges and agrees as follows:

a. Seller shall determine the placement and orientation of the House on the Lot in Seller's sole discretion.

b. The House shall be handmade and unique, and that although the House shall be based on the Base Plan, variations from the Base Plan will occur. Seller shall not be responsible for such variations from the Base Plan or changes to the Base Plan standard features made prior to Closing. Standard features of the Base Plan are subject to change without notice or obligation.

c. Brochures, collateral, drawings, renderings and other marketing materials, models and displays used by Seller's sales agents are for general illustrative purposes only, and are not to be relied upon as representations of actual locations, dimensions, specifications, features or finished products.

d. Seller may locate the heating, wiring and electrical system, hot water heater, all plumbing lines, and gas and electric meters at Seller's sole discretion.

e. Seller may substitute materials or items to be used in the construction of the House with materials or items of equal or comparable value, in Seller's reasonable discretion.

f. Seller may remove or retain any trees and other vegetation currently existing on the Property if, in Seller's sole discretion, Seller determines that such removal or retention is necessary or desirable in connection with the development of the Property or the Subdivision.

g. Seller may use a helicopter during the development and construction phases of the Subdivision. From time to time, there may be helicopter flyovers and/or landings in the Subdivision. Once construction is completed, said flyovers and landings by Seller will cease.

h. Subject only to the provisions of 9.c and 14 of this Agreement, Closing shall constitute acceptance of the House by Purchaser AS BUILT, and Purchaser hereby waives any right to object to any variation in construction from the Base Plan after Closing.

3. HEATING AND AIR CONDITIONING. The House shall be adequately and efficiently heated and air-conditioned with equipment having at least the minimum specifications for the House as established by applicable building and construction codes. Purchaser acknowledges that the performance and methods and practices of operating heating and cooling systems can be directly affected by the orientation and location of a room or Home in relation to the sun. Seller shall, therefore, have no obligation other than to install a heating

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and cooling system at the Property which has been sized and designed based on industry standards for the type and size of House to be constructed and which functions in accordance with industry standards. No representations are made that the systems in the Property including, by way of example only, heating and air conditioning and electrical systems will operate or perform at a level or standard greater than the minimum specifications of the manufacturer. The clothes dryer shall vent to the outside.

4. INSULATION. The type, thickness and R-value of the insulation to be installed in the House, where construction reasonably permits as determined in the sole discretion of Seller, shall be as follows: (a) exterior walls are insulated with batt insulation to a thickness of 3.5 inches or per code, whichever is greater, which will yield an R- value meeting or exceeding applicable building code; (b) ceilings below attic areas are insulated with blown insulation to a thickness of 12 inches or per code, whichever is greater, which will yield an R-value meeting or exceeding applicable building code; (c) vaulted ceilings are insulated with batt insulation to a thickness of 3.5 inches or per code, whichever is greater, which will yield an R-value meeting or exceeding applicable building code; (d) floor overhangs are insulated with batt insulation to a thickness of 3.5 inches or per code, whichever is greater, which will yield an R-value meeting or exceeding building code; (e) notwithstanding the foregoing, Purchaser acknowledges that insulation may be of lesser thickness and R-value than indicated in certain areas based upon normal construction variances in insulation thickness and openings in walls and where the design of the Home does not permit greater thickness. Purchaser further acknowledges that the information above as to R-values is based on the representation of the manufacturer or installer of the insulation and Seller does not warrant the accuracy of such representations. Seller reserves the right to substitute the type, thickness and R-value of the insulation installed in the Home as long as the R-value of the insulation installed in a substantial portion of the Home is not substantially changed.

5. ALARM SYSTEM OR PREWIRING. Only the item checked below is part of this Agreement:

☐ A. An alarm system shall be or has been INSTALLED on the main floor of the House; however it shall be Purchaser's responsibility to activate the alarm system and secure monitoring for the alarm system. Seller shall not be responsible for any changes made to the alarm system by Purchaser or by any alarm-servicing or monitoring company other than the contractor engaged by Seller to install the system.

☐ B. An alarm system shall be or has been PREWIRED on the main floor of the House; however it shall be Purchaser's responsibility to install an alarm system, activate the alarm system, and secure monitoring for the alarm system. Seller shall not be responsible for any changes made to the alarm system prewiring by Purchaser or by anyone other than the contractor engaged by Seller to install the system. Purchaser understands and acknowledge there may be additional costs associated with installation, activation, and/or monitoring of an alarm system. Any additional costs associated with the installation, activation, and/or monitoring of an alarm system are the Purchaser's sole responsibility and are not part of this Agreement.

☑ **C. The House shall not be prewired for a security system, nor will an alarm system be installed.**

6. CHANGES. After the execution of this Agreement, Seller may (but shall not be obligated to) permit Purchaser to change the options to be included House. Seller may withhold approval of any change in its sole discretion. In order to change an option in the House, Purchaser shall pay to Seller a Change Fee in the amount of **Five Hundred and 00/100 Dollars ($500.00) for each such change** at the time the request is approved by Seller. Any Change Fee paid shall be nonrefundable and shall not be credited against the Purchase Price. Any changes shall not be effective unless evidenced by a written amendment to this Agreement. At the time of execution of that amendment, Seller may, in its sole discretion, require Purchaser to pay additional Option Money in the amount of the total increase in the Purchase Price resulting from the change. Any Option Money paid to Seller at any time shall not be held in escrow, and shall be nonrefundable to Purchaser except in the event of: (1) breach of this Agreement by Seller, or (2) termination of this Agreement by Seller pursuant to Section 2 above. At Closing, all Option Money previously paid to Seller shall be credited to Purchaser against the Purchase Price. Purchaser acknowledges that any changes may affect the timing of completion of the House. Purchaser acknowledges that the cost of options and upgrades may not result in a commensurate increase in the value of the Property.

7. COMPLETION. Subject to the contingencies stated herein, Seller shall complete construction of the House prior to Closing. Seller shall construct the House according to all applicable governmental codes and regulations. Construction of the House shall be deemed complete when a certificate of occupancy is issued for the House by the applicable governmental authority. Seller shall deliver the completed House to Purchaser at Closing in "broom-clean" condition, ready to occupy. The House and Lot shall be free of all trash and debris.

8. PURCHASER'S INQUIRIES. Purchaser shall direct all inquiries and questions to Seller's on-site associate. The on-site associate will provide Purchaser with timely responses; however, the associate does not and shall not have authority to change the terms of this Agreement in any manner. This Agreement may be changed or modified only by a written amendment duly executed by both Purchaser and Seller. Purchaser acknowledges that Seller's sales associates, superintendents, closing staff, warranty staff and other employees **do not** have authority to modify this Agreement. Only an authorized corporate officer of Seller may modify this Agreement on Seller's

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behalf.

IN WITNESS WHEREOF, THE UNDERSIGNED, HAVING READ AND REVIEWED THIS ADDENDUM, HAVE SIGNED THIS ADDENDUM ON THE DATES SHOWN BELOW.

PURCHASER:

DocuSigned by:
Sherman Howell
07B891A20B7D430...
12/29/2021

Buyer: Sherman Howell — Date

DocuSigned by:
Claudia Howell
D93629FC3AAF456...
12/29/2021

Co-Buyer: Claudia Howell — Date

SELLER:

D.R. Horton, Inc.

_____ _____
Date

For Internal Purposes Only
Seller's Sales Representative:

DocuSigned by:
Wayne V Valsecchi
E5D1E3E307AB493...
12/29/2021

Sales Rep: Wayne Vincent Valsecchi — Date

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ADDENDUM 8
VARIATIONS IN MATERIALS AND COMPONENTS

This Addendum is attached to and made a part of that Home Purchase Agreement (the "Agreement") between Sherman **Howell** and Claudia Howell, as Purchaser, and **D.R. Horton, Inc.**, as Seller, regarding that parcel of land located in **RICHLAND** County, **SC**, briefly described as Lot **2159**, Block/Phase , **The Villages at Long Cove** subdivision, and referred to in the Agreement as the "Lot." All terms defined in the Agreement shall have the same meanings when used in this Addendum. Purchaser and Seller further agree and acknowledge as follows:

1. Many materials, both natural and man-made, used in the construction of homes contain variations and inconsistencies. Such variations and inconsistencies are beyond Seller's control, and Seller shall not be responsible or liable for them. Some of the materials and components which may exhibit variations and inconsistencies are detailed in the sections below.

2. CONCRETE. Purchaser understands and acknowledges that when adding additional concrete to the existing concrete pad, the two pads may not match in color. Also, there may be visible seam between the two pads.

3. INTERIOR PAINT. Seller installs a level 4 drywall/Gypsum Board finish in its homes. White or light color flat paint is recommended for this type of finish and is a standard feature in Seller's homes. Colored, gloss or semi-gloss paint are not recommended as they may magnify joint or patch photographing in critical lighting areas.

4. OUTLET LOCATIONS. Purchaser understands that any cable, phone and/or data outlet locations that are not specifically designated at the initial time of selections will be placed by the construction supervisor, and will not be moved.

5. WOOD.

a. Purchaser understands that wood of the same species will vary in color, mineral streaking, texture, pitch pockets, and grain uniformity, depending on when, where and how the tree grew and the fact that different wood products come from different manufacturers. These characteristics may occur on adjacent cabinets, between pair of doors and/or drawers, with the same cabinet panels, between flooring, stair treads and railings and between flooring and cabinets/vanities. It is these differences, caused by nature, that create the warmth and individuality of fine woods. Darker finishes tend to hide some of these natural characteristics while lighter finishes tend to accentuate the differences. Because of this, the variations in color and contrast may be different than in a display or in a smaller sample.

b. Seller shall not be responsible under any circumstances for damage or wear to hardwood flooring caused in whole or in part by moisture. Please refer to the Limited Warranty administered by Residential Warranty Corporation for terms, conditions, and exclusions pertaining to flooring.

6. STUCCO. The final appearance of your home may be impacted by sunlight angles, shadows from architectural details, application and texturing techniques, environmental surrounding and color lot to color lot variations.

7. BRICK/STONE. Brick and stone products are composed of earthen materials and go through many processes before firing and consequently each run or lot of brick/stone will vary. Photographs, samples and even completed homes are only a representation of the color and each run or lot and even installation can vary from home to home. An exact replication of total color or percentages as displayed by samples or model homes cannot be guaranteed.

8. GRANITE/CERAMIC/MARBLE. The materials used in counter tops, fireplace surrounds/hearths, wall and floor tile contain color variations and "veining", natural blemishes, and grain. Accordingly, consistency *cannot be guaranteed*.

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9. In the event of any conflict between the provisions of this Addendum and the provisions of the Agreement, the Agreement shall control. In the event of any conflict between the provisions of this Addendum and the provisions of the Limited Warranty, the Limited Warranty shall control.

IN WITNESS WHEREOF, THE UNDERSIGNED, HAVING READ AND UNDERSTOOD THIS ADDENDUM, HEREBY EXECUTE THIS ADDENDUM AS OF THE DATES SHOWN BELOW.

Purchaser:	**Seller:**
DocuSigned by: Sherman Howell 07B891A20B7D430... 12/29/2021	**D.R. Horton, Inc.**
Buyer: Sherman Howell Date	_____ _____ Date
DocuSigned by: Claudia Howell D93629FC3AAF456... 12/29/2021	
Co-Buyer: Claudia Howell Date	

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SOUTH CAROLINA DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS

South Carolina Real Estate Commission
PO BOX 11847, Columbia, S.C. 29211-1847
Telephone: (803) 896-4400 Fax: (803) 896-4427
http://llr.sc.gov/POL/REC/

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Pursuant to South Carolina Real Estate License Law in S.C. Code of Laws Section 40-57-370, a real estate licensee is required to provide you a meaningful explanation of agency relationships offered by the licensee's brokerage firm. This must be done at the first practical opportunity when you and the licensee have substantive contact.

Before you begin to work with a real estate licensee, it is important for you to know the difference between a broker-in-charge and associated licensees. The broker-in-charge is the person in charge of a real estate brokerage firm. Associated licensees may work only through a broker-in-charge. **In other words, when you choose to work with any real estate licensee, your business relationship is legally with the brokerage firm and not with the associated licensee.**

A real estate brokerage firm and its associated licensees can provide buyers and sellers valuable real estate services, whether in the form of basic **customer** services, or through **client**-level agency representation. The services you can expect will depend upon the legal relationship you establish with the brokerage firm. It is important for you to discuss the following information with the real estate licensee and agree on whether in your business relationship you will be a **customer** or a **client**.

You Are a Customer of the Brokerage Firm

South Carolina license law defines customers as buyers or sellers who choose NOT to establish an agency relationship. The law requires real estate licensees to perform the following ***basic duties*** when dealing with ***any*** real estate buyer or seller as customers: ***present all offers in a timely manner, account for money or other property received on your behalf, provide an explanation of the scope of services to be provided, be fair and honest and provide accurate information, and disclose "material adverse facts" about the property or the transaction which are within the licensee's knowledge.***

Unless or until you enter into a written agreement with the brokerage firm for agency representation, you are considered a "customer" of the brokerage firm, and the brokerage firm will not act as your agent. As a customer, you should not expect the brokerage firm or its licensees to promote your best interest, or to keep your bargaining information confidential unless a transaction broker agreement obligates the brokerage firm otherwise.

Customer service does not require a written agreement; therefore, you are not committed to the brokerage firm in any way unless a transaction broker agreement or compensation agreement obligates you otherwise.

Transaction Brokerage

A real estate brokerage firm may offer transaction brokerage in accordance with S.C. Code of Laws Section 40-57-350. Transaction broker means a real estate brokerage firm that provides customer service to a buyer, a seller, or both in a real estate transaction. A transaction broker may be a single agent of a party in a transaction giving the other party customer service. A transaction broker also may facilitate a transaction without representing either party. The duties of a brokerage firm offering transaction brokerage relationship to a customer can be found in S.C. Code of Laws Section 40-57-350(L)(2).

You Can Become a Client of the Brokerage Firm

Clients receive more services than customers. If client status is offered by the real estate brokerage firm, you can become a client by entering into a written agency agreement requiring the brokerage firm and its associated licensees to act as an agent on your behalf and promote your best interests. If you choose to become a client, you will be asked to confirm in your written representation agreement that you received this agency relationships disclosure document in a timely manner.

A ***seller becomes a client*** of a real estate brokerage firm by signing a formal listing agreement with the brokerage firm. For a seller to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the seller and the brokerage firm which becomes the agent for the seller.

A ***buyer becomes a client*** of a real estate brokerage firm by signing a formal buyer agency agreement with the brokerage firm. For a buyer to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the buyer and the brokerage firm which becomes the agent for the buyer.

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SOUTH CAROLINA DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS

South Carolina Real Estate Commission
PO BOX 11847, Columbia, S.C. 29211-1847
Telephone: (803) 896-4400 Fax: (803) 896-4427
http://llr.sc.gov/POL/REC/

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If you enter into a written agency agreement, as a client, the real estate brokerage has the following ***client-level duties: obedience, loyalty, disclosure, confidentiality, accounting, and reasonable skill and care***. Client-level services also include advice, counsel and assistance in negotiations.

Single Agency

When the brokerage firm represents only one client in the same transaction (the seller or the buyer), it is called single agency.

Dual Agency

Dual agency exists when the real estate brokerage firm has two clients in one transaction – a seller client and a buyer client. At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the brokerage firm to represent both you and the other client in a disclosed dual agency relationship.

Disclosed Dual Agency

In a disclosed dual agency, the brokerage firm's representation duties are limited because the buyer and seller have recognized conflicts of interest. Both clients' interests are represented by the brokerage firm. As a disclosed dual agent, the brokerage firm and its associated licensees cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning the price negotiations, terms, or factors motivating the buyer/client to buy or the seller/client to sell. Each Dual Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

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Designated Agency

In designated agency, a broker-in-charge may designate individual associated licensees to act solely on behalf of each client. Designated agents are not limited by the brokerage firm's agency relationship with the other client, but instead have a duty to promote the best interest of their clients, including negotiating a price. The broker-in-charge remains a disclosed dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients. At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the brokerage firm to designate a representative for you and one for the other client in a designated agency. Each Designated Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

It's Your Choice

As a real estate consumer in South Carolina, it is your choice as to the type and nature of services you receive.

- You can choose to remain a customer and represent yourself, with or without a transaction broker agreement.
- You can choose to hire the brokerage firm for representation through a written agency agreement.
- If represented by the brokerage firm, you can decide whether to go forward under the shared services of dual agency or designated agency or to remain in single agency.

If you plan to become a client of a brokerage firm, the licensee will explain the agreement to you fully and answer questions you may have about the agreement. Remember, however that until you enter into a representation agreement with the brokerage firm, you are considered a customer and the brokerage firm cannot be your advocate, cannot advise you on price or terms, and cannot keep your confidences unless a transaction broker agreement obligates the brokerage firm otherwise.

The choice of services belongs to you – the South Carolina real estate consumer.

Acknowledgement of Receipt by Consumer:

DocuSigned by:
Sherman Howell
07B891A20B7D430...

12/29/2021

Buyer: Sherman Howell Date

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SOUTH CAROLINA DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS

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PO BOX 11847, Columbia, S.C. 29211-1847
Telephone: (803) 896-4400 Fax: (803) 896-4427
http://llr.sc.gov/POL/REC/

DocuSigned by:
Claudia Howell
D93629FC3AAF456...

12/29/2021

Co-Buyer: Claudia Howell Date

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FHA REAL ESTATE CERTIFICATION

This certification is attached to and made part of that certain Home Purchase Agreement (the "Agreement") by and between **D.R. Horton, Inc.**, as Seller, and **Sherman Howell and Claudia Howell**, as Purchaser, for the purchase and sale of Lot **159**, Block/Phase , **The Villages at Long Cove** Subdivision in **RICHLAND**, **SC**. Capitalized terms not otherwise defined herein shall have the same meanings as ascribed to them in the Agreement.

Purchaser, Seller, and Co-Broker hereby certify that (1) the terms and conditions of the Agreement are true to the best of their knowledge and belief, and (2) any other agreement entered into by any of these parties in connection with this real estate transaction is part of, or attached to, the Agreement.

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PURCHASER:

DocuSigned by:
Sherman Howell
07B891A20B7D430...

12/29/2021

Buyer: Sherman Howell — Date

DocuSigned by:
Claudia Howell
D93629FC3AAF456...

12/29/2021

Co-Buyer: Claudia Howell — Date

SELLER:

D.R. Horton, Inc.

_____ _____
Date

CO-BROKER:

DocuSigned by:
Tonya Peay
0DE4D7B562D8432...

12/29/2021

Broker Agent: Tonya Peay — Date

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NOTICE OF SELLER'S BUSINESS AFFILIATIONS

TO: Sherman Howell and Claudia Howell
[Homebuyer(s)]

PROPERTY: 564 Pine Knot Road, BLYTHEWOOD, SC 29016

FROM: D.R. Horton, Inc.
[Seller]

DATE: December 29, 2021

This is to give you notice that the above referenced seller has a business relationship with:

DHI MORTGAGE COMPANY, LTD.
570 Chris Drive
West Columbia, SC 29169

D.R. HORTON INSURANCE AGENCY INC.
1341 Horton Circle
Arlington, TX 76011

TRAVIS COUNTY TITLE COMPANY, DBA DHI TITLE AGENCY/DHI TITLE OF SOUTH CAROLINA
10700 Pecan Park Blvd, Ste 220
Austin, TX 78750

The nature of this business relationship is that these companies are corporate affiliates, each being 100% wholly owned by, or by a subsidiary of, the same parent corporation. Because of this relationship, this referral may provide seller a financial or other benefit.

Set forth below is the estimated charge or range of charges by each company for settlement services listed. You are **NOT** required to use these companies as a condition of your purchase of the property from seller or as a condition of your application for, or settlement of, a mortgage loan on the property in connection with your purchase. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

DHI MORTGAGE COMPANY, LTD.		TRAVIS COUNTY TITLE COMPANY	
Service	**Charge or Range**	**Service**	**Charge or Range**
Loan Origination Charge:	0% of Loan Amount plus $995.00	Simultaneous Lender's Title Insurance	$100.00 - $250.00
	An additional 1% of the Loan Amount may apply for certain Affordable Housing Loan Programs	Owner's Title Insurance:	$828.00 - $928.00

Travis County Title Company charge estimates are based on an average home price of $300,000. Title Insurance Rates are set by the state. Adjustments to Sales Price, Loan Amount and Lender requirements will impact the cost of your title insurance. Mortgage fees may vary depending upon whether the loan is originated or brokered by DHI Mortgage Company, Ltd.

NOTE: If you apply with DHI Mortgage Company, Ltd., a Loan Estimate of all settlement charges will be provided to you by DHI Mortgage Company, Ltd. at or within three business days after loan application.

You may be entitled to additional builder discounts/credits paid by the seller to purchase multiple settlement services as set forth in the Builder's Incentive and Concessions Addendum to your purchase contract.

D. R. HORTON INSURANCE AGENCY, INC.
D.R. HORTON INSURANCE AGENCY, INC. is a licensed insurance agent that offers policies of property insurance as agent for one or more insurance companies qualified to transact insurance business in the State of South Carolina. You will be provided a separate proposal or quote of the terms and conditions of any policy of insurance offered by D.R. HORTON INSURANCE AGENCY, INC. in which you express an interest. For comparison purposes, the cost for a hazard insurance policy for a home valued at $300,000 with commonly selected coverage items and deductibles would range between: $323 and $12,563 per annum. The specific premium depends on various factors, including but not limited to, the value of the home, the location of the home, deductibles selected, and the amount of coverage selected. The quote will set out the estimated premium and other charges, or range of charges, by D.R. HORTON INSURANCE AGENCY, INC. for its insurance products or services.

ACKNOWLEDGMENT:
I/we have read this disclosure form and understand that seller is referring me/us to purchase the above-described settlement services from **DHI MORTGAGE COMPANY, LTD., TRAVIS COUNTY TITLE COMPANY,** and **D.R. HORTON INSURANCE AGENCY, INC.,** and may receive a financial or other benefit as the result of this referral.

DocuSigned by:
Sherman Howell
07B891A20B7D430...

12/29/2021

Buyer: Sherman Howell — Date

DocuSigned by:
Claudia Howell
D93629FC3AAF456...

12/29/2021

Co-Buyer: Claudia Howell — Date

Revised 7.16.2021 MTW

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

ADDENDUM 3
CURRENT RESIDENCE CONTINGENCY

This Addendum is attached to and made a part of that Home Purchase Agreement (the "Agreement") between **Sherman Howell and Claudia Howell**, as Purchaser, and **D.R. Horton, Inc.**, as Seller, regarding that parcel of land located in **RICHLAND** County, **SC**, briefly described as Lot **2159**, Block/Phase , **The Villages at Long Cove** Subdivision, and referred to in the Agreement as the "Lot." All terms defined in the Agreement shall have the same meanings when used in this Addendum. Purchaser and Seller further agree as follows:

1. CONTINGENCY. The subsection checked below shall apply:

○ **a.** NO CONTINGENCY. Purchaser agrees and acknowledge that Purchaser's performance of its obligations under this Agreement shall not be contingent upon the sale of Purchaser's current or former residence or any other property of Purchaser.

⊘ **b.** CONTINGENCY. Purchaser's performance of its obligations under this Agreement shall be contingent upon the closing of Purchaser's sale of certain real property owned by Purchaser identified below (the "Current Residence"). The contingency described in the foregoing sentence is referred to in this Addendum as the "Contingency." In the event the Contingency is not satisfied or waived in writing by Purchaser on or before the deadline set forth below (the "Contingency Deadline"), either party may terminate this Agreement upon written notice to the other. In such event, the Earnest Money shall be refunded to Purchaser, the Option Money, if any, shall be retained by Seller, and neither party shall have any further liability or obligation to the other hereunder.

Current Residence: _____
_____, ____,

Contingency Deadline: **02/27/2022**

2. PURCHASER'S WARRANTIES. If Section 1(b) above is checked, Purchaser represents and warrants as follows:

a. Purchaser warrants that the Current Residence is currently listed for sale (or will be listed within 5 business days of the Effective Date) with a reputable real estate brokerage licensed to do business in the state and county in which it is located, and that the Current Residence is listed by that brokerage firm in the authorized multiple listing service used by real estate agencies in the community in which it is located. Purchaser warrants that it shall maintain these listings of the Current Residence until it is sold or this Agreement is terminated.

b. Purchaser warrants that there ☒ **IS** / ☐ **IS NOT** a fully executed contract currently in effect for the sale of Purchaser's Current Residence.

c. Purchaser warrants that, except for the Contingency, this Agreement is not contingent upon the closing of a sale of any property owned by Purchaser and that, at the time of Closing, Purchaser will have sufficient cash available (together with the Loan) to complete the purchase of the Property contemplated in the Agreement. In the event the Purchaser does not have sufficient cash available at Closing or cannot obtain financing without closing on the sale of another property, Seller may terminate this Agreement upon written notice to Purchaser. In such event, Seller shall retain the Earnest Money and the Option Money, if any, and thereafter neither party shall have any further liability or obligation to the other hereunder.

3. AUTOMATIC EXPIRATION OF RIGHT TO TERMINATE. Notwithstanding any other provision herein, if this Agreement has not been previously terminated, the Contingency shall automatically expire on the date that is ten (10) days after the Contingency Deadline and thereafter shall not be a condition to Purchaser's obligation to close on the purchase of the Property. FROM AND AFTER THAT DATE, PURCHASER SHALL NOT HAVE THE RIGHT TO TERMINATE THIS AGREEMENT FOR FAILURE OF THE CONTINGENCY TO BE MET OR SATISFIED.

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4. THIRD PARTY OFFERS; TERMINATION BY SELLER. Purchaser acknowledges that Seller shall continue to market the Property so long as the Contingency remains in effect. If Seller receives a bona fide offer to purchase the Property from a third party during such period, then Seller shall notify Purchaser that it has received such offer. Purchaser shall then have forty-eight (48) hours from receipt of such notice to notify Seller that Purchaser waives the contingency to Purchaser's performance stated in this Addendum, in which event the contingency shall become void and have no further force or effect. If Purchaser does not so notify Seller within that time period, then Seller may terminate this Agreement upon written notice to Purchaser, in which event Seller shall refund all Earnest Money to Purchaser, Seller shall retain all Option Money, if any, and thereafter neither party shall have any further liability or obligation to the other under this Agreement.

5. CONFLICT. In the event of any conflict between the terms and provisions of the main text of this Agreement and the terms and provisions of this Addendum, the terms and provisions of this Addendum shall control.

Purchaser:

DocuSigned by:
Sherman Howell
07B891A20B7D430...

12/29/2021

Buyer: Sherman Howell — Date

DocuSigned by:
Claudia Howell
D93629FC3AAF456...

12/29/2021

Co-Buyer: Claudia Howell — Date

Seller:

D.R. Horton, Inc.

_____ _____

Date

For Internal Purposes Only
SELLER'S SALES REP:

DocuSigned by:
Wayne V Valsecchi
E5D1E3E307AB493...

12/29/2021

Sales Rep: Wayne Vincent Valsecchi — Date

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ADDENDUM 4
CO-BROKER COMMISSION ADDENDUM

Seller:	**D.R. Horton, Inc.**
Purchaser(s):	**Sherman Howell and Claudia Howell**
Property:	**564 Pine Knot Road, BLYTHEWOOD, SC 29016** Lot **159**, **The Villages at Long Cove** **Subdivision**
Co-Broker Real Estate Agency:	**Realty One Group**
Agency Address:	**1001 pinnacle point drive, suite 104, columbia, SC 29223, US**
Co-Broker Agent:	**Tonya Peay**
Co-Broker Agent License No.	
	(803) 800-2405 tmjpeay1@gmail.com

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This Co-Broker Addendum ("Addendum") is being provided pursuant to the Home Purchase Agreement ("Agreement") by and between Seller and Purchaser for the purchase and sale of the above-referenced Property. Capitalized terms not otherwise defined herein shall have the same means as ascribed to them in the Agreement. If any term or condition of this Addendum conflicts with any term or condition of the Agreement, the terms and conditions of this Addendum shall prevail.

1. **Commission**. Purchaser hereby identifies and designates the above named Sales Agent, Real Estate Broker and Real Estate Agency, collectively, as "Co-Broker," as provided in Section 10 of the Agreement. Subject to the terms and provisions of the Agreement and this Addendum, and provided that Closing actually occurs, Co-Broker will receive a real estate sales commission at Closing in the amount of **3.00%** of the Purchase Price stated Section 2 of the Agreement as of the Effective Date (the "Base Commission"). For the purposes of this Addendum, the term "Commission" is intended to include the Based Commission and all other commissions, incentives, and bonuses, if any, to be received by Co-Broker in connection with the purchase and sale of the Property pursuant to the Agreement. No commission of any kind shall be earned or due unless and until Closing occurs. Co-broker's Commission shall be subject to limitations, if any, on total broker commission imposed by Purchaser's lender. The Commission must be paid at Closing and must be shown on the closing disclosure.

2. **Bonus Commission**. The subsection checked below shall apply:

☒ No bonus commission shall be due or paid.

OR

○ If Closing occurs on or before , then, at Closing, the Co-Broker shall be paid an additional, bonus commission in the amount specified in the sub-subsection checked below:

☐ **$0.00**

AND / OR

☐ Relocation fee reimbursement up to **$**

The applicable **D.R. Horton Club Elite** bonus amount pursuant to the **D.R. Horton Club Elite** rules published by the Seller as of the Closing Date shall be paid if eligible.

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3. **Real Estate Certification**. Co-Broker hereby certifies as follows:
   a. The terms, conditions, representations and warranties contained in the Agreement are true, to the best of my knowledge and belief; and
   b. Any other agreement entered into by any parties in connection with the subject real estate transaction is part of, or attached to, the Agreement.

4. **Warranty of Authority**. The undersigned Sales Agent (or other person signing on behalf of Co-Broker) represents and warrants that he or she has the requisite authority to bind Co-Broker, including the above-named Real Estate Broker and Real Estate Agency as to all matters addressed in this Addendum and to modify any existing commission agreement with respect to the Agreement and under which Co-Broker may be entitled to receive a commission.

CO-BROKER:

DocuSigned by:
Tonya Peay
0DE4D7B562D8432...

12/29/2021
Broker Agent: Tonya Peay Date

Agent License Number:
(803) 800-2405
tmjpeay1@gmail.com

In Process

SELLER:
D.R. Horton, Inc.

_____ _____
Date

For Internal Purposes Only
SELLER'S SALES REP:

DocuSigned by:
Wayne V Valsecchi
E5D1E3E307AB493...

12/29/2021
Sales Rep: Wayne Vincent Valsecchi Date

WVValsecchi@drhorton.com

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Internal # **The Villages at Long Cove/2159**

Sherman Howell and Claudia Howell 526492159

CO-BROKER CERTIFICATION

Seller: **D.R. Horton, Inc.**

Purchaser(s): **Sherman Howell and Claudia Howell**

Property: **564 Pine Knot Road, BLYTHEWOOD, SC 29016**
Lot **159**, **The Villages at Long Cove** Subdivision

Co-Broker Real Estate Agency: **Realty One Group**

Co-Broker Agent: **Tonya Peay**

Co-Broker Agent License No.

This Co-Broker Certification (this "Certification") is being provided pursuant to the Home Purchase Agreement ("Agreement") by and between Seller and Purchaser in connection with the purchase and sale of the above-referenced Property. Capitalized terms not otherwise defined herein shall have the same means as ascribed to them in the Agreement. If any term or condition of this Addendum conflicts with any term or condition of the Agreement, the terms and conditions of this Addendum shall prevail. As used herein, "Co-Broker" shall refer collectively to the above named Co-Broker Sales Agent, Co-Broker Broker-In-Charge/Qualifying Broker, and Co-Broker Real Estate Agency.

In Process

1. Certification.

   a. Co-Broker hereby acknowledges and certifies that it **WILL NOT** pay to Purchaser all or any part of the Commission (as defined in Addendum 4) at Closing. Co-Broker acknowledges and agrees that no payment by Co-Broker of any portion of the Commission will be made directly to, or indirectly on behalf of, Purchaser or any other interested and/or related party, and that no part of the Commission will be used to pay Purchaser costs associated with the purchase and sale of the Property.

   b. Co-Broker certifies that it **HAS NOT** and **WILL NOT** give, pay, or provide any payment or other benefit directly or indirectly (as part of Closing or outside of Closing) to Purchaser or to any other interested and/or related party, or pay any of Purchaser's costs or liabilities to any third party, for the purpose of inducing Purchaser to close on the sale of the Property. Any such inducement payment or benefit and any shared commission are collectively referred to hereinafter as "*Inducements*" or, in the singular, an "*Inducement*."

   c. In the event Co-Broker decides at a later date to pay or give any type of Inducement, Co-Broker agrees to execute an amendment to the Agreement to disclose the terms of such Inducement in order to create transparency with regard to how such Inducement applies to the purchase and sale of the above-referenced Property.

   d. Co-Broker acknowledges that Seller is relying on this Certification as verification of whether any payment of any portion of the Commission to Purchaser is to be made.

2. Warranty of Authority. The undersigned Sales Agent (or other person signing on behalf of Co-Broker) represents and warrants that he or she has the requisite authority to bind Co-Broker, including the above-named Real Estate Broker and Real Estate Agency as to all matters addressed in this Addendum and to modify any existing commission agreement with respect to the Agreement and under which Co-Broker may be entitled to receive a commission.

CO-BROKER:

DocuSigned by:
Tonya Peay
0DE4D7B562D8432...

12/29/2021

Broker Agent: Tonya Peay Date

DocuSign Envelope ID: 9398543C-028D-4DCF-8D40-85F9C40B8994

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

ADDENDUM 6
SPECIAL STIPULATIONS

This ADDENDUM is attached to and made a part of that Home Purchase Agreement (the "Agreement") by and between **D.R. Horton, Inc.**, as Seller, and **Sherman Howell and Claudia Howell**, as Purchaser, regarding that certain parcel of real estate located in **RICHLAND** County, **SC**, briefly described as Lot: **2159**, in **The Villages at Long Cove** Subdivision and referred to in the Agreement as the "Lot." All terms defined in the main text of the Agreement shall have the same meanings when used in this Addendum. In the event of conflict between the terms or conditions of this Addendum and any term of condition of the Agreement, the terms and conditions of this Addendum shall control. Notwithstanding any other provision of the Agreement, Seller and Purchaser agree as follows:

All parties agree and understand the glass shower door in the master bedroom will be deleted as an inclusive option on this purchase agreement. The glass shower door will be completed by the purchaser after closing. In lieu of glass shower door option, the seller will take $1000.00 off of the purchase price of the home. The shower door and install of the shower door will not be included within the same home warranty. All other terms remain the same.

In Process

IN WITNESS WHEREOF, THE UNDERSIGNED, HAVING READ AND REVIEWED THIS ADDENDUM, HAVE SIGNED THIS ADDENDUM ON THE DATES SHOWN BELOW.

PURCHASER:

DocuSigned by:
Sherman Howell
07B891A20B7D430...

12/29/2021

Buyer: Sherman Howell — Date

DocuSigned by:
Claudia Howell
D93629FC3AAF456...

12/29/2021

Co-Buyer: Claudia Howell — Date

SELLER:
D.R. Horton, Inc.

_____ _____

Date

DocuSign Envelope ID: 9398543C-028D-4DCF-8D40-85F9C40B8994

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D.R. Horton Smart Home Disclosure

Congratulations on your new D.R. Horton Smart Home! Your new home is equipped with technology that includes some or all of the following Internet-connected devices: a programmable thermostat; a door lock; a light switch; a touchscreen smart home control device; home security devices such as door and window contacts and motion detectors; a video doorbell; a garage door opener; and a smart speaker (collectively, "**Smart Home Technology**"), all of which are integrated by an automation platform hosted by Alarm.com. Other Smart Home Technology features may be offered for an additional charge. See your D.R. Horton sales representative for complete details on the Smart Home Technology included in your home.

The video doorbell and the smart speaker will be installed by a third party ("**Installer**") *after closing*. Installation of the touchscreen smart home control device also may occur *after closing*. At that time, the Installer will activate certain components of the Smart Home Technology, provide training to you on how to use the Smart Home Technology, and provide information to you regarding additional services or products available for purchase.

The Alarm.com home automation-only application (the "**App**") is included at no charge to you for 36 months following the close of escrow on your home. Thereafter, the App may be purchased directly from the Installer for a monthly fee or, if you have contracted with the Installer for security monitoring services, the App is included with such security-monitoring services.

In order to install and activate the Smart Home Technology and to provide you with training on how to use the Smart Home Technology and information regarding additional services or products available for purchase, D.R. Horton will provide your contact information to the Installer so the Installer can get in touch with you via telephone, email or U.S. mail to schedule an appointment. For the Smart Home Technology to work, you must obtain and pay for your own Internet service, and you may need to purchase compatible devices and maintain accounts with third parties for the services. The Installer will discuss these requirements with you prior to the appointment to ensure the installation and activation goes smoothly. D.R. Horton may receive a referral fee from the Installer if you purchase additional services or products from the Installer.

IMPORTANT INSTALLATION DEADLINE: You have *120 days* from the date you close escrow on your home (the "**Deadline**") to schedule an appointment with the Installer. If you schedule an appointment with the Installer after the Deadline, you will be required to pay the Installer's then-current labor and equipment costs to install and activate certain components of the Smart Home Technology and to train you on how to use the Smart Home Technology.

PRIVACY DISCLOSURE: In connection with your purchase of a home from D.R. Horton, we will collect certain personal information from you. To learn more about the categories of personal information we collect, and how we may use or share that personal information, please view our Privacy Policy on our website at www.drhorton.com, as it may change from time to time.

COLLECTION OF INFORMATION BY DEVICES: The Smart Home Technology may collect information about you and your use of the device. This information is collected, used and analyzed by the third-party providers of the devices and the Alarm.com automation platform. Use of such information is governed by the terms, conditions, policies and practices of such third-party providers only. D.R. Horton recommends that you carefully review your agreements with, and other terms and conditions published by, these third-party providers, as well as additional information about the Smart Home Technology by visiting www.drhorton.com/smart-home. D.R. Horton does not collect any information from these devices about you or your use of the devices.

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I acknowledge and agree that D.R. Horton does not make any representations or warranties that any or all of the Smart Home Technology is secure, will meet any of my needs or will provide any level of physical or cyber security for my home or otherwise – even if the Smart Home Technology is working as intended.

Cell Phone #: (803) 908-3319 Work Phone #: Home Phone #:

Email Address (primary): howellsherman32@gmail.com Email Address (secondary): cbowers803@gmail.com

My New Home – Address /Direct Mail: 564 Pine Knot Road, BLYTHEWOOD, SC 29016
Community/Subdivision Name: The Villages at Long Cove

BUYER(S):

DocuSigned by:
Sherman Howell
07B891A20B7D430...

Buyer: Sherman Howell 12/29/2021 Date

DocuSigned by:
Claudia Howell
D93629FC3AAF456...

Co-Buyer: Claudia Howell 12/29/2021 Date

In Process

EXHIBIT

"C"

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Sherman and Claudia Howell, Plaintiff, vs. D.R. Horton, Inc., Defendant	CASE NO. 2024-CP-40-03510
D.R. Horton, Inc. Third-Party Plaintiff, vs. Jenkins Plumbing Company, LLC, Caryl Mechanicals II, Inc., L&M Electric, Inc., Unique Stone Creations, M&L General Construction, Inc., Alpha Omega Construction Group, Inc., and ASC Services and Supply, Inc. Third-Party Defendants.	**AFFIDAVIT OF THOMAS SIMMONS**

PERSONALLY appeared before me, Thomas Simmons, who being duly sworn does state as follows:

1. I am over the age of eighteen (18) ears and am competent to make this Affidavit.

2. My wife Leigh Anne Thomas and I are residents of Maryland. In August, 2021, we entered into a purchase and sale agreement with Defendant D.R. Horton, Inc. for 564 Pine Knot Drive, Blythewood, South Carolina located in the Long Cove Subdivision.

3. We are friends with the Nielsens, a family who lived in Long Cove. The Nielsens told us that they had cut flanges and compromised I-Joists in their house.

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4. My wife and I hired Evan Williams of Home Team Inspection Service to serve as an independent inspection company to inspect the house during construction to ensure that it was being built in accordance with applicable building codes.

5. On August 9, 2021, Mr. Williams made a visual inspection of the residence. He issued an inspection report noting several significant construction defects which is attached hereto as Exhibit 1.

6. Among the construction defects noted, Mr. Williams noted in his inspection report that the BCI Joists had flange damage and were gapped and require lateral support.

7. Separately, Mr. Evans explained that joists are not typically pre-manufactured. The I-Joists in the home are pre-manufactured and holes can only be cut in prescribed locations at specific specifications. D.R. Horton and its subcontractors failed to follow the installation instructions, cut too many holes at incorrect specifications, and cut the flanges, which comprised I-Joists and the structure of the house.

8. My realtor sent Mr. Evans' inspection report to D.R. Horton in an email dated August 10, 2021 and copied me on the communication. In response, D.R. Horton stated: "Received, list is very simple nothing too major I have sent everything to the correct vendors. Richland County did approve insulation. Once items are completed this week I will re-check." See the email attached hereto as Exhibit 2.

9. D.R. Horton lied that the structural problems presented by the cut flanges and BCI Joint defects were "very simple nothing major."

10. The inspection report was sent to Richland County. Richland County noted the defects in the I-Joists and instructed D.R. Horton to repair them before the drywall was installed.

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11. D.R. Horton's onsite employee told us that the engineer from Boise Cascade, the manufacturer of the I-Joists, was flown in to inspect the I-Joists in the residence and the engineer prepared a scope of repair.

12. On August 23, 2024, in response to our realtor's request for an update on repairs required by our inspection report, we received an email from D.R. Horton's construction manager that stated "[j]ust wanted to reach out to let you know county has approved everything with the house and drywall will begin tomorrow. As for third party inspection I have addressed and repair items per code."

13. After I received the email, I called Mr. Zapp, Richland County inspector, to ask if he had inspected the I-Joists and whether repairs were made. He said that he had not performed an inspection. I emailed D.R. Horton that Richland County needed to inspect the I-Joists.

14. On September 8, 2024, D.R. Horton emailed me that Richland County had received all the required documentation and that they were waiting for a re-inspection. The same day, I emailed D.R. Horton "So have the repairs been made and we're just waiting on the re-inspection?" D.R. Horton responded "Correct."

15. The following day, D.R. Horton sent two emails. The first email stated that an initial inspection occurred, Richland County instructed a few corrections needed to be made and a re-inspection would be required. Later that day, D.R. Horton indicated that the inspection passed. D.R. Horton's emails confirming that repairs were made and that they passed inspection are attached hereto as Exhibit 3.

16. I had telephone calls with D.R. Horton as well. We were told that Boise Cascade's engineer inspected the repairs and a separate letter from Boise Cascade was stapled to each of the fixed I-Joists confirming that the repairs were made in accordance with their scope of work.

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17. D.R. Horton's representations in the emails that the repairs were made were false. My understanding is that Mr. Howell's experts confirmed that the plans for the repairs recommended by Boise Cascade were stapled to the I-Joists, but none of the recommended repairs were performed. The statement that the letter was stapled to the I-Joists to confirm repairs were made was also false and would have been very misleading if we were given the opportunity to see the I-Joists before the drywall was installed.

18. We instructed D.R. Horton to wait to install the drywall until Mr. Evans and I had an opportunity to inspect and confirm that all the defects listed in Mr. Evans' report were made. My family and I drove 8 hours from Maryland to perform a walkthrough of the house. Despite our requests, the drywall was installed against our wishes before anyone could confirm that the repair was completed.

19. The drywall was bowed in the master bedroom. It was clear that the drywall had been installed quickly. When I complained about the drywall, D.R. Horton told me the wall could be fixed with mud.

20. At that point, I had lost all trust in D.R. Horton and its home product. We contacted our realtor and asked to be released from the purchase and sale agreement and to receive our earnest money back. The realtor instructed us to prepare a letter providing notice of termination of the purchase and sale agreement and include the reasons.

21. The termination letter that I prepared is attached hereto as Exhibit 4. It states that the basis for termination was D.R. Horton failing to notify us of the framing inspection so that Mr. Evans and I were able to attend and then proceeding to install the drywall. We terminated, because D.R. Horton would not allow us to verify that the repairs to the framing and I-Joists were made.

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22. My realtor emailed the termination letter. D.R. Horton accepted the termination and released our earnest money deposit without objection. The emails regarding the termination are attached hereto as Exhibit 5.

23. In conclusion, this transaction left the sourest taste in our mouth. My wife and I will never own another D.R. Horton built home and will do our due diligence to confirm that they did not build any house that we purchase. I do not trust the quality of their product, and I have lost all faith and trust in D.R. Horton.

Thomas Simmons

SWORN to and subscribed before me this
28 day of August, 2024.

Laurinda Susanne Murphy
Notary Public of Maryland
My Commission Expires: 01-29-2026

Laurinda Susanne Murphy
NOTARY PUBLIC
CHARLES COUNTY
MARYLAND
MY COMMISSION EXPIRES JANUARY 29, 2026

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Affidavit of
Thomas Simmons

EXHIBIT
“1”

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HomeTeam® INSPECTION SERVICE

HOME INSPECTION REPORT

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Home. Safe. Home.

HomeTeam® INSPECTION SERVICE

CONVENIENT BOOKINGS | EFFICIENT & INSPECTIONS FAST REPORTS

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WHAT IS A HOME INSPECTION?

The purpose of a home inspection is to visually examine the readily accessible systems and components of the home. The inspectors are not required to move personal property, materials or any other objects that may impede access or limit visibility. Items that are unsafe or not functioning, in the opinion of the inspector, will be described in accordance with the standards of practice by which inspectors abide.

WHAT DOES THIS REPORT MEAN TO YOU?

This inspection report is not intended as a guarantee, warranty or an insurance policy. Because your home is one of the largest investments you will ever make, use the information provided in this report and discuss the findings with your real estate agent and family to understand the current condition of the home.

OUR INSPECTIONS EXCEED THE HIGHEST INDUSTRY STANDARDS.

Because we use a team of inspectors, each an expert in his or her field, our inspections are performed with greater efficiency and more expertise and therefore exceed the highest industry standards. We are pleased to provide this detailed report as a service to you, our client.

WE BELIEVE IN YOUR DREAM OF HOME OWNERSHIP.

We want to help you get into your dream home. Therefore, we take great pride in assisting you with this decision making process. This is certainly a major achievement in your life. We are happy to be part of this important occasion and we appreciate the opportunity to help you realize your dream.

WE EXCEED YOUR EXPECTATIONS.

Buying your new home is a major decision. Much hinges on the current condition of the home you have chosen. That is why we have developed the HomeTeam Inspection Report. Backed by HomeTeam's experience with hundreds of thousands of home inspections over the years, the report in your hand has been uniquely designed to meet and exceed the expectations of today's homebuyers. We are proud to deliver this high-quality document for your peace of mind. If you have any questions while reviewing this report, please contact us immediately.

Thank you for allowing us the opportunity to serve you.



FAST



TRUSTED



ACCURATE

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HomeTeam INSPECTION SERVICE

FAST TRUSTED ACCURATE



Dear TJ Simmons,

On Monday, August 9, 2021 The HomeTeam Inspection Service made a visual inspection of 564 Pine Knot Rd, Blythewood, SC 29016. Enclosed please find a written, narrative report of our findings in accordance with the terms of our Inspection Agreement.

If we can be of any assistance, please feel free to call us at (803) 638-2190. Thank you for choosing HomeTeam.

Sincerely,

Evan & Jennifer Williams, Owners
HomeTeam Inspection Service
SC Home Inspector RBI 49107

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PREFACE

A home inspection is intended to assist in evaluation of the overall condition of the dwelling. The inspection is based on observation of the visible and apparent condition of the structure and its components on the date of the inspection. We will not render an opinion as to the condition of any systems or components of the structure that are concealed by walls, floors, drywall, paneling, suspended ceiling tiles, insulation, carpeting, furniture or any other items on the property at the time of the inspection.

The results of this home inspection are not intended to make any representation regarding the presence or absence of latent or concealed defects that are not reasonably ascertainable in a competently performed home inspection. No warranty or guaranty is expressed or implied.

You may be advised to seek a specialist's opinion as to any defects or concerns mentioned in the report. At that time, additional defects may be revealed that may not have been identified in the initial home inspection. This is part of the normal due diligence process.

If the age, condition or operation of any system, structure or component of the property is of a concern to you, we recommend that a specialist in the respective field be consulted for a more technically exhaustive evaluation.

This inspection report includes a description of any material defects* noted during the inspection, along with any recommendation that certain experts be retained to determine the extent of the named defects and other related defects and any corrective action that should be taken. Any material defect that poses an unreasonable risk to people on the property will be conspicuously defined as such. Any recommendations made to consult with other specialists for further evaluation as a result of our findings should be complete prior to the conclusion of the inspection contingency period. This may require an extension of the period. The Client warrants they will read the entire inspection report when received and shall promptly contact HomeTeam regarding any questions or concerns the Client may have regarding the inspection or the inspection report.

* Material Defect: A problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property, or one that involves an unreasonable risk to the people on the property. The fact that a structural element, system or subsystem is near, at or beyond the end of the normal useful life of such a structural element, system or subsystem is not by itself a defect.

The majority of home inspections are performed on pre-existing structures. Building techniques have changed dramatically over the years, and a home inspection is not designed to identify methods that were previously acceptable that may have been superseded by superior methods. We will not determine the cause of any condition or deficiency, or determine future conditions that may occur, including the failure of systems and components or consequential damage.

It is not uncommon to observe cracks or for cracks to occur in concrete slabs or exterior and interior walls. Cracks may be caused by curing of building materials, temperature variations and soil movement such as: settlement, uneven moisture content in the soil, shock waves, vibrations, etc. While cracks may not necessarily affect the structural integrity of a building, cracks should be monitored so that appropriate maintenance can be performed if movement continues at an abnormal rate. Proper foundation maintenance is key to the prevention of initial cracks or cracks enlarging. This includes, but is not limited to proper watering, foundation drainage and removal of vegetation growth near the foundation.

This report is intended for the sole, confidential, and exclusive use and benefit of the Client(s) under a written HomeTeam Inspection Agreement. This report is not intended for the benefit of, and may not be relied upon by, any other party. The disclosure or distribution of this report to the current owner(s) of the property inspected or to any real estate agent will not make those persons intended beneficiaries of this report. The HomeTeam Inspection Service has no liability to any party (other than the HomeTeam client named above, for whom this report was expressly prepared) for any loss, damage or expense (including, without limitation, attorney fees) arising from any claim relating to this report.

A home inspection bears conditions relevant to a specific time stamp and as conditions in a home can change from the time of the inspection to the time of closing, HomeTeam strongly recommends the client perform a thorough walk-through shortly prior to closing, turning on all faucets, flushing toilets, testing garbage disposals, turning on the furnace and air conditioner, and looking for any leakage, signs of water intrusion, stains, or other changes that may have occurred since the time of the inspection.

Any defects noted in the body of the report should be addressed by a professional in that field within the due diligence period. Additional assessments may uncover more extensive damage or needed repairs that a professional would have more significant knowledge of. .

All pictures that may be included are to be considered as examples of the visible deficiencies that may be present. If any item has a picture, it is not to be construed as more or less significant than items with no picture included.

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INTRODUCTION

Throughout this report, the terms “right” and “left” are used to describe areas of the home as viewed from the street. A system or component has a material defect if it is either unsafe or not functioning and cannot be replaced or rendered safe or functional for less than $1,000. The cosmetic condition of the paint, wall covering, carpeting, window coverings, to include drywall damage, etc., is not addressed. All conditions are reported as they existed at the time of the inspection. Routine maintenance and safety items are not within the scope of this inspection unless they otherwise constitute material, visually observable defects. Although some maintenance and/or safety items may be disclosed, this report does not include all maintenance or safety items and should not be relied upon for such items. When material defects are observed or minor repairs need to be made, we recommend you consult a qualified licensed professional. Cost estimates are advised prior to closing. All contractors should work for you, as their evaluation/observation may make you aware of findings not listed in this report.

A home inspection is not a home warranty, and HomeTeam strongly recommends purchasing a home warranty from a reputable company to cover items that will fail in the course of time.

****NOTE: We include photos to show examples of the defects noted on the property. These photos are a representative number and may not indicate all areas of the home with this type of defect.****





The approximate temperature at the time of the inspection was 85 to 90 ° F, and the weather was cloudy. The utilities were not installed at the time of the inspection.

LOT AND GRADE

The structure was situated on a level lot. The general grade around the structure appeared to be adequate to direct rain water away from the foundation, assuming normal drainage and downspout, gutter, and other systems are functioning properly.

STRUCTURE PRE-DRYWALL

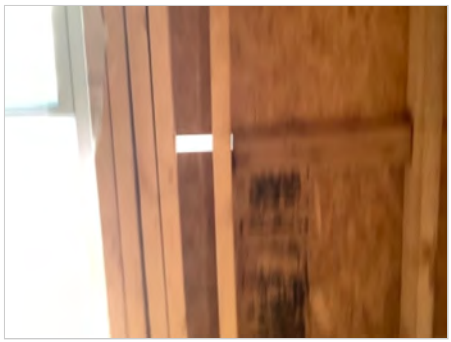
The inspected property consisted of a two story wood-framed structure in the pre-drywall phase of construction at the time of the inspection.

Gaps to the exterior should be sealed to to assist temperature regulation and avoid pest intrusion.












BCI joists are gapped or may require lateral support. Have assessed by a licensed contractor and repair as required.






by kitchen



in garage, appears it has rolled some

Some 2x4 studs appear to have damage over 25% or appear excessively warped. Have assessed by a licensed contractor and repair as required.

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Upstairs hall bathroom






Some BCI Joists appear to have flange damage. The joists should be assessed by a licensed contractor and repaired as required.





flange busted



Previous water intrusion was noted in areas of the home. This should be assessed by a licensed contractor to ensure that the intrusion has ceased and that no damage has occurred to the structure.



Upstairs

Braces that are partially attached should either be removed or secured to avoid damage to the structure.



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Over master suite

Exposed nails or screws were noted in areas where they may cause injury. Caution should be used in these areas if they cannot be removed or mitigated.



at attic entrance

ELECTRIC SERVICE

The underground electric service wire entered the structure on the left wall. The electric meter was located on the exterior wall.



HEATING SYSTEM

The heating system was inspected by a qualified HomeTeam professional. Periodic preventive maintenance is recommended to keep this unit in good working condition. Annual maintenance of the heating and cooling equipment is essential for safe and efficient performance, which will maximize the system's useful life. NOTE: Codes change for proper furnace installation. As a reminder, this is a visual and functional check of the system only. Whenever a furnace is replaced by a licensed HVAC technician it is necessary for him to bring the setup up to the then-current code. This may include altering the current configuration of the system. This is a functional test only; if a complete and exhaustive

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checkout of all of the components of the HVAC system is desired, or if your warranty company requires a specific inspection from their approved HVAC vendor list, contact a reputable and licensed HVAC company prior to closing.

The structure was heated by a Carrier natural gas forced air furnace, model number 58SB0A045E14--12, serial number 2021A15299 which is less than 1 years old. The unit was located in the attic of the structure. The flue vent appeared to be configured in such a way as to properly vent the flue gases.



HEATING SYSTEM

The heating system was inspected by a qualified HomeTeam professional. Periodic preventive maintenance is recommended to keep this unit in good working condition. Annual maintenance of the heating and cooling equipment is essential for safe and efficient performance, which will maximize the system's useful life. NOTE: Codes change for proper furnace installation. As a reminder, this is a visual and functional check of the system only. Whenever a furnace is replaced by a licensed HVAC technician it is necessary for him to bring the setup up to the then-current code. This may include altering the current configuration of the system. This is a functional test only; if a complete and exhaustive checkout of all of the components of the HVAC system is desired, or if your warranty company requires a specific inspection from their approved HVAC vendor list, contact a reputable and licensed HVAC company prior to closing.

The structure was heated by a Carrier natural gas forced air furnace, model number 58SB0A04TE14--12, serial number 0521A15398 which is less than one year old. The unit was located in the attic of the structure. The flue vent appeared to be configured in such a way as to properly vent the flue gases.





missing coils

The condensate line will press up against the sheetrock and may cause water staining. This should be insulated or protected to avoid water damage.

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The left side garage wall appears to be offset from foundation. A repair has been made, this should be assessed by a licensed contractor and repair if needed.





There will be normal temperature variations from room to room and level to level, most noticeable between levels. Airflow throughout the house may be balanced by adjusting any dampers in the supply ducts, or by adjusting the supply registers. Inspection of air and duct supply system for adequacy, efficiency, capacity or uniformity of the conditioned air to the various parts of the structure is beyond the scope of the home inspection. The air filter should be replaced or cleaned, as appropriate, on a regular basis to maintain the efficiency of the system.

Some of the insulation, sealant tape, and/or mastic on the ductwork is missing or damaged. All ductwork should be completely sealed and insulated for maximum efficiency.



Formal dining room



Formal dining room

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Some of the ductwork in the left front part of the house appears that it will be crushed when sheetrock is installed. Ensure ample flow through the ductwork after during installation of the sheetrock.





ROOF

The roof was a gable and hip design covered with asphalt/fiberglass shingles. Observation of the roof surfaces and flashing was performed by drone. There appeared to be one layer of shingles. The roof shingles exhibited no curling and light surface wear. We could not test for lifted edges because a drone had to be used for inspection.

These conditions indicate the roof shingles were in the first half of their useful life.

NOTE: Sometimes our opinion of a roof may differ from that of an insurance provider/adjuster or roofer. Some insurance providers/adjusters or roofers are more particular than others. We are there to state the overall condition of the roof; the roof is not considered to be defective unless there are visible leaks and/or material damage or wear that indicates failure is imminent. If we note any moderate to serious curling or surface wear, lifted edges, or evidence of a hail event, we recommend getting a second opinion or approval from your insurance provider regarding the roof. We do not make installation judgments regarding roof covering, appropriate pitch, etc.







The roof requires routine maintenance to preserve its integrity. This maintenance may include tarring over exposed nails, caulking seams, or removing debris. At the time of the maintenance, the roof should be further assessed for any additional repairs.







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Loose, damaged, or rotted fascia was present on the exteriorof the structure. The fascia should be repaired to avoid water entry.




CHIMNEYS AND FLUES

The structure had two flue chases. Observation of the flue chases was made from the ground with the aid of a drone. The flashing around the roof penetration point appeared to be adequate.




GARAGE

The attached garage was designed for two cars

FOUNDATION

The foundation was constructed of a slab on grade. A single inspection cannot determine whether movement of a foundation has ceased. Any cracks should be monitored regularly.

The full slab was not visible at the time of the inspection because of carpet or other floor coverings. There were no

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indications of moisture present. There were no material defects observed on the visible portions of the slab. Please note that the condition of any utilities within or under a slab-on-grade, such as plumbing or ductwork, are not within the scope of the inspection. Due to the nature and expense of these items, HomeTeam recommends having drain lines scoped by a plumber. This is particularly important in older homes since drain line problems are hidden from view.

Small cracks were observed on the foundation. The cracks were 1/16" or less in width. The homeowner should monitor these cracks for any changes, and if changes are noted, should contact a structural repair company for further analysis. Below-grade cracks are highly susceptible to water intrusion during times of heavy rain. Water staining from previous water intrusion was not visible.



Kitchen





Office



ATTIC STRUCTURE

The attic area was accessed by ladder and was entered. The roof structure consisted of 2x4” and 2x6 " wood trusses spaced 24 " on center and OSB (waferboard) sheathing. There was no active moisture visible in the attic structure.

As with all aspects of the home inspection, attic and roof inspections are limited in scope to the visible and readily accessible areas. Due to configuration, parts of the attic were not accessible. Many areas of the roof are not visible from the attic especially near the base, where the largest volume of water drains. The presence or active status of roof leaks cannot be determined unless the conditions which allow leaks to occur are present at the time of the inspection, i.e., heavy rain combined with high winds. Please be aware that rain alone is not always a condition that causes a leak to reveal itself. The conditions that cause leaks to occur can often involve wind direction, the length of time it rains, etc.

Attic rafters/trusses or areas of sheathing are damaged and may require repair. The areas do not appear to have been damaged by prior water intrusion. The cause of the damage must be identified and corrected. HomeTeam recommends having the existing damage in the attic structure repaired and further evaluated at the time of repair.

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Truss fasteners may not installed according to manufacturer guidelines. These should be assessed and repaired by a qualified contractor.



fasteners have not been fully seated on some, a few areas mainly right front



fasteners have not been fully seated on some





at least one joist appears to be gapped over the 1/2" maximum left front











hangers are spread





Back left bedroom, truss plate removed

PLUMBING

The visible water supply lines throughout the structure were PEX pipe. Water shutoff valves are not tested as part of the home inspection since water shutoff valves that have not been operated for an extended period of time often leak after being operated, and we would not be able to repair a leaking valve during the home inspection.

The visible waste lines consisted of PVC pipe.

The plumbing pipe in the rear left corner appears pitted and only minimal glue was noted. This should be assessed by a licensed plumber and repaired if required.



WINDOWS AND DOORS

A representative number of accessible windows and doors were operated and found to be functional. The primary windows were vinyl-clad, single hung style, with double pane glass. All windows and exterior doors were operated and found to be functional. The exterior door locks should be changed or rekeyed upon occupancy. Possible problem areas may not be identified if the windows or doors have been recently painted. Exterior windows require routine caulking and maintenance to prevent water intrusion.

NOTE: The condition, presence, or absence of screens, storm windows and doors is outside the scope of the inspection. Storm windows improve energy efficiency, assist in preventing water intrusion, and slow the deterioration of some window frames.

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REASONABLE EXPECTATIONS REGARDING A PROFESSIONAL HOME INSPECTION:

There may come a time when you discover something wrong with the house, and you may be upset or disappointed with your home inspection. There are some things we'd like you to keep in mind.

Intermittent or concealed problems: Some problems can only be discovered by living in a house. They cannot be discovered during the few hours of a home inspection. For example, some shower stalls leak when people are in the shower, but do not leak when you simply turn on the tap. Some roofs and basements only leak when specific conditions exist. Some problems will only be discovered when carpets are lifted, furniture is moved or finishes are removed.

No clues: These problems may have existed at the time of the inspection, but there were no clues as to their existence. Our inspections are based on the past performance of the house. If there are no clues of a past problem, it is unfair to assume we should foresee a future problem.

We always miss some minor things: Some say we are inconsistent because our reports identify some minor problems but not others. The minor problems that are identified were discovered while looking for more significant problems. We note them simply as a courtesy. The intent of the inspection is not to find the $200 problems; it is to find the $1000 problems. These are the things that affect people's decisions to purchase.

Contractor's advice: A common source of dissatisfaction with home inspectors comes from comments made by contractors. Contractors' opinions often differ from ours. Don't be surprised when three roofers all say the roof needs replacement, when we said that the roof would last a few more years with some minor repairs.

"Last man in" theory: While our advice represents the most prudent thing to do, many contractors are reluctant to undertake these repairs. This is because of the "last man in" theory. The contractor fears that if he is the last person to work on the roof, he will get blamed if the roof leaks, regardless of whether or not the roof leak is his fault. Consequently, he won't want to do a minor repair with high liability, when he could re-roof the entire house for more money and reduce the likelihood of a callback. This is understandable.

Most recent advice is best: There is more to the "last man in" theory. It suggests that it is human nature for homeowners to believe the last bit of expert advice they receive, even if it is contrary to previous advice. As home inspectors, we unfortunately find ourselves in the position of "first man in" and consequently it is our advice that is often disbelieved.

Why didn't we see it?: Contractors may say, "I can't believe you had this house inspected, and they didn't find this problem." There are several reasons for these apparent oversights:

- **Conditions during inspection:** It is difficult for homeowners to remember the circumstances in the house at the time of the inspection. Homeowners seldom remember that it was snowing, there was storage everywhere or that the furnace could not be turned on because the air conditioning was operating, etc. It's impossible for contractors to know what the circumstances were when the inspection was performed.
- **This wisdom of hindsight:** When the problem manifests itself, it is very easy to have 20/20 hindsight. Anybody can say that the basement is wet when there is 2" of water on the floor. Predicting the problem is a different story.
- **A long look;** If we spent half an hour under the kitchen sink or 45 minutes disassembling the furnace, we'd find more problems, too. Unfortunately, the inspection would take several days and would cost considerably more.
- **We're generalists:** We are generalists; we are not specialists. The heating contractor may indeed have more heating expertise than we do. This is because we are expected to have heating expertise and plumbing expertise, structural expertise, electrical expertise, etc.
- **An invasive look:** Problems often become apparent when carpets or plaster are removed, when fixtures or cabinets are pulled out, and so on. A home inspection is a visual examination. We don't perform invasive or destructive tests.

Not insurance: In conclusion, a home inspection is designed to better your odds. It is not designed to eliminate all risk. For that reason, a home inspection should not be considered an insurance policy. The premium that an insurance company would have to charge for a policy with no deductible, no limit and an indefinite policy period would be considerably more than the fee we charge. It would also not include the value added by the inspection.
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Affidavit of
Thomas Simmons

EXHIBIT
“2”

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---------- Forwarded message ---------
From: **Tj Simmons** <simmons.tj88@gmail.com>
Date: Tue, Aug 10, 2021, 4:49 PM
Subject: Fwd: 564 Pine Knot Rd Pre-Drywall Inspection Report.pdf
To: Evan Williams <ewilliams@hometeam.com>

This was the response from the builder

---------- Forwarded message ---------
From: **Adrian Demetrius Burroughs** <ADBurroughs@drhorton.com>
Date: Tue, Aug 10, 2021, 11:46 AM
Subject: RE: 564 Pine Knot Rd Pre-Drywall Inspection Report.pdf
To: Shannon McNulty (Real Estate) <smcnulty777@gmail.com>, Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>, Thomas "TJ" Simmons <simmons.tj88@gmail.com>

Received, list is very simple nothing too major I have sent everything to the correct vendors. Richland county did approve us for insulation. Once items are completed this week I will recheck.

From: Shannon McNulty (Real Estate) <smcnulty777@gmail.com>
Sent: Tuesday, August 10, 2021 9:27 AM
To: Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>; Adrian Demetrius Burroughs <ADBurroughs@drhorton.com>; Thomas "TJ" Simmons <simmons.tj88@gmail.com>
Subject: 564 Pine Knot Rd Pre-Drywall Inspection Report.pdf

[External]

Hello,

Please see the attached pre-drywall inspection report for the above noted property. Please confirm receipt of this email.

Thank you,

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Shannon McNulty
Realtor/Broker Associate
Coldwell Banker Realty
803-767-1674
https://urldefense.com/v3/__http://www.SMcNultyRealty.com__;!!Ly-L1StFRqU!aayBfAlqhAJFUYfCrYamITJKyn_sDcLmvVhgcMIy3KFD7KjgKMrfCtimUqliZWOmy6k$

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Affidavit of
Thomas Simmons

EXHIBIT
“3”

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---------- Forwarded message ---------
From: **Wayne Vincent Valsecchi** <WVValsecchi@drhorton.com>
Date: Fri, Oct 8, 2021, 2:38 PM
Subject: RE: 564 Pine Knot
To: Adrian Demetrius Burroughs <ADBurroughs@drhorton.com>, Shannon McNulty (Real Estate) <smcnulty777@gmail.com>
Cc: Tj Simmons <simmons.tj88@gmail.com>, Heather Holbrook <hholbrook@drhorton.com>

Good afternoon TJ,

We are starting to see the light at the end of the tunnel. As Adrian indicated, roof issue and master wall issue have been addressed.

The cabinets, granite counter tops, hardwoods and carpeting have been installed- appliances set to go in next week- landscaping going in today.

Construction will be ready to set a close date pretty soon....more than likely within the first 10 days of November. A formal closing letter will be sent out to all parties once that date has been set. Once we have a firm date, we can discuss dates for the buyers orientation and 3rd party inspection. Please let me know if you have any questions or concerns. Thank you,

Wayne

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From: Adrian Demetrius Burroughs <ADBurroughs@drhorton.com>
Sent: Wednesday, October 6, 2021 11:18 AM
To: Shannon McNulty (Real Estate) <smcnulty777@gmail.com>
Cc: Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>; Tj Simmons <simmons.tj88@gmail.com>; Heather Holbrook <hholbrook@drhorton.com>
Subject: RE: 564 Pine Knot

Goodmorning,

I wanted to give a update on progress of the home. Roofing issue and master wall issue have been addressed and fixed. Flooring is going in this week.

Adrian Burroughs

Superintendent

D.R. HORTON – Columbia Division

570 Chris Dr, West Columbia, SC 29169

o: 803.851.0419 **m:** 803.830.9267

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-------- Original message --------

From: "Shannon McNulty (Real Estate)" <smcnulty777@gmail.com>

Date: 10/1/21 8:56 AM (GMT-05:00)

To: Adrian Demetrius Burroughs <ADBurroughs@drhorton.com>

Cc: Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>, Tj Simmons <simmons.tj88@gmail.com>, Heather Holbrook <hholbrook@drhorton.com>

Subject: Re: 564 Pine Knot

[External]

Good morning,

Wayne and I walked the house on Monday. After I shared some pictures with Mr. Simmons, he would like for the master bedroom wall to be fixed and not with a ton of mud. He is concerned if he goes to hang something there and doesn't have actual sheetrock, the mud that will crack.

He also requests that condensation line be moved so it's not above the window. In his line of work, he has seen this cause major damage. Is it possible to have it moved?

He would also like the roof concerns addressed which Wayne and I discussed.

Thank you,

Shannon McNulty

Realtor/Broker Associate

Coldwell Banker Realty

803-767-1674

www.SMcNultyRealty.com

On Sep 28, 2021, at 11:01 AM, Shannon McNulty (Real Estate) <smcnulty777@gmail.com> wrote:

Thank you, Adrian!

Shannon McNulty

Realtor/Broker Associate

Coldwell Banker Realty

803-767-1674

www.SMcNultyRealty.com

On Sep 28, 2021, at 11:00 AM, Adrian Demetrius Burroughs <ADBurroughs@drhorton.com> wrote:

I have forward these issue to my roofing guy they will get addressed this week thank you

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Adrian Burroughs

Superintendent

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-------- Original message --------

From: "Shannon McNulty (Real Estate)" <smcnulty777@gmail.com>

Date: 9/28/21 10:58 AM (GMT-05:00)

To: Adrian Demetrius Burroughs <ADBurroughs@drhorton.com>

Cc: Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>, Tj Simmons <simmons.tj88@gmail.com>, Heather Holbrook <hholbrook@drhorton.com>

Subject: Re: 564 Pine Knot

[External]

Hi Adrian,

I walked the house yesterday with Wayne and showed him the roof concern.

The shingles are loose, torn, and appear to not be aligned correctly. Wayne knows the area I am referring to.

Thank you,

Shannon McNulty

Realtor/Broker Associate

Coldwell Banker Realty

803-767-1674

www.SMcNultyRealty.com

> On Sep 28, 2021, at 10:41 AM, Adrian Demetrius Burroughs <ADBurroughs@drhorton.com> wrote:
>
> Goodmorning, roof hasnt had a roof punch yet. I believe your referring to a torn shingle and debris correct?
>
> Pipe above window is a drain pipe for a/c pan no water will ever come out of that unless upstairs unit has a issue. The pipe is so water doesnt fill pan and pour over in attic to your drywall plus it has a float switch which prevents water coming in house. Hvac pan pipe is a plan item and doesn't need to be move with no water coming outof it, it is not the condensation line that is on the first floor by ac units.
>
> Bow in drywall in master i know at the time houses wasnt sanded plus we do pull ups multiple time on the house to resolve any drywall waveness issues.
>
> We look forward to seeing you all at finally walk through thank you .

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Adrian Burroughs

Superintendent

D.R. HORTON – Columbia Division

570 Chris Dr, West Columbia, SC 29169

o: 803.851.0419 **m:** 803.830.9267

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-------- Original message --------

From: "Shannon McNulty (Real Estate)" <smcnulty777@gmail.com>

Date: 9/24/21 6:59 PM (GMT-05:00)

To: Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>

Cc: Adrian Demetrius Burroughs <ADBurroughs@drhorton.com>, Tj Simmons <simmons.tj88@gmail.com>, Heather Holbrook <hholbrook@drhorton.com>

Subject: Re: 564 Pine Knot

[External]

Also, please remember to look into the roof concerns right outside of the loft window on the right.

Shannon McNulty

Realtor/Broker Associate

Coldwell Banker Realty

803-767-1674

www.SMcNultyRealty.com

On Sep 24, 2021, at 6:45 PM, Wayne Vincent Valsecchi <WVValsecchi@drhorton.com> wrote:

Adrian and I have also discussed the wall in the master bedroom and drain pipe above the outside window. Adrian is looking into these concerns and will address next week. Thank you,

Wayne

From: Adrian Demetrius Burroughs <ADBurroughs@drhorton.com>
Sent: Friday, September 24, 2021 5:06 PM
To: Tj Simmons <simmons.tj88@gmail.com>; Shannon McNulty (Real Estate) <smcnulty777@gmail.com>
Cc: Heather Holbrook <hholbrook@drhorton.com>; Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>
Subject: RE: 564 Pine Knot

Good evening,

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I want to update you that the house will be entering first paint. The cabinets and trim are installed and I must say this is a very beautiful home.



Adrian Burroughs

Superintendent

D.R. HORTON – Columbia Division

570 Chris Dr, West Columbia, SC 29169

o: 803.851.0419 **m:** 803.830.9267

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-------- Original message --------

From: Tj Simmons <simmons.tj88@gmail.com>

Date: 9/20/21 11:12 AM (GMT-05:00)

To: "Shannon McNulty (Real Estate)" <smcnulty777@gmail.com>

Cc: Heather Holbrook <hholbrook@drhorton.com>, Adrian Demetrius Burroughs <ADBurroughs@drhorton.com>,

Wayne Vincent Valsecchi
<WVValsecchi@drhorton.com>

Subject: Re: 564 Pine Knot

[External]

Good morning,

I just wanted to check in and see where we are in the process and what's coming up.

Thanks

On Thu, Sep 9, 2021, 3:51 PM Shannon McNulty (Real Estate) <smcnulty777@gmail.com> wrote:

> Thank you so much for the update, Heather!
>
> Shannon McNulty
>
> Realtor/Broker Associate
>
> Coldwell Banker Realty
>
> 803-767-1674
>
> www.SMcNultyRealty.com
>
> > On Sep 9, 2021, at 3:42 PM,
> > Heather Holbrook
> > <hholbrook@drhorton.com>
> > wrote:

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Good News, the inspector has passed, the home progress will now resume.

Thank you,

Heather Holbrook

Sales Manager, Columbia Division

D.R. HORTON

570 Chris Drive, West Columbia, SC 29169

803-331-9789

hholbrook@drhorton.com

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From: Heather Holbrook
Sent: Thursday, September 9,

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2021 8:53 AM
To: 'Tj Simmons' <simmons.tj88@gmail.com>
Cc: Shannon McNulty (Real Estate) <smcnulty777@gmail.com>; Adrian Demetrius Burroughs <ADBurroughs@drhorton.com>; Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>
Subject: RE: 564 Pine Knot

Good Morning- The county inspector did come out and noted a few minor corrections that were completed yesterday. A new inspection has been requested at this time. We are anticipating this inspection to be done by tomorrow which should allow progress on the home. Once we have word on that county inspection, everyone will be notified.

Enjoy your day and thank you for your continued patience.

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Heather Holbrook

Sales Manager, Columbia Division

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From: Tj Simmons <simmons.tj88@gmail.com>
Sent: Wednesday, September 8, 2021 10:24 AM
To: Heather Holbrook <hholbrook@drhorton.com>
Cc: Shannon McNulty (Real Estate) <smcnulty777@gmail.com>; Adrian Demetrius Burroughs <ADBurroughs@drhorton.com>; Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>
Subject: Re: 564 Pine Knot

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[External]

Thank you Heather.

Please let me know when you have the scheduled date for the inspection.

Thank you again

On Wed, Sep 8, 2021, 9:51 AM Heather Holbrook <hholbrook@drhorton.com> wrote:

> Correct.

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Heather Holbrook

Sales Manager, Columbia Division

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hholbrook@drhorton.com

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From: Tj Simmons <simmons.tj88@gmail.com>
Sent: Wednesday, September 8, 2021 9:51 AM
To: Heather Holbrook <hholbrook@drhorton.com>
Cc: Shannon McNulty (Real Estate) <smcnulty777@gmail.com>; Adrian Demetrius Burroughs <ADBurroughs@drhorton.com>; Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>
Subject: Re: 564 Pine Knot

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[External]

Thank you Heather. So have the repairs been made and we're just waiting on the re-inspection?

On Wed, Sep 8, 2021, 9:34 AM Heather Holbrook <hholbrook@drhorton.com> wrote:

> Good Morning. The County has been given all the required documents requested, awaiting a new inspection and once
>
> this is completed, the home should be able to move to the next stage.
>
> Thank you,

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Heather Holbrook

Sales Manager, Columbia Division

D.R. HORTON

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From: Tj Simmons <simmons.tj88@gmail.com>
Sent: Tuesday, September 7, 2021 5:21 PM
To: Shannon McNulty (Real Estate) <smcnulty777@gmail.com>
Cc: Heather Holbrook <hholbrook@drhorton.com>; Adrian Demetrius Burroughs <ADBurroughs@drhorton.com> ; Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>
Subject: Re: 564 Pine Knot

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[External]

Is there an update on when the repairs will begin or be completed?

Thanks

On Tue, Aug 31, 2021, 3:20 PM Shannon McNulty (Real Estate) <smcnulty777@gmail.com> wrote:

> Thank you for the update, Heather!
>
> Shannon McNulty
>
> Realtor/Broker Associate
>
> Coldwell Banker Realty
>
> 803-767-1674
>
> www.SMcNultyRealty.com
>
> > On Aug 31, 2021, at 3:15 PM, Heather Holbrook <hholbrook@drhorton.com> wrote:
> >
> > Shannon and Mr. Simmons, Good Afternoon. Unfor

tunately, the county has stopped all progress on this home until further documentation has been received. Most recently what has been requested is an Efficiency Duct Test for the HVAC system. Our vendor has been contacted to schedule a date to have this test completed; awaiting their available dates. Each stage of the home requires inspections which then adds further documentation based on the details you have requested from the County. Your Patience is appreciated as this will slow the build process down over the next couple of months so we can properly address each item of concern with any necessary test and/or documentation.

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Thank you,

Heather Holbrook

Sales Manager, Columbia Division

D.R. HORTON

570 Chris Drive, West Columbia, SC 29169

hholbrook@drhorton.com

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to us, please include your email address. You may call us at 817.390.8200.

From: Shannon McNulty <smcnulty777@gmail.com>
Sent: Tuesday, August 31, 2021 10:14 AM
To: Tj Simmons <simmons.tj88@gmail.com>
Cc: Adrian Demetrius Burroughs <ADBurroughs@drhorton.com>; Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>
Subject: Re: 564 Pine Knot

[External]

Hello All,

We have been patiently waiting for an update for a week now. Please provide an update or give

us a contact of anyone else we may contact.

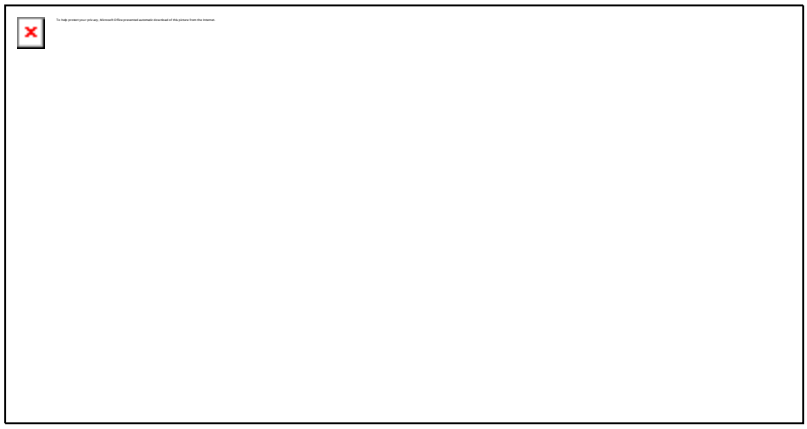
Mr. Simmons deserves to know what progress has been made with the property he is purchasing and how DR Horton plans to address his concerns.

He and his family have plans to move to SC when this home is complete.

Needless to say, they have many things to coordinate.

We appreciate your assistance in this matter.

Best Regards,



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803-767-1674

smcnulty777@gmail.com

www.SMcNultyRealty.com

On Tue, Aug 24, 2021 at 2:29 PM Tj Simmons <simmons.tj88@gmail.com> wrote:

> Good afternoon ,
>
> I spoke with Mike Zapp this morning and he has advised that he has not walked our house and approved to move forward. He needs to walk and see the repairs per the engineering letters.
>
> Can you please update on the time-line to have those repairs made

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and when the re-inspection might be?

Thanks

On Mon, Aug 23, 2021, 12:21 PM Adrian Demetrius Burroughs <ADBurroughs@drhorton.com> wrote:

> Good afternoon,
>
> Just wanted to reach out to let you know county has approved everything with the house and drywall will begin tomorrow. As for third party inspection I have addressed and repair items per code.

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Adrian Burroughs

Superintendent

D.R. HORTON – Columbia Division

570 Chris Dr, West Columbia, SC 29169

o: 803.851.0419 **m:** 803.830.9267

America's #1 Home Builder Since 2002 | **D.R.**

-------- Original message --------

From: Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>

Date: 8/19/21 2:18 PM (GMT-05:00)

To: "Shannon McNulty (Real Estate)" <smcnulty777@gmail.com>, Tj Simmons

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<simmons.tj88@gmail.com>

Cc: Adrian Demetrius Burroughs <ADBurroughs@drhorton.com>

Subject: RE: 564 Pine Knot

Good afternoon, county inspections are done routinely at every phase of construction. Construction is not able to continue if failed inspections are not addressed. If there is a failed inspection, Adrienne and construction team will complete repairs in a timely fashion and have inspectors back out once complete. As for the 3rd party inspection, Adrienne has reviewed and has assured me that he will be in touch soon. Thank you,

Wayne

-----Original Message-----
From: Shannon McNulty (Real Estate) <smcnulty777@gmail.com>
Sent: Thursday,

August 19, 2021 11:58 AM
To: Tj Simmons <simmons.tj88@gmail.com>
Cc: Adrian Demetrius Burroughs <ADBurroughs@drhorton.com>; Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>
Subject: Re: 564 Pine Knot

[External]

Hello all,

Mr. Simmons is waiting to hear about the county's inspection report. If it didn't pass, when will they come back out or repairs be made? He is also wanting to know what the plan is regarding the inspection report he sent to you all. Please give us an update. Thank you!

Shannon McNulty
Realtor/Broker Associate
Coldwell Banker Realty
803-767-1674
https://urldefense.com/v3/__http://www.SMcNultyRealty.com__;!!Ly-L1StFRqU!aAO0vzL8uCu_S6R75F1Zr2z9DyxvmUg1UqliXlyCve81XdXYqvfSkArjaR81xoKnDak$

> On Aug 18,

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2021, at 9:18 AM, Tj Simmons <simmons.tj88@gmail.com> wrote:
>
> Good morning,
>
> I am still waiting to hear back from Mike Zapp from Richland County on their inspection report and findings.
>
> I wanted to check in and see where we were with the repairs per the inspection findings.
>
> Thanks
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Affidavit of
Thomas Simmons

EXHIBIT
“4”

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October 11, 2021

From:

Thomas Simmons

564 Pine Knot Rd.

Blythewood, SC

To:

DR Horton Homes

Shannon McNulty

Subject: Termination letter to purchase agreement

To whom it may concern,

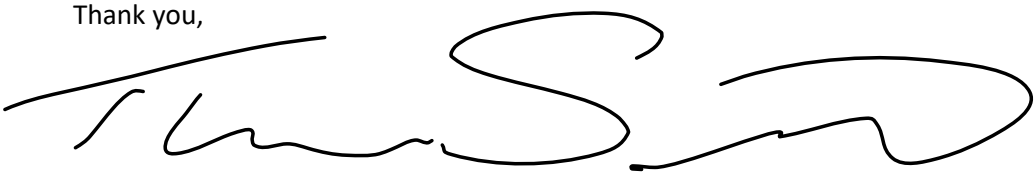
At this time, I regretfully write this letter to officially notify the involved parties that I am terminating the purchase agreement that was signed for the house at the address noted above.

The reason for the termination is due to the extreme lack of communication from the builder even requesting multiple times for updates on progress and timeline. With no projected timeline we have not been able to schedule and plan our move accordingly.

The request was made to be made known of the reschedule date for framing inspection after delays and failed initial framing inspection. I was never notified of the re-inspection date, instead the next communication I received was to notify me that it passed and drywall was going up. Due to no communication my hired home inspector was unable to inspect the framing before the drywall went up. The builder was aware that we had our own home inspector from the first inspection.

Due to these reason, we are terminating the purchase agreement. We request the full reimbursement of the earnest money of $3,000. While we are disappointed with this process, I hope for the fullest cooperation between each party.

Thank you,



Thomas Simmons

Affidavit of
Thomas Simmons

EXHIBIT
“5”

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---------- Forwarded message ---------
From: **Heather Holbrook** <hholbrook@drhorton.com>
Date: Wed, Oct 20, 2021, 1:38 PM
Subject: RE: Purchase termination letter.docx
To: Shannon McNulty (Real Estate) <smcnulty777@gmail.com>, Tj Simmons <simmons.tj88@gmail.com>
Cc: Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>

Good afternoon, the office has verified and the termination has been sent thru edoc. The earnest money deposit funds will be credited back into the same account of which they were received within @ 10 business days from the date of process along with all parties signatures. Please let us know if you have any questions.

Thank you,

Heather Holbrook

Sales Manager, Columbia Division

D.R. HORTON

570 Chris Drive, West Columbia, SC 29169

803-331-9789

hholbrook@drhorton.com





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From: Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>
Sent: Tuesday, October 19, 2021 1:32 PM
To: Shannon McNulty (Real Estate) <smcnulty777@gmail.com>; Heather Holbrook <hholbrook@drhorton.com>; Tj Simmons <simmons.tj88@gmail.com>
Subject: RE: Purchase termination letter.docx

Hi TJ, management has reviewed your request and has agreed to release your earnest money. A termination letter will go out by weeks end. Once the release is signed, earnest money will be returned, usually 4-6 weeks. Thank you,

Wayne

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From: Shannon McNulty (Real Estate) <smcnulty777@gmail.com>
Sent: Thursday, October 14, 2021 12:59 PM
To: Wayne Vincent Valsecchi <WVValsecchi@drhorton.com>; Heather Holbrook <hholbrook@drhorton.com>; Tj Simmons <simmons.tj88@gmail.com>
Subject: Purchase termination letter.docx

[External]

Hello,

Please see the purchase termination letter from Thomas Simmons regarding the property located at 564 Pine Knot Rd., Blythewood, SC 29016. Please confirm receipt of this email and let us know what he needs to do in order to process this termination.

Thank you,

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Shannon McNulty
Realtor/Broker Associate
Coldwell Banker Realty
803-767-1674
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EXHIBIT

“D”

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Sherman and Claudia Howell, Plaintiff, vs. D.R. Horton, Inc., Defendant	CASE NO. 2024-CP-40-03510
D.R. Horton, Inc. Third-Party Plaintiff, vs. Jenkins Plumbing Company, LLC, Caryl Mechanicals II, Inc., L&M Electric, Inc., Unique Stone Creations, M&L General Construction, Inc., Alpha Omega Construction Group, Inc., and ASC Services and Supply, Inc. Third-Party Defendants.	**AFFIDAVIT OF JOHN C. WYLIE, P.E.**

PERSONALLY appeared before me, John C. Wylie, P.E., who being duly sworn does state as follows:

1. I am over the age of eighteen (18) ears and am competent to make this Affidavit. I am a senior project manager with REI Engineering, Inc. with over 15 years of experience; my curriculum vitae is attached hereto as Exhibit 1.

2. I was retained by Plaintiffs Sherman Howell and Claudia Howell to evaluate construction defects at 564 Pine Knot Drive, Blythewood, South Carolina located in the Long Cove Subdivision ("Residence").

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3. Visual surveys of the Residence were completed on November 9, 2023 and February 14, 2024 to include the roof, attic, exterior, and interior areas. Destructive testing was conducted at the February, 2024 inspection.

4. I also reviewed the Home Team Inspection Service Report that included photos of the Residence during construction that was performed for Thomas and Leigh Ann Simmons. The Home Team Inspection Service Report noted issues related to the structural wood framing components (see Figures attached to Exhibit 2, my Visual Inspection and Destructive Testing Report):

- BCI joists are gapped or may require lateral support (see Ex. 2, Figure 2).
- Some 2x4 studs appear to have damage over 25% or appear excessively warped (see Ex. 2, Figure 3).
- Some BCI joists appear to have flange damage (see Ex. 2, Figure 4).
- Previous water intrusion in areas of home (see Ex. 2, Figure 5).

5. After the above inspections and review, I prepared the Summary of the Visual Inspection and Destructive Testing for the Howells attached hereto as Exhibit 2 ("Report"). As noted on page 23 of my Report, during my visual inspection on February 14, 2023, I found a structural engineering analysis performed by Ross J. Holt, P.E. of Boise Cascade dated August 20, 2021 and September 1, 2021 attached to the webs of the wood I-Joists ("Boise Cascade Plans"). Exh. 2, p. 20. Images of the Boise Cascade Plans are found on page 20 of my Report. Exh. 2, p. 20.

6. The Boise Cascade Plans proposed a scope of repair to the wood I-Joist members located in the kitchen and sitting areas. Exh. 2, p. 20. The engineering analysis specified that

reinforcement repairs were required for the I-Joists to be considered adequate at both the kitchen and the sitting room areas. Exh. 20, p. 20.

7. I "did not observe the presence and/or evidence of repairs performed to the wood I-Joists as required by Boise Cascade at the subject Residence." Exh. 2, p. 23.

8. It is my professional opinion, to a reasonable degree of engineering certainty, that the repairs proposed by Boise Cascade, if performed, would be inadequate. Exh 2, p. 23. It is my understanding that "the cutting, notching, and/or damage to the top flange of the wood I-Joist would require complete removal and replacement due to the compressive stresses from the simple beam configuration." Exh. 2, p. 23.

John C. Wylie, P.E.

SWORN to and subscribed before me this
28th day of AUGUST, 2024.

Notary Public of South Carolina
My Commission Expires: APRIL 27, 2026

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Affidavit of
John C. Wylie, P.E.

EXHIBIT
"1"

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UPDATED: May 2023
YEARS WITH FIRM: 14
YEARS IN INDUSTRY: 14

EDUCATION

NC State University | Raleigh, NC
Master of Science, Civil Engineering: Structures and Mechanics, 2009

Mansfield University of Pennsylvania | Mansfield, PA
Bachelor of Science, Applied Mathematics and Physics, 2005

PREVIOUS EXPERIENCE

Montana Technological University
Adjunct Faculty [August 2020 - present]

Grad Research Assistant, NCSU [2007-2009]

Engineering Assistant, NCDOT, [2006]
Transportation Construction Inspector: Level III, NYDOT, [2005]

REGISTRATIONS

Professional Engineer: FL #82984
Professional Engineer: GA #048437
Professional Engineer: NC #044980
Professional Engineer: NY #82984
Professional Engineer: SC #34000
IIBEC: Registered Building Enclosure Consultant (RBEC®) #0065
IIBEC: Registered Exterior Wall Consultant (REWC®) #0094
IIBEC: Registered Roof Consultant (RRC®) #900
IIBEC: Registered Waterproofing Consultant (RWC®) #0125
IIBEC: Registered Roof Observer (RRO®) #2078

PROFESSIONAL ORGANIZATIONS

American Society of Civil Engineers (ASCE)
American Society of Civil Engineers (ASCE) Committee Member (FED)
Chair of Committee on Forensic Investigations (CFI) [2020 - present]

National Society of Professional Engineers (NSPE)

International Institute of Building Enclosure Consultants (IIBEC)
IIBEC Interface Peer Review Committee Member
Chair of Interface Editorial Committee [2021 - present]

Structural Engineering Association of South Carolina (SEA of SC)
Greenville Chapter President [2018-2019]
Greenville Chapter Secretary [2020-Present]

PRINCIPAL AREAS of PRACTICE

- Deficient Construction
- Structural Analysis
- Collapse and Damage Investigation
- Repair Projects

John C. Wylie has over fourteen (14) years of experience as an forensic / structural engineer and consultant, primarily in the areas of deficient construction, structural analysis, collapse/damage investigations, and repair projects. He is licensed as a Professional Engineer in five (5) states and a Registered Building Enclosure Consultant (RBEC®), Registered Roof Consultant (RRC®), Registered Wall Consultant (RWC®), Registered Exterior Wall Consultant (REWC®), and Registered Roof Observer (RRO®) with the International Institute of Building Enclosure Consultants.

John is responsible for the inspection and structural analysis of a wide variety of building enclosure and framing systems that include roof, wall, and guardrail systems. John is an Adjunct Instructor at Montana Tech University for their Building Inspections course, has been published in several industry publications, and has presented several technical papers at national and regional conferences.

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DEFICIENT CONSTRUCTION

- Investigation of building enclosure and structural issues of residential structures | multiple locations in SC and NC
- Investigation of building enclosure issues of residential structures | multiple locations in SC
- Investigation and assessment of building enclosure and structural issues of residential structures | SC
- Investigation of building enclosure and wood truss roof system of residential structures | multiple locations in SC
- Investigation and assessment of building envelope and structural issues of residential structure | SC
- Investigation and assessment of structures issues of residential structures | GA
- Investigation of structural issues for residential structures | SC
- Investigation and assessment of exterior cladding of residential structure | SC

STRUCTURAL ANALYSIS

- Investigation and assessment of residential above-ground pool caused by wind event | GA
- Investigation and assessment of residential masonry chimney | multiple locations in GA
- Investigation and assessment of retaining wall collapse | multiple locations in SC
- Investigation of wood truss roof system | SC
- Investigation and assessment of residential siding attachment | NC
- Investigation and assessment of aluminum framed enclosure of single family residence | SC
- Assessment of multi-family condominium handrail attachment | SC
- Investigation and assessment of autoclaved aerated concrete block foundation and exterior walls of single family residence | NC
- Investigation and assessment of residential structural framing issues | NC
- Investigation and assessment of building enclosure and structural issues for residential structures | multiple locations in SC
- Investigation and assessment of pre-engineered metal building including standing seam metal roof, steel bar joint, steel girders and steel columns | SC
- Investigation and assessment of structural wood pile foundation of residential structures | SC
- Design of wood framed gazebo | SC
- Investigation and assessment of light-gauge metal exterior framing of condominium high-rise and mid-rise residential structures | multiple locations in SC
- Design of light-gauge metal framed marina dock, LA

COLLAPSE and DAMAGE INVESTIGATION

- Investigation of structural damage to residence caused by tree impact | multiple locations in SC
- Investigation of structural damage to residence caused by earthquake | SC
- Investigation of structural damage to residence caused by vehicle impact | TN
- Investigation of structural damage to residence caused by wind event | TN
- Investigation of damage to boat dock caused by wind event | GA
- Investigation of residential roof system caused by wind and hail event | GA
- Investigation of wood truss roof system deteriorated due to Fire Retardant Treatment (FRT) | SC
- Investigation and assessment of residential modular roof system failure | SC
- Investigation of collapse of a large-scale commercial SPF roof structure | SC
- Investigation of in-ground swimming pool surface cracking at residence | SC
- Investigation of low-slope rubber paver issues at commercial roof | SC
- Investigation of structural steel television tower collapse | SC
- Investigation of damage to residences caused by vibration events | SC
- Investigation of damage to residences caused by blasting events | SC
- Investigation of reinforced concrete slab-on- grade airplane taxi area | SC
- Investigation of light-gauge metal roofing truss collapse | SC
- Investigation of structure damage caused by termites at residence | SC
- Investigation of low-slope roof collapse of commercial building | SC
- Investigation of damage to boat docks caused by wind and/or wave events | multiple locations, SC
- Investigation of residential structure damaged by fire | SC
- Investigation of hotel structure damaged by fire | SC

PRESENTATIONS and PUBLICATIONS

- Peer Reviewer: Wylie, J.: Investigation of Constructed Facilities – Sampling Methodologies, American Society of Civil Engineers (ASCE) - Committee on Forensic Investigations – Forensic Engineering Division, American Society of Civil Engineers, Reston, VA (2021)
- Author: Wylie, J.: "**Tornadoes vs. the Building Enclosure - A Case Study**" IIBEC Interface: September 2021 | Vol. XXXIX No. 9
- Author: Wylie, J.: "**What (Not) To Expect When You Are Expecting New Fenestrations - A Case Study**" IIBEC Interface: April 2021 | Vol. XXXIX No. 4

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PRESENTATIONS and PUBLICATIONS CONTINUED

- Author: Wylie, J.: "**U.S. Building Enclosure Resource Guide**", IIBEC Interface: September 2020 | Vol. XXXIX No. 4
- Author: Wylie, J.: **"Anatomy of Construction Litigation — An IIBEC Interface Collection"**, by Derek Hodgin, RBEC, RRO, PE, CDT, and John Wylie, REWC, RRO, PE, IIBEC Interface: January 2021.
- Author: Wylie, J.: **"Anatomy of Construction Litigation, Part 1 - Identification of Defects"**, IIBEC Interface: August 2019 | Vol. XXXVIII No. 9
- Author: Wylie, J.: **"Evaluating The Adequacy of Siding Attachment"**, IIBEC Interface: July 2019 | Vol. XXXVII No. 7
- Presenter: Wylie, J.: **"Why Window Why? Water Testing Problems and Solutions",** IIBEC Charleston Meeting, Charleston, SC. April, 2019.
- Presenter: Wylie, J.: **"Best Practices for Structural Engineering", CSE Seminar Dealing with the Challenges of Mid-Rise Wood Frame Construction"**, Clemson, SC. July 2017; Atlanta, GA. August 2017; Raleigh, NC. November 2017.
- Presenter: Wylie, J.: **"Dealing with the Challenges of Mid-Rise Wood Frame Construction"**, Mid-Atlantic Chapter IIBEC (RCI) Seminar. Jessup, MD. October 2017.
- Presenter: Wylie, J.: **"Lessons Learned During Sliding Glass Door Replacement and Concrete Balcony Repairs in a Hurricane Coastline",** 31th IIBEC (RCI) International Convention and Trade Show, Orlando, FL, March 2016
- Presenter: Wylie, J.: **"Tale of Two Stones",** The 12th North American Masonry Conference. Denver, CO. May 2015. American Society of Civil Engineers (ASCE) Forensic Engineering 7th Congress Conference. Miami, FL. November 2015.
- Presenter: Wylie, J.: **"A Building's First Line of Defense: The Exterior Cladding"**, CSE Load Path Seminar. Clemson, SC. November 2015.
- Presenter: Wylie, J.: **"Case Study on Code Shortcomings Regarding Stone Veneer Requirements",** 2015 WCA Spring Conference. Mount Pleasant, SC. March 2015.
- Presenter: Wylie, J.: **"Siding Attachment: Facts + Fantasies"**, CSE Understanding Building Envelope Failures. Clemson, SC. June 2013. 28th IIBEC (RCI) International Convention and Trade Show. Anaheim, CA. March 2014.
- Author: Wylie, J.: **"Experimental Testing of Unreinforced Masonry Walls Strengthened with Orthogonal Near-Surface Mounted CFRP Subject to Out-of-Plane Loading",** a thesis submitted to the Graduate Faculty of North Carolina State University. 2009.

Affidavit of
John C. Wylie, P.E.

EXHIBIT
“2”

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Summary of Visual Survey & Destructive Testing

Howell Residence



564 Pine Knot Road
Blythewood, South Carolina

May 8, 2024

REI Engineers, Inc.
218 East Main Street ▪ Westminster ▪ South Carolina ▪ 29693
www.reiengineers.com

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BCSI Guide ▪ Metal Plate Connected Wood Trusses 17

James Hardie Manufacturer Information ▪ Vertical Board and Batten Fiber Cement Board Siding 17

TMS 402/602 Building Code Requirements and Specifications for Masonry Structures 18

MVMA Installation Guide and Detailing 18

ICC-ES Evaluation Report ■ BCI Prefabricated Wood I-Joists 18
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EXECUTIVE SUMMARY

REI Engineers, Inc. (REI) has prepared this *Summary of Visual Survey & Destructive Testing* report for William C. Lewis, Esquire of Richardson Thomas, LLC, based on our visual surveys with limited destructive testing. The purpose of our work was to determine if the subject residence was constructed in accordance with the applicable building code requirements, manufacturer's installation instructions, accepted industry standards, project plans, and/or project specifications (collectively referred to as the contractor's instructions). Additionally, REI has determined the extent of damages and/or construction deficiencies associated from deviations from the contractor's instructions and has provided a recommended outline scope of repair to address these issues.

It is the opinion of REI, to a reasonable degree of engineering certainty, that construction deficiencies exist that require repair at the subject residence. Specifically, REI observed the following construction defects and/or issues to date at the subject residence.

Building Component	Construction Defect and/or Issue	
Roof	R.1	Absence of Metal Drip at Eave
	R.2	Unprotected Plumbing Vent Pipe
Attic	A.1	Absence of Diagonal Bracing at Base Roof Trusses
	A.2	Absence of Diagonal Bracing at Piggyback Roof Trusses
	A.3	Inadequate Fastening of Wood Framing Connection at Base Roof Truss and Piggyback Roof Truss
Exterior Walls	EW.1	Improper Integration of Weather Resistive Barrier and Metal Flashing at Vertical Board & Batten Fiber Cement Siding
	EW.2	Improper Integration of Weather Resistive Barrier and Metal Flashing at Horizontal Fiber Cement Trim
	EW.3	Improper Installation of Adhered Masonry Stone Veneer Cladding
Interior Wood I-Joists	I.1	Evidence of Damage to I-Joist Flange
	I.2	Absence of Recommended Repairs at I-Joist

The construction defects and issues described above represent building code violations that serve to reduce the serviceable life of the subject residence. The observed conditions will continue to worsen, if left in an uncorrected condition.

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REI ENGINEERS, INC.

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REI File Number: 3036.01
May 8, 2024

William C. Lewis
Attorney
Richardson Thomas, LLC
1513 Hampton Street
Columbia, South Carolina 29201

Re: Summary of Visual Survey & Destructive Testing
Howell Residence
Long Cove Neighborhood
564 Pine Knot Road
Blythewood, South Carolina 29016

Dear Mr. Lewis:

Pursuant to your request, REI Engineers, Inc. (REI) has performed a visual survey with limited destructive testing at the above referenced property. The purpose of our work was to determine if the subject residence was constructed in accordance with the applicable building code requirements, manufacturer's installation instructions, accepted industry standards, project plans, and/or project specifications (collectively referred to as the contractor's instructions). Additionally, REI was asked to determine the extent of construction deficiencies that may exist at the subject residence based on one (1) or more of the following conditions:

1. A building code violation;

2. A life / safety issue; and/or,

3. Physical damage resulting from a construction deficiency.

In accordance with these conditions, REI has provided a recommended outline scope of repair based on the extent of construction deficiencies that may exist at the subject residence. This report provides a summary of our findings to date.

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DESCRIPTION

The subject residence is a two (2) story structure located on the south side of Pine Knot Road in Blythewood, South Carolina (Figure 1) [1]. The subject residence is supported by a reinforced concrete slab-on-grade foundation. Above the foundation, the construction consists of conventional wood framing, engineered wood joists (i.e., I-joists) and metal plate connected wood roof trusses. The exterior walls are clad with a combination of adhered masonry stone veneer, fiber cement board horizontal lap siding, vertical board and batten fiber cement siding, and fiber cement shake siding. The roof construction consists of a steep slope clipped gable roof configuration with an intersecting gable roof configuration that are covered with architectural laminated shingles. Photos 1, 2, 3, and 4 show the front, rear, left, and right elevations of the subject residence. For purposes of this report, the front elevation is considered to face north.

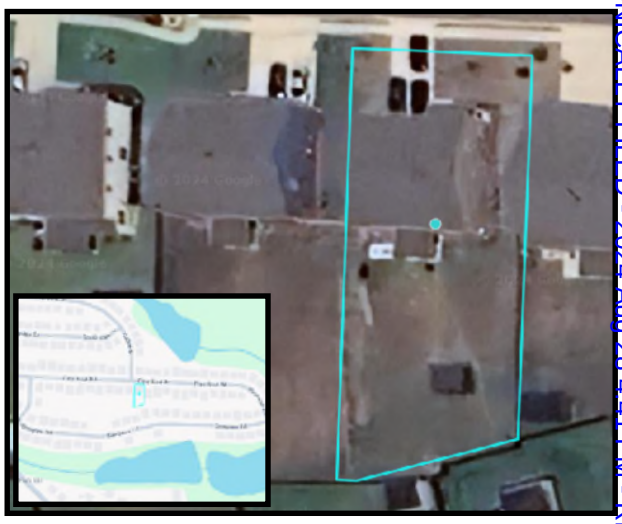


Figure 1 ▪ Satellite View of Subject Residence









Photos 1, 2, 3, & 4 ▪ Front, Rear, Left, and Right Elevations of the Subject Residence

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BACKGROUND INFORMATION

The background information provided below is considered to be relevant to determine if the subject residence was constructed in accordance with the contractor's instructions.

Homeowner Interview

During the visual survey, the homeowner Claudia Howell, provided the following relevant information with regard to the subject residence.

- The subject residence was purchased in February 2022.
- Floor vibration of the second floor I-joists occurred when subjected to normal walking conditions.

Home Inspection Report

HomeTeam Inspection Services, Inc. (HomeTeam) produced the document *Home Inspection Report* by Evan Williams based on a site visit performed on August 9, 2021, at the subject residence [2]. HomeTeam performed a pre-interior finish inspection of the following areas:

- Structural wood framing components
- Electrical service
- Heating system
- Roof
- Chimneys & flues
- Garage
- Foundation
- Plumbing
- Windows & doors

The HomeTeam report identified the following issues related to the structural wood framing components:

1. BCI joists are gapped or may require lateral support (see Figure 2 below - Presented in HomeTeam Report).
2. Some 2x4 studs appear to be have damage over 25% or appear excessively warped (see Figure 3 below - Presented in HomeTeam Report).
3. Some BCI joists appear to have flange damage (see Figure 4 below - Presented in HomeTeam Report).
4. Previous water intrusion in areas of home (see Figure 5 below - Presented in HomeTeam Report).

Additionally, the HomeTeam report provided photographs depicting the installation of the weather resistive barrier at the exterior walls prior to the installation of adhered masonry stone veneer, fiber cement board horizontal lap siding, vertical board and batten fiber cement siding, and fiber cement shake siding systems (see Figure 6 below - Presented in HomeTeam Report).

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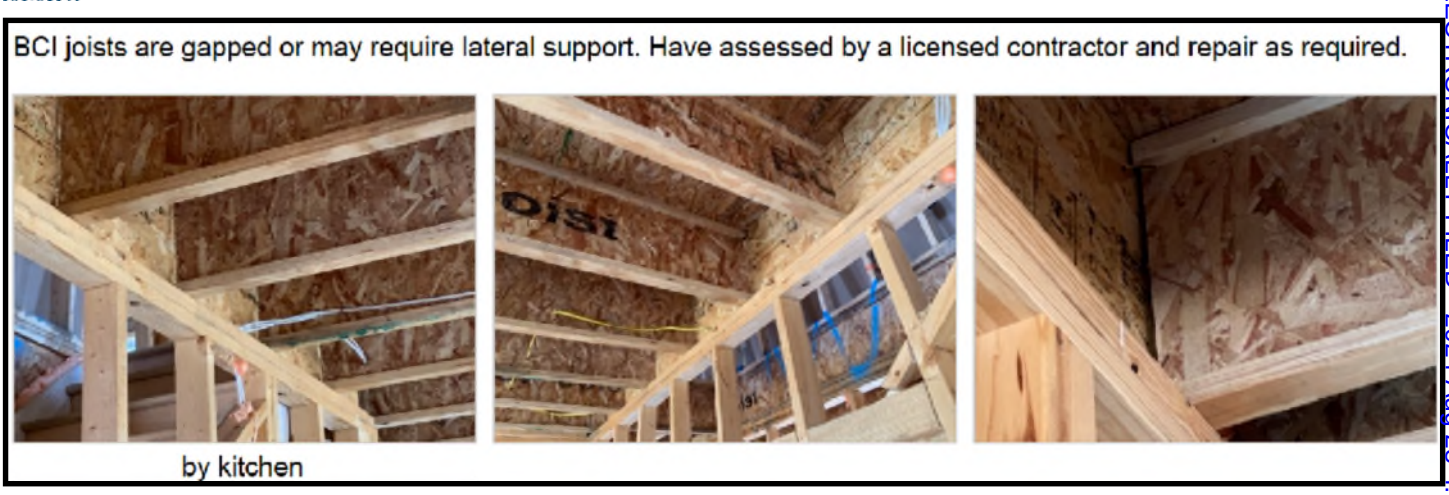


Figure 2 ▪ BCI Joist Gapping
(Presented in HomeTeam Report)



Figure 3 ▪ Structural Wood Stud Damage
(Presented in HomeTeam Report)

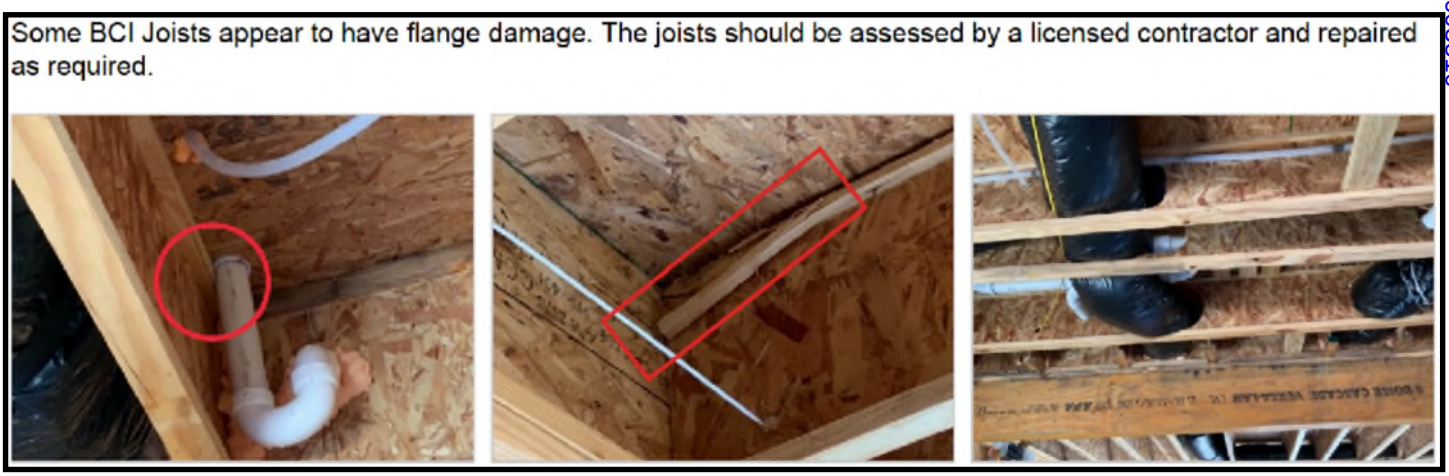


Figure 4 ▪ BCI Joist Flange Damage
(Presented in HomeTeam Report)

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Previous water intrusion was noted in areas of the home. This should be assessed by a licensed contractor to ensure that the intrusion has ceased and that no damage has occurred to the structure.



Figure 5 ▪ Previous Water Intrusion
(Presented in HomeTeam Report)



Figure 6 ▪ Installation of Weather Resistive Barrier Prior to Exterior Claddings Systems
(Presented in HomeTeam Report)

Applicable Building Code

Based on our review of the Richland County Assessor database and Richland County Geographic Information System (GIS) database, it is the understanding of REI that the subject residence was constructed circa 2021 [3]. The applicable building code at the time of original construction 2018 Edition of the South Carolina Residential Code (2018 SCRC) [4].

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OBSERVATIONS

REI performed two (2) visual surveys with limited destructive testing at the subject residence. The visual surveys included selected observations of the roof, attic, exterior, and interior areas. A summary of the work performed by REI is provided in Table 1.

REI Personnel	Date	Visual Survey	Destructive Testing
John C. Wylie, P.E. RBEC, REWC, RWC, RRC, RRO	November 9, 2023	✓	
	February 14, 2024	✓	✓

Table 1 ▪ Summary of Work Performed by REI at the Subject Residence

A summary of relevant and representative observations noted during the visual surveys with limited destructive testing is provided below.

Roof

1. Observations at the roof eave revealed the absence of a metal drip edge (Photo 5).

2. The polyvinyl chloride (PVC) vent pipes were observed to be unprotected (Photo 6).



Photo 5 ▪ Absence of Metal Drip Edge at the Eave



Photo 6 ▪ Unprotected PVC Vent Pipes

3. Roof truss diagonal bracing was observed to be absent at the base truss web horizontal lateral brace lines (see Photo 7 below).

4. Roof truss diagonal bracing was observed to be absent at the horizontal bace lines between the piggyback and base trusses (see Photo 8 below)

5. Inadequate fastening of the supplemental wood framing was observed at the connection of the base truss and piggyback truss (see Photos 9 & 10 below).



Photo 7 ▪ Absence of Diagonal Bracing at Base Truss



Photo 8 ▪ Absence of Diagonal Bracing at Piggyback Truss





Photos 9 & 10 ▪ Inadequate Fastening of Supplemental Wood Framing at Base & Piggyback Truss

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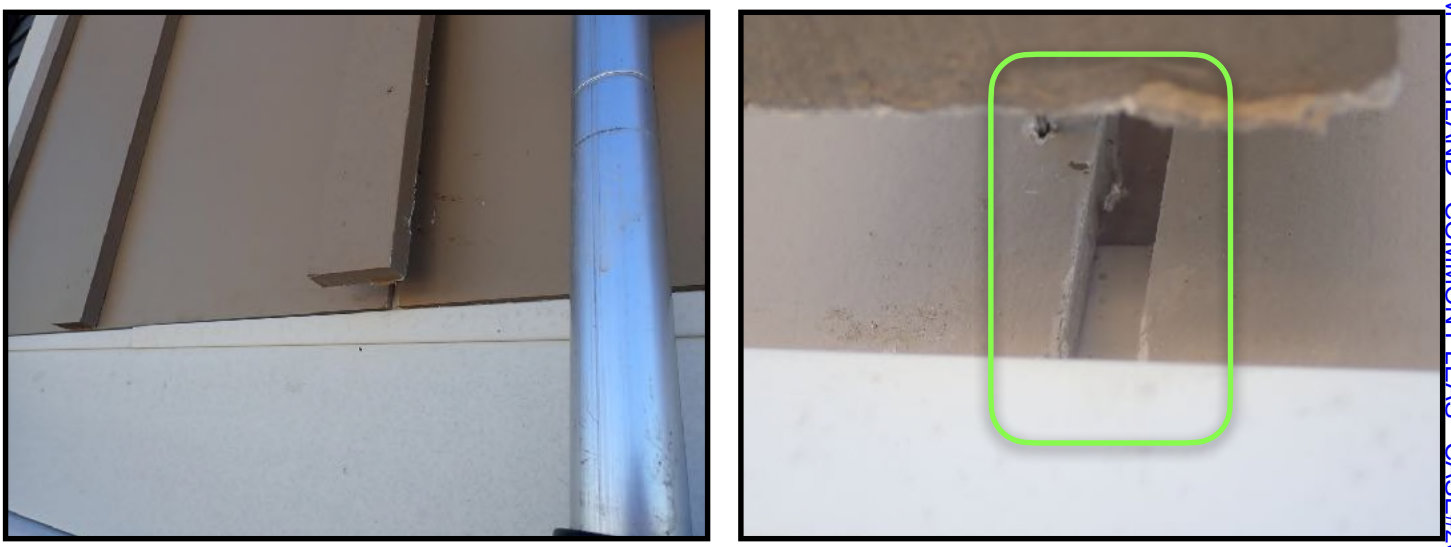
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Vertical Board and Batten Fiber Cement Siding

6. The weather resistive barrier was observed to be improperly integrated with the vertical leg of the metal flashing located at the top of the fiber cement board horizontal trim at the first-to-second floor line (Photos 11 & 12).

Fiber Cement Horizontal Trim

7. The weather resistive barrier was observed to be improperly integrated with the vertical leg of the metal flashing located at the top of the adhered masonry stone veneer at the first-to-second floor line (Photos 13 & 14).



Photos 11 & 12 ▪ Improper Integration of Weather Resistive Barrier and Metal Flashing at Board & Batten



Photos 13 & 14 ▪ Improper Integration of Weather Resistive Barrier and Metal Flashing at Horizontal Trim

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Adhered Masonry Stone Veneer

8. The adhered masonry stone veneer system was observed to have a weather resistive barrier installed behind a building felt layer with the metal mesh.

9. The weather resistive barrier was observed to be improperly integrated with the vertical leg of the metal flashing at the head of the garage opening and base of wall (Photos 15, 16, 17, & 18).

10. The building felt (with metal mesh) was observed to be properly integrated with the metal flashing.





Photos 15 & 16 ▪ Improper Integration of Weather Resistive Barrier and Metal Flashing at Garage Opening





Photos 17 & 18 ▪ Improper Integration of Weather Resistive Barrier and Metal Flashing at Base of Wall

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Interior ▪ Second Floor I-Joists

11. REI performed localized destructive testing to observe the second floor parallel-chord wood joists (i.e., I-joists) at four (4) locations (Figure 7 - Provided by JCC Building, Inc.).

    11.a. Living Room ▪ Destructive Test 1 (TH1)

    11.b. Dining Room ▪ Destructive Test 2 (TH2)

    11.c. Kitchen ▪ Destructive Test 3 (TH3)

    11.d. Sitting Room ▪ Destructive Test 4 (TH4)

Living Room ▪ Destructive Test 1 (TH1)

12. Destructive Test 1 was performed at a recessed light fixture in the gypsum ceiling panel located in the living room (Photo 19).

13. Parallel chord wood I-joists were identified to be fourteen inch (14") BCI 5000 manufactured by Boise Cascade.

14. Circular openings had been cut through the web with diameters ranging from approximately eight inches to nine inches (8" to 9") for the flexible HVAC ducts (see Photos 20 & 21 below - Provided by JCC Building, Inc.)

15. The vertical distance from the top of the circular openings to the bottom surface of the top flange measured to be from approximately zero inches (i.e., intimate contact) to one inch (1") (see Photos 22 & 23 below - Provided by JCC Building, Inc.).

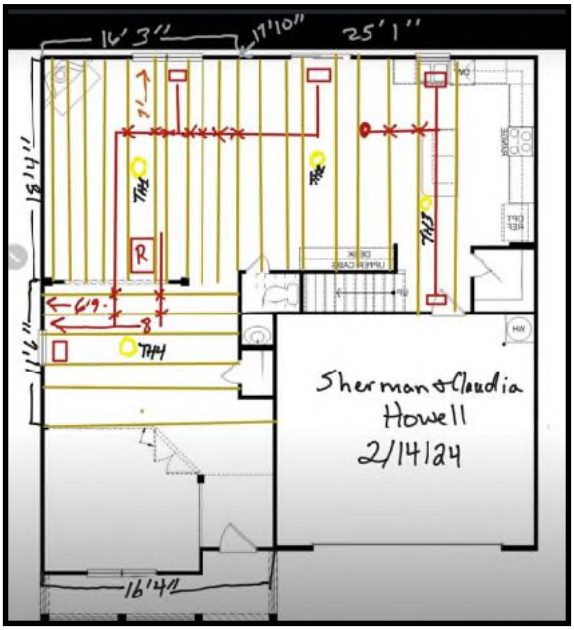


Figure 7 ▪ Relative Locations of Interior Destructive Testing
(Provided by JCC Building, Inc.)



Photo 19 ▪ Location of Destructive Test 1 in the Living Room

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Photos 20 & 21 ▪ As-Built Conditions of Wood I-Joists (Provided by JCC Building, Inc.)





Photos 22 & 23 ▪ Circular Cut Adjacent to Top Flange (Provided by JCC Building, Inc.)

16. Destructive Test 2 was performed at a recessed light fixture in the gypsum ceiling panel located in the dining room (Photo 24 - Provided by JCC Building, Inc.).

17. Circular openings had been cut through the web with diameters ranging from approximately eight inches to nine inches (8” to 9”) for the flexible HVAC ducts (see Photo 25 below - Provided by JCC Building, Inc.)

18. The vertical distance from the top of the circular openings to the bottom surface of the top flange was measured to be approximately one inch (1”) (see Photo 26 below - Provided by JCC Building, Inc.).

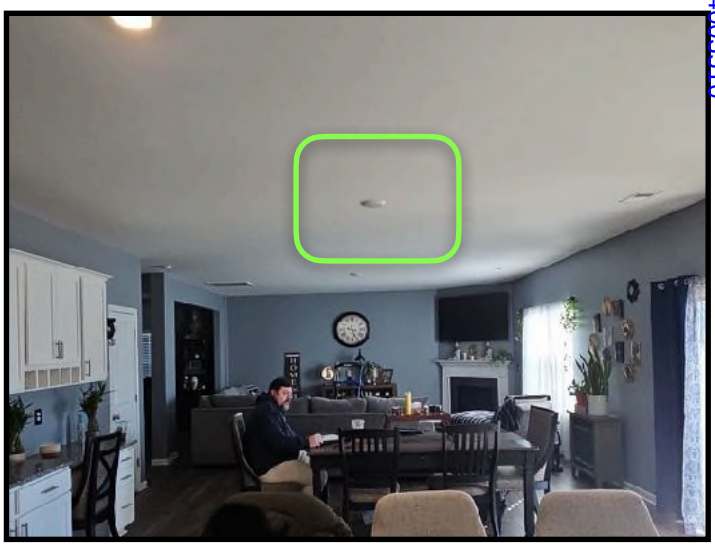


Photo 24 ▪ Location of Destructive Test 2 in the Living Room

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Photo 25 ▪ As-Built Conditions of Wood I-Joists (Provided by JCC Building, Inc.)



Photo 26 ▪ Circular Cut Adjacent to Top Flange (Provided by JCC Building, Inc.)

Kitchen ▪ Destructive Test 3 (TH3)

19. Destructive Test 3 was performed at a recessed light fixture in the gypsum ceiling panel located in the kitchen. A secondary opening was cut into the gypsum ceiling panel adjacent to the recessed light fixture (Photo 27).

20. An engineered analysis performed by Boise Cascade was observed to be attached to one (1) web of the wood I-joist members (Photo 28).

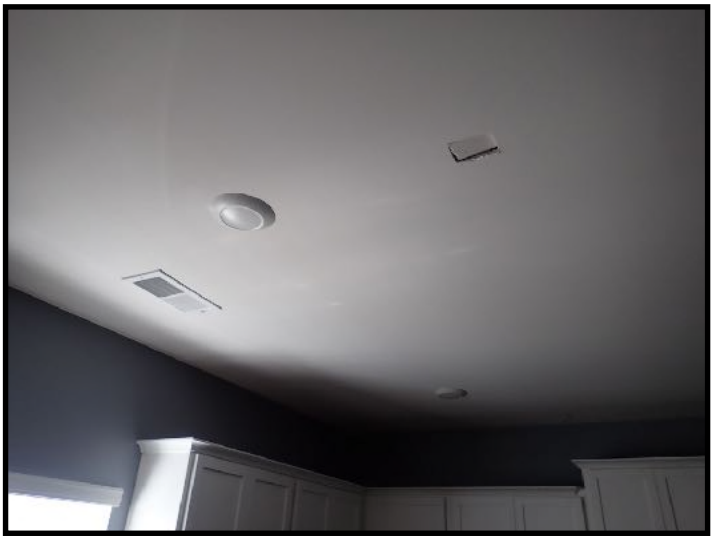


Photo 27 ▪ Location of Destructive Test 3 in the Kitchen

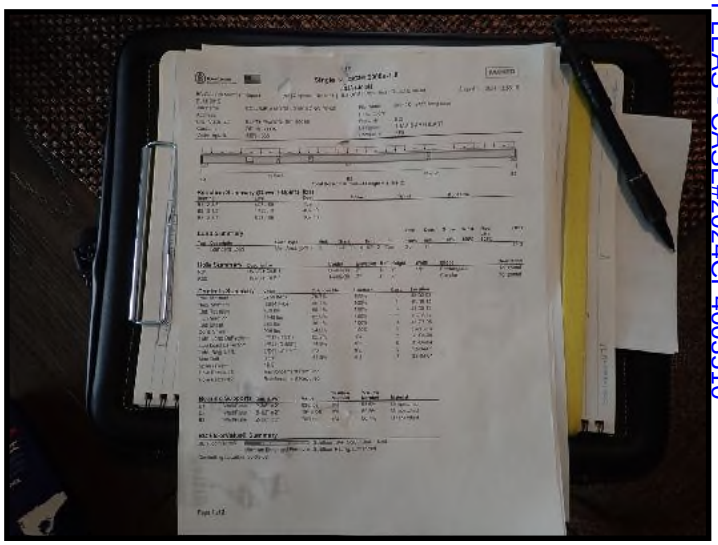


Photo 28 ▪ Boise Cascade Engineering Analysis Attached to I-Joist in Kitchen

Sitting Room ▪ Destructive Test 4 (TH4)

21. Destructive Test 4 was performed at a recessed light fixture in the gypsum ceiling panel located in the kitchen. Secondary openings were cut into the gypsum ceiling panel adjacent to the recessed light fixture (see Photo 29 below).

22. The vertical distance from the top of the circular openings to the bottom surface of the top flange was measured to be approximately one-half inch (½") (see Photo 30 below).

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23. Circular openings had been cut through the I-joist web with diameters ranging from approximately eight inches to nine inches (8” to 9”) for the flexible HVAC ducts (Photo 31 - Provided by JCC Building, Inc.)

24. An engineered analysis performed by Boise Cascade was observed to be attached to one (1) web of the wood I-joist members (Photo 32 - Provided by JCC Building, Inc).

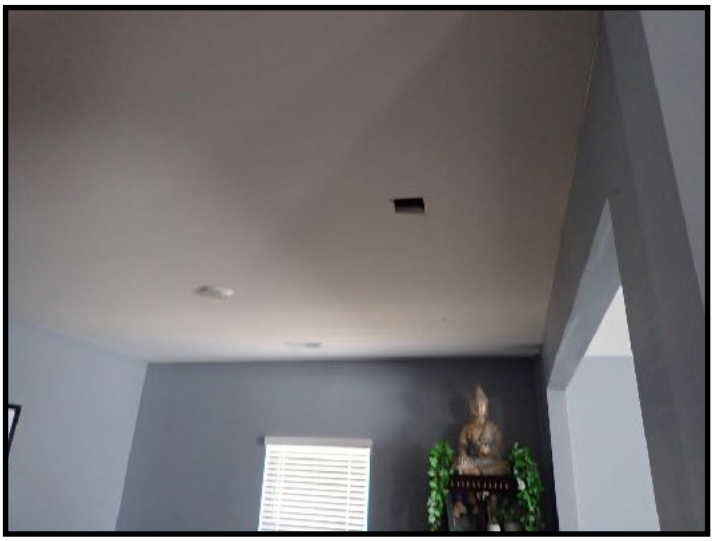


Photo 29 ▪ Location of Destructive Test 3 in the Kitchen



Photo 30 ▪ Circular Cut Adjacent to Top Flange



Photo 31 ▪ As-Built Conditions of Wood I-Joists (Provided by JCC Building, Inc.)

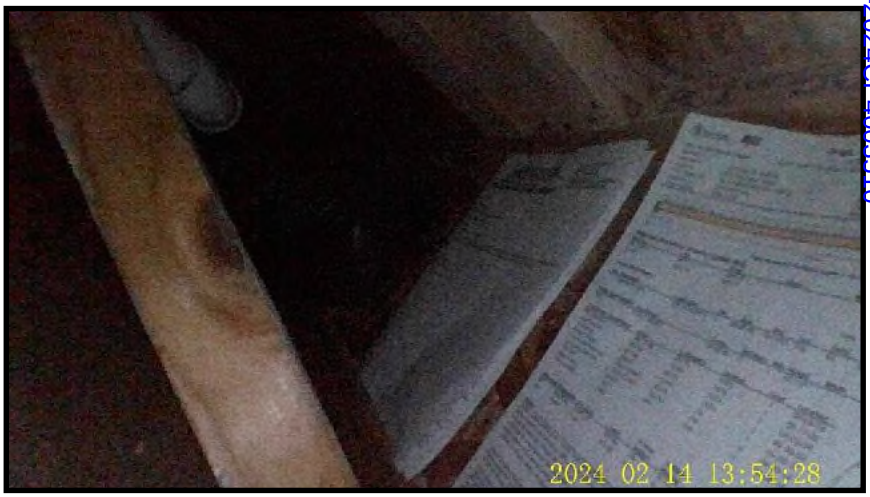


Photo 32 ▪ Boise Cascade Engineering Analysis Attached to I-Joist in Sitting Room (Provided by JCC Building, Inc.)

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REVIEW OF BUILDING CODE, STANDARDS, AND MANUFACTURER INFORMATION

REI reviewed the following building code, standards, and manufacturer information that are considered to be applicable at the time of original construction for the subject residence. Relevant excerpts from the applicable building code, standards and manufacturer information are provided below.

2018 South Carolina Residential Code

Applicable Roofing Code Sections

Chapter 9 *Roof Assemblies* provides provisions for the design, materials, construction, and quality of roof assemblies. Section R905.2 *Asphalt Shingles* provides information specific to the installation of asphalt shingles (i.e., architectural laminated shingles). Section R905.2.8.5 *Drip Edge* states that a drip edge is provided at the eave where required by the manufacturer (Figure 8).

R905.2.8.5 Drip edge.

A drip edge shall be provided at eaves and rake edges of asphalt shingle roofs where required by the manufacturer.

Figure 8 ▪ Section R905.2.8.5 of the 2018 SCRC

Applicable Truss Bracing Code Sections

Chapter 8 *Roof-Ceiling Construction* provides provisions for the design and construction of the roof-ceiling system for buildings. Section R802 *Wood Roof Framing* provides information specific to wood-based products that are used for load-supporting purposes. Section R802.10 *Bracing* states that trusses shall be braced to prevent rotation and provide lateral stability. Additionally, in the absence of specific bracing requirements, trusses shall be braced in accordance with accepted industry practice SBCA *Building Component Safety Information (BCSI) Guide to Good Practice for Handling, Installing & Bracing of Metal Plate Connected Wood Trusses* (Figure 9).

R802.10.3 Bracing.

Trusses shall be braced to prevent rotation and provide lateral stability in accordance with the requirements specified in the *construction documents* for the building and on the individual truss design drawings. In the absence of specific bracing requirements, trusses shall be braced in accordance with accepted industry practice such as the SBCA *Building Component Safety Information (BCSI) Guide to Good Practice for Handling, Installing & Bracing of Metal Plate Connected Wood Trusses*.

Figure 9 ▪ Section R802.10.3 of the 2018 SCRC

Applicable Exterior Wall Covering Sections

Chapter 7 *Wall Covering* provides provisions for the design and construction of the exterior wall coverings for buildings. Section R703 *Exterior Covering* provides information specific to the weather-resistant exterior wall envelope and flashing requirements. Section R703.1.1 *Water Resistance* states that the exterior wall envelope shall be constructed to prevent water accumulation and a means of drainage to the exterior (Figure 10).

R703.1.1 Water resistance.

The exterior wall envelope shall be designed and constructed in a manner that prevents the accumulation of water within the wall assembly by providing a water-resistant barrier behind the exterior cladding as required by Section R703.2 and a means of draining to the exterior water that penetrates the exterior cladding.

Figure 10 ▪ Section R703.1.1 of the 2018 SCRC

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Section R703.4 *Flashing* states that flashing shall be applied shingle-fashion in a manner to prevent water entry into the wall cavity or penetration of water to the building structural framing components (Figure 11).

Section R703.10.1 *Panel Siding* states that the panel siding shall be protected with caulking, or with battens or flashing, or be vertical or horizontal shiplap, or otherwise designed to comply with Section R703.1 (Figure 12).

R703.4 Flashing.

Approved corrosion-resistant flashing shall be applied shingle-fashion in a manner to prevent entry of water into the wall cavity or penetration of water to the building structural framing components. Self-adhered membranes used as flashing shall comply with AAMA 711. Fluid-applied membranes used as flashing in exterior walls shall comply with AAMA 714. The flashing shall extend to the surface of the exterior wall finish. Approved corrosion-

Figure 11 ▪ Section R703.4 of the 2018 SCRC

Section R703.12 *Adhered Masonry Veneer Installation* states that the adhered masonry stone veneer system shall be installed in accordance with Section R703.7.1 (i.e., metal lath attachment), Article 3.3C of TMS 602, or the manufacturer's installation instructions (Figure 13).

R703.10.1 Panel siding.

Fiber-cement panels shall comply with the requirements of ASTM C1186, Type A, minimum Grade II or ISO 8336, Category A, minimum Class 2. Panels shall be installed with the long dimension either parallel or perpendicular to framing. Vertical and horizontal joints shall occur over framing members and shall be protected with caulking, or with battens or flashing, or be vertical or horizontal shiplap, or otherwise designed to comply with Section R703.1. Panel siding shall be installed with fasteners in accordance with Table R703.3(1) or the approved manufacturer's instructions.

Figure 12 ▪ Section R703.10.1 of the 2018 SCRC

R703.12 Adhered masonry veneer installation.

Adhered masonry veneer shall comply with the requirements of Section R703.7.3 and the requirements in Sections 12.1 and 12.3 of TMS 402. Adhered masonry veneer shall be installed in accordance with Section R703.7.1, Article 3.3C of TMS 602 or the manufacturer's instructions.

Figure 13 ▪ Section R703.12 of the 2018 SCRC

Applicable Wood I-Joist Code Sections

Chapter 5 *Floors* provides the provisions for the design and construction of floor systems that will be capable of supporting minimum required design loads. Section R502.8 *Cutting, Drilling and Notching* provides information and limitations to the cutting, drilling, and/or notching of structural floor system. Section R502.8.2 *Engineered Wood Products* states that cutting, notching, and/or holes in wood I-joists are prohibited excepted where permitted by the manufacturer (Figure 14).

R502.8.2 Engineered wood products.

Cuts, notches and holes bored in trusses, structural composite lumber, structural glue-laminated members, cross-laminated timber members or I-joists are prohibited except where permitted by the manufacturer's recommendations or where the effects of such alterations are specifically considered in the design of the member by a *registered design professional*.

Figure 14 ▪ Section R502.8.2 of the 2018 SCRC

Chapter 13 *General Mechanical System Requirements* provides the provisions that govern the installation of mechanical systems not specifically covered in other chapters applicable to mechanical systems. Section M1308 *Mechanical Systems Installation* provides information regarding the installation the mechanical systems within light-frame construction assemblies. Section M1308.1 *Drilling and Notching* states that drilling, notching, and/or alteration of wood-framed structural members shall be in accordance with Section R502.8 (Figure 15).

M1308.1 Drilling and notching.

Wood-framed structural members shall be drilled, notched or altered in accordance with the provisions of Sections R502.8, R602.6, R602.6.1 and R802.7. Holes in load-bearing members of cold-formed steel light-frame construction shall be permitted only in accordance with Sections R505.2.6, R603.2.6 and R804.2.6. In accordance with the provisions of Sections R505.3.5, R603.3.4 and R804.3.3, cutting and notching of flanges and lips of load-bearing members of cold-formed steel light frame construction shall not be permitted. Structural insulated panels (SIPs) shall be drilled and notched or altered in accordance with the provisions of Section R610.7.

Figure 15 ▪ Section M1308.1 of the 2018 SCRC

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Chapter 26 *General Plumbing Requirements* provides the provisions that govern the installation of plumbing not specifically covered in other chapter applicable to plumbing systems. Section P2603 *Structural and Piping Protection* provides information regarding installation or repair of plumbing relative to the finished floors, walls, ceilings, tile work, or other parts of the building. Section P2603.2 *Drilling and Notching* states that drilling, notching, and/or alteration of wood-framed structural members shall be in accordance with Section R502.8 (Figure 16).

P2603.2 Drilling and notching.

Wood-framed structural members shall not be drilled, notched or altered in any manner except as provided in Sections R502.8, R602.6, R802.7 and R802.7.1. Holes in load-bearing members of cold-formed steel light-frame construction shall be made only in accordance with Sections R505.2.6, R603.2.6 and R804.2.6. In accordance with the provisions in Sections R505.3.5, R603.3.3 and R804.3.4, cutting and notching of flanges and lips of load-bearing members of cold-formed steel light-frame construction shall be prohibited. Structural insulated panels (SIPs) shall be drilled and notched or altered in accordance with the provisions of Section R613.7.

Figure 16 ▪ Section P2603.2 of the 2018 SCRC

ASTM D2665

ASTM International (ASTM) developed and produced the technical standard ASTM D2665 *Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste, and Vent Pipe and Fittings* [5]. The scope of this standard is to provide the requirements and test methods for materials, dimensions and tolerances, pipe stiffness, crush resistance, impact resistance, and solvent cement for poly (vinyl chloride) plastic drain, waste, and vent pipe and fittings.

Appendix Section X1.11 *Exposed Piping* states that plumbing vents exposed to sunlight shall be protected by water-base synthetic latex paints (Figure 17).

X1.11 *Exposed Piping*—Provide adequate support where piping is exposed to wind, snow, and ice loading. Plumbing vents exposed to sunlight shall be protected by water-base synthetic latex paints. Where surface temperatures exceed 140°F (60°C) piping shall be protected by means of shielding or some type of lightweight insulation. Exposure to sunlight during normal construction periods is not harmful. It is good practice to store pipe and fittings under suitable cover prior to installation.

Figure 17 ▪ Section X1.11 of the ATSM D2665

NRCA Guidelines for Asphalt Shingles

The National Roofing Contractors Association (NRCA) produced the technical document NRCA Guidelines for Asphalt Shingle Roof Systems dated 2017 [6]. The purpose of this document is to provide technical information and best industry practices with regard to the design, materials, and installation of asphalt shingle roof systems.

NRCA recommends the installation of a metal drip edge at the eave to provide a means of termination for the roof underlayment and shingles, in addition to, providing for efficient water-shedding and protection to the building components. Construction detail ASPH-1 depicts the integration of the metal drip edge with the roof underlayment and shingles (Figure 18).

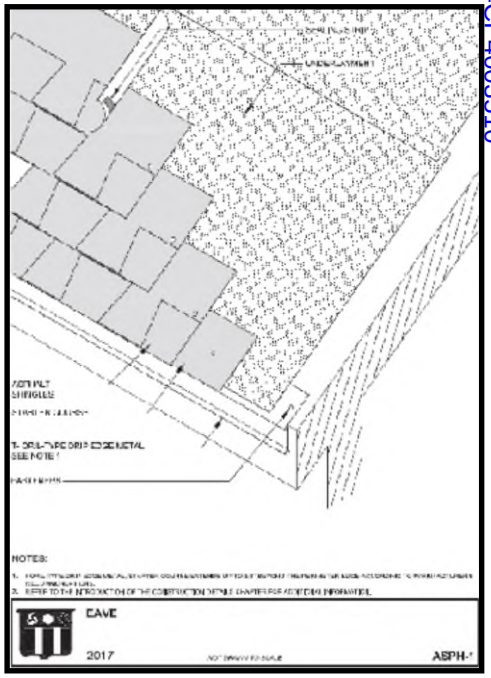


Figure 18 ▪ NRCA Detail ASPH-1

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BCSI Guide ▪ Metal Plate Connected Wood Trusses

The Structural Building Components Association (SBCA) and the Truss Plate Institute (TPI) jointly produced the code-referenced technical document *Building Component Safety Information (BCSI) Guide to Good Practice for Handling, Installing, Restraining & Bracing of Metal Plate Connected Wood Trusses* dated March 2015 [7]. The purpose of this document is to provide recommendations for the handling, installing, restraining, and bracing of trusses that are consistent with accepted framing construction practices in the field.

Section BCSI-B3 *Permanent Restraint/Bracing of Chords & Web Members* states that diagonal bracing is required to restrain the continuous lateral restraint (i.e., lateral bracing) and transfer the cumulative force from the lateral bracing into the lateral force resisting system (i.e., roof or ceiling diaphragm)(Figure 19). It should be noted that SCRC Section R802.10.3 specifically references that BCSI document for metal plate connected wood truss bracing.

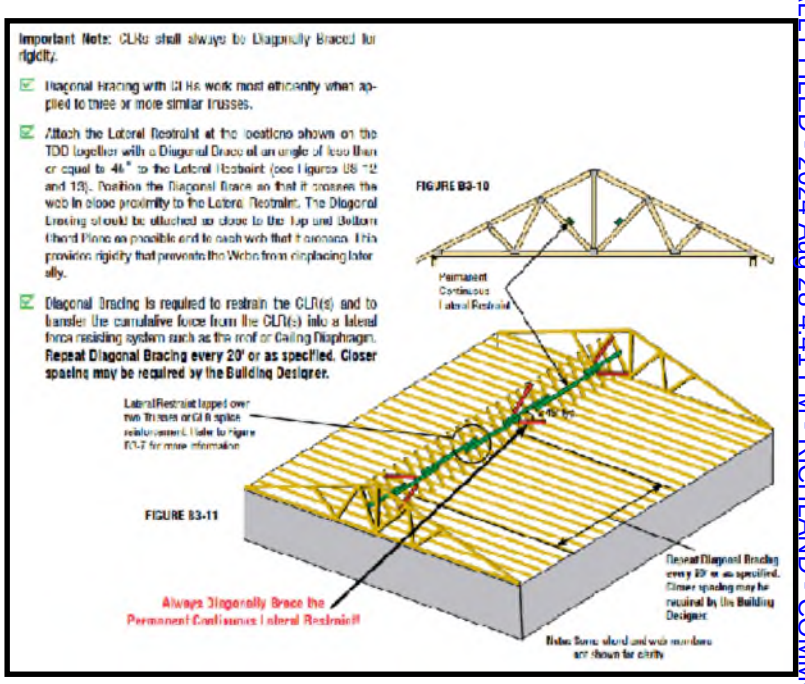


Figure 19 ▪ Section BSCI-B3 Permanent Bracing

James Hardie Manufacturer Information ▪ Vertical Board and Batten Fiber Cement Board Siding

REI believes that the vertical board and batten fiber cement board siding system installed at the subject residence is manufactured by James Hardie Building Products, Inc. (Hardie) [8]. Hardie developed and produced the document *HardiePanel® Vertical Siding HZ-10* installation instructions. Section *Clearance and Flashing Requirements* provides details that illustrate the installation of the weather resistive barrier over the vertical leg of the metal at trim and cladding transitions (Figure 20).

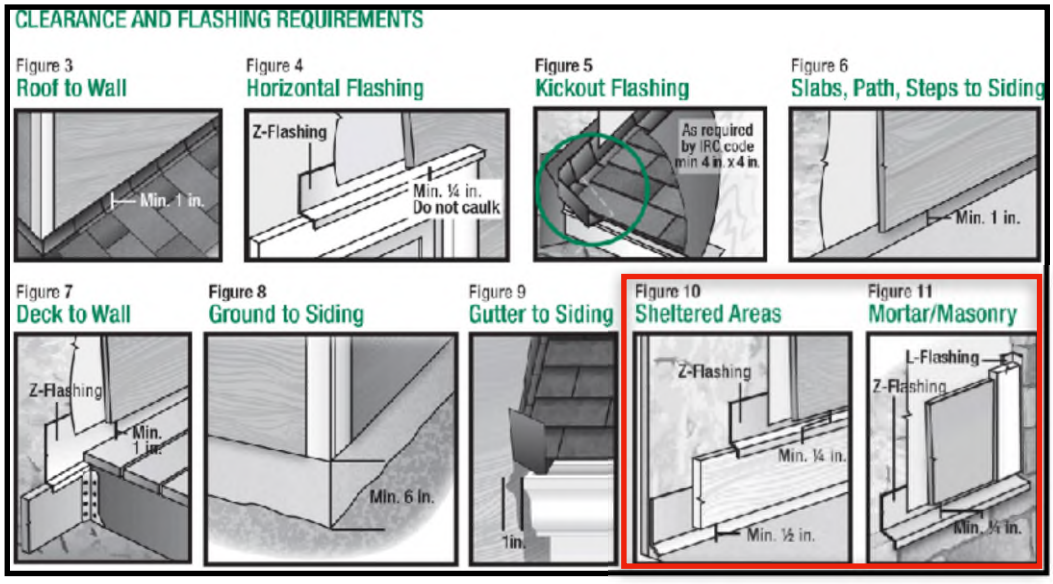
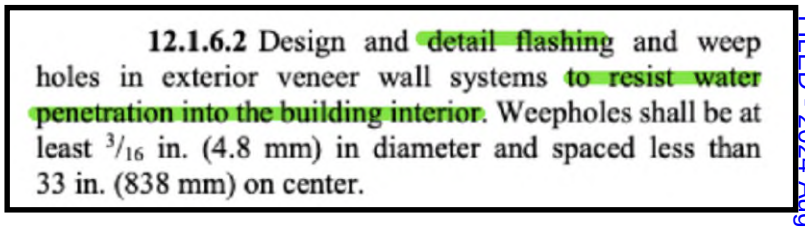


Figure 20 ▪ Flashing Requirements in HardiePanel® Vertical Siding Instructions

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TMS 402/602 Building Code Requirements and Specifications for Masonry Structures

The Masonry Society (TMS) produced the code-referenced industry standard TMS 402/602-16 *Building Code Requirements and Specification for Masonry Structures* dated October 9, 2016 [9]. This document provides information regarding the design and construction of masonry structures, in addition to, the minimum construction requirements for masonry in structures. Chapter 12 *Veneer* provides the requirements for design and detailing of adhered masonry veneer. Section 12.1.6.2 *General Design Requirements* states to design and detail the flashing and weep holes to resist water penetration into the building interior (Figure 21).

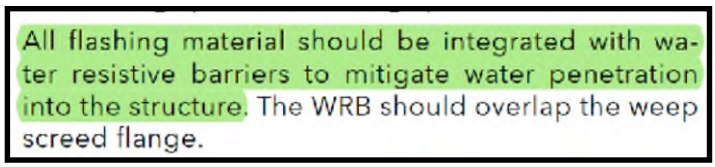


12.1.6.2 Design and detail flashing and weep holes in exterior veneer wall systems to resist water penetration into the building interior. Weepholes shall be at least $^{3}/_{16}$ in. (4.8 mm) in diameter and spaced less than 33 in. (838 mm) on center.

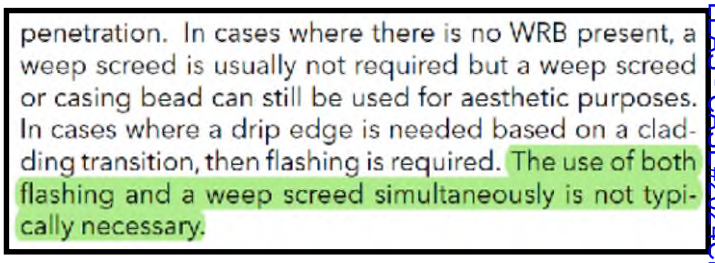
Figure 21 ▪ Section 12.1.6.2 of TMS 402/602

MVMA Installation Guide and Detailing

The Masonry Veneer Manufacturers Association (MVMA) produced the technical document *Installation Guide and Detailing Options for Compliance with ASTM C1780 for Adhered Manufactured Stone Veneer* dated March 2018 [10]. Section *Flashing/Weep Screeds/Casing Bead/Movement Joints* states that all flashing material should be integrated with the water resistive barrier (i.e., weather resistive barrier) to mitigate water penetration into the structure (see Figure 22 below). Additionally, MVMA states that the use of both flashing and a weep screed simultaneously is not typically necessary (see Figure 23 below).



All flashing material should be integrated with water resistive barriers to mitigate water penetration into the structure. The WRB should overlap the weep screed flange.



penetration. In cases where there is no WRB present, a weep screed is usually not required but a weep screed or casing bead can still be used for aesthetic purposes. In cases where a drip edge is needed based on a cladding transition, then flashing is required. The use of both flashing and a weep screed simultaneously is not typically necessary.

Figures 22 & 23 ▪ MVMA Flashing and Weep Screed Recommendations

ICC-ES Evaluation Report ▪ BCI Prefabricated Wood I-Joists

The ICC Evaluation Service (ICC-ES) and APA - the Engineered Wood Association (APA) produced the joint evaluation report ESR-1336 regarding the BCI prefabricated wood I-joists manufactured by Boise Cascade Wood Products, LLC [11]. This report was evaluated in compliance with the 2018 International Residential Code for prefabricated BCI joists with laminated veneer lumber flanges and oriented strand board (OSB) webs.

Section 4.0 *Design and Installation* provides information that includes, but is not limited to:

- Holes in the I-Joist Web
- Member Spans
- Deflection

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Section 5.0 *Conditions of Use* states that cutting or notching of the I-joist flanges is considered to be beyond the scope of the report (Figure 24).

5.0 CONDITIONS OF USE

The BCI Prefabricated Wood I-joists described in this report comply with, or are suitable alternatives to joists and rafters specified in, those codes listed in Section 1.0 of this report, subject to the following conditions:

5.1 BCI joists must be installed in accordance with this report and the manufacturer's installation details.

5.2 Drawings and design details verifying compliance with this report must be submitted to the code official when requested. The drawings and calculations must be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed.

5.3 Where one-hour or two-hour fire-resistance-rated construction is required, the construction must comply with this report.

5.4 Cutting or notching of BCI joist flanges is beyond the scope of this report.

Figure 24 ▪ Section 5.0 of ESR-1336

Boise Cascade Installation Guide

Boise Cascade Wood Products, LLC (Boise Cascade) produced the document *Eastern Installation Guide* dated April 1, 2019 [12]. The information provided within this document is relative to the design, installation, hole cutting of their engineered wood I-joist components and systems, and vibration performance tables.

Boise Cascade states that floor vibration by the end user (i.e., homeowner) is the most common complaint. Therefore, Boise Cascade developed floor performance criteria based on live load deflection limits to increase stiffness. For example, a wood I-joist designed with a live load deflection of L/480 would be thirty-three percent (33%) stiffer than a I-joist designed with live load deflection of L/360 (where L equals the length in inches). This guide provides floor vibration performance tables and a graphic depiction with a table for joist hole location and sizing requirements within the BCI wood I-joist (see Figures 25 & 26 below).

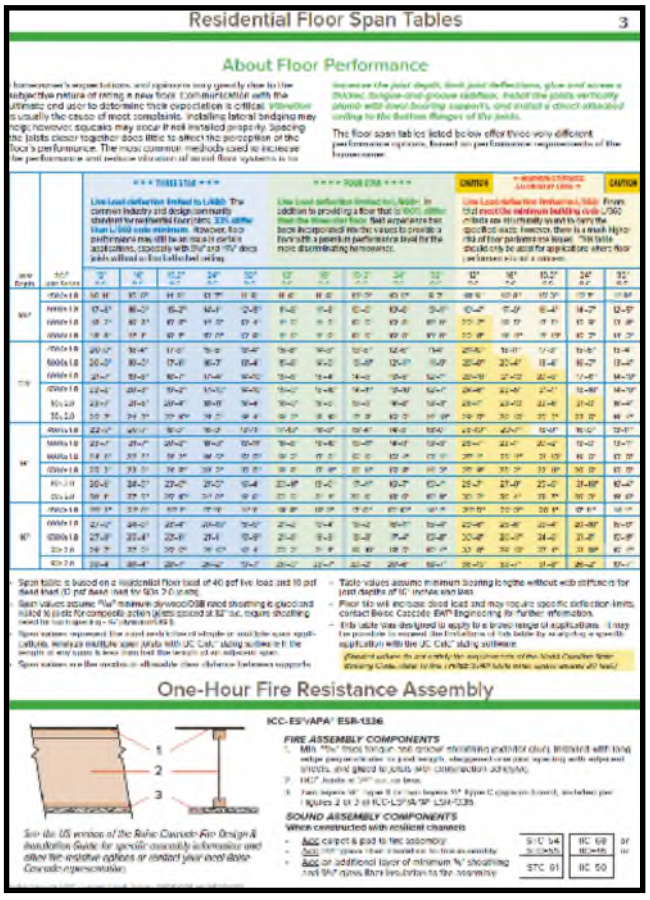


Figure 25 ▪ Boise Cascade Floor Performance

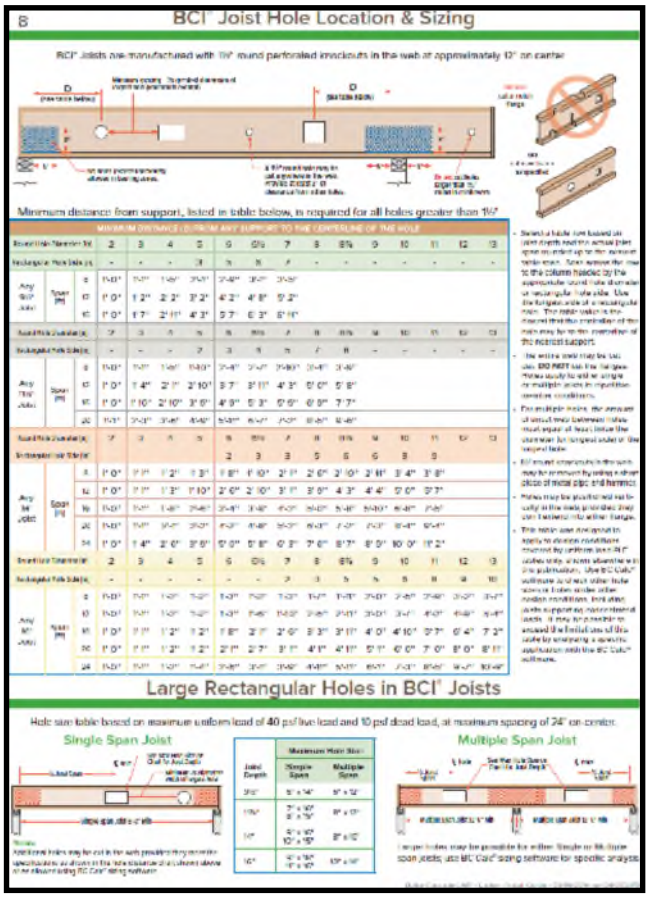


Figure 26 ▪ Boise Cascade Hole Location and Sizing

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REVIEW OF BOISE CASCADE ENGINEERING ANALYSIS

REI reviewed a structural engineering analysis that was performed by Ross J. Holt, P.E. of Boise Cascade dated August 20, 2021, and September 1, 2021. The engineering analyses proposed repairs to be performed at wood I-joist members located in the kitchen and sitting room areas. The engineering analyses specified that reinforcement repairs were required for the I-joists to be considered adequate at both the kitchen and sitting room areas.

- Kitchen - Reinforcement repairs required Hole 1 and Hole 2 (Figure 27)
- Sitting Room - Reinforcement repairs at top flange notch (Figure 28)

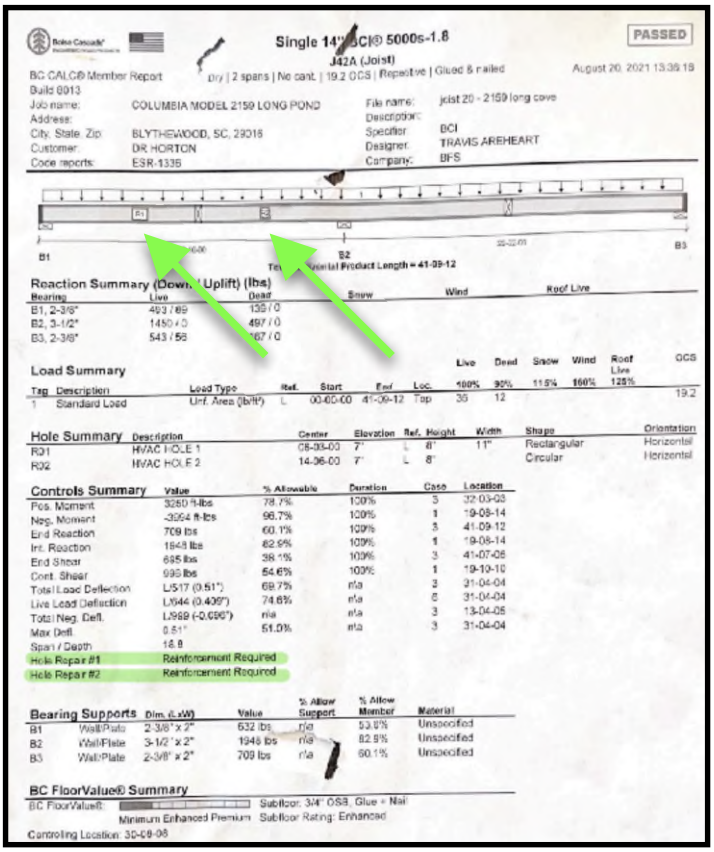


Figure 27 ▪ Boise Cascade Engineering Analysis of I-Joist Located in Kitchen

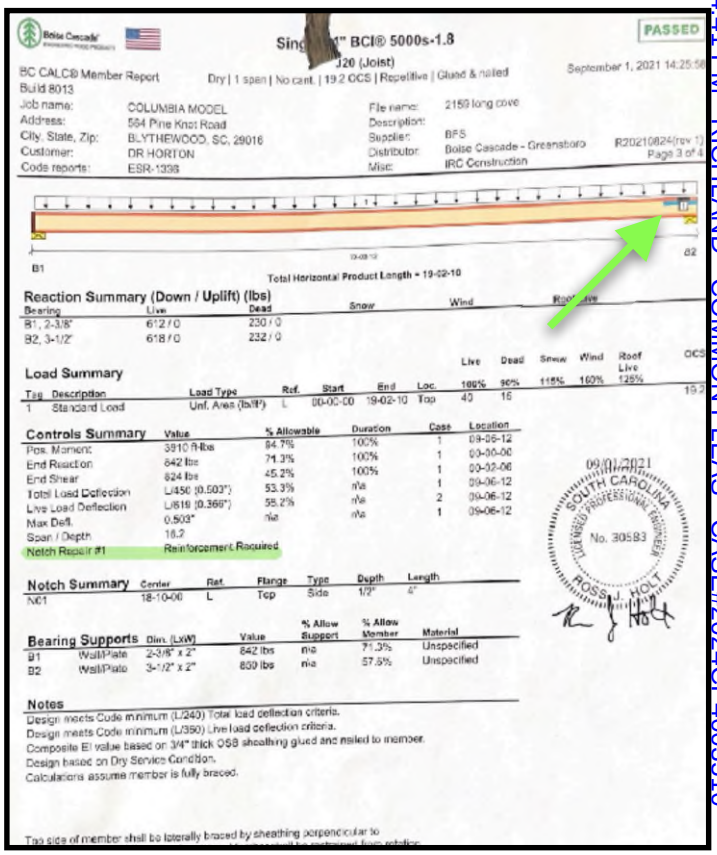


Figure 28 ▪ Boise Cascade Engineering Analysis of I-Joist Located in Sitting Room

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DISCUSSION

Based on the background information, visual survey with limited destructive testing, and review of the Boise Cascade engineering analysis, it is the opinion of REI, to a reasonable degree of engineering certainty, that construction deficiencies exist that require repair at the subject residence. Specifically, REI observed the following construction defects and/or issues at the subject residence (Table 2):

Building Component	Construction Defect and/or Issue	
Roof	R.1	Absence of Metal Drip at Eave
	R.2	Unprotected Plumbing Vent Pipe
Attic	A.1	Absence of Diagonal Bracing at Base Roof Trusses
	A.2	Absence of Diagonal Bracing at Piggyback Roof Trusses
	A.3	Inadequate Fastening of Wood Framing Connection at Base Roof Truss and Piggyback Roof Truss
Exterior Walls	EW.1	Improper Integration of Weather Resistive Barrier and Metal Flashing at Vertical Board & Batten Fiber Cement Siding
	EW.2	Improper Integration of Weather Resistive Barrier and Metal Flashing at Horizontal Fiber Cement Trim
	EW.3	Improper Installation of Adhered Masonry Stone Veneer Cladding
Interior Wood I-Joists	I.1	Evidence of Damage to I-Joist Flange
	I.2	Absence of Recommended Repairs at I-Joist

Table 2 ▪ Summary of Construction Defects & Issues at the Subject Residence

Roof ▪ Metal Drip Edge

The metal drip edge was observed to be absent at the eave of the roof. This condition can allow water to penetrate the building enclosure and cause damage to the roof deck and wood framing components. The 2018 SCRC states that a drip edge is provided where required by the manufacturer. Though REI has not identified the manufacturer of the asphalt shingles at the subject residence, the NRCA recommends the installation of a metal drip edge at the eave as a means of termination for the roof underlayment and shingles, as well as, to promote efficient water-shedding.

Roof ▪ Plumbing Vent Pipe

Unprotected polyvinyl chloride (PVC) vent pipes are subjected to ultra-violet (UV) light deterioration over periods of long-term exposure. Protection is typically provided by the application of a paint or lead pipe cover.

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Attic ▪ Diagonal Bracing

Diagonal bracing was not installed at the web members of the metal plate connected wood base trusses and piggyback trusses. The absence of web member diagonal bracing may cause the truss members (i.e., chords and webs) to buckle and fail when subjected to a code-prescribed loadings. At this time, REI has not received and/or reviewed truss design drawings that detail the location of the associated diagonal bracing. However, in the absence of truss design drawings, the referenced BCSI states that diagonal bracing is required to restrain the continuous lateral restraint (i.e., lateral bracing) and transfer the cumulative force from the lateral bracing into the lateral force resisting system (i.e., roof or ceiling diaphragm).

Attic ▪ Inadequate Fastening of Wood Framing Connection

The wood framing connection between the base roof truss and piggyback roof truss appeared to be inadequately fastening. At this time, REI has not received and/or reviewed truss design drawings that detail the connection. However, the applicable building code requires the truss fabricator/engineer to provide truss-to-truss connection details. Additionally, in the absence of truss design drawings, the applicable building code states that the design and construction of a building, and parts therefore, shall properly transfer loadings from their point of origin through the load-resisting elements to the foundation. The as-built condition does not adequately transfer code-prescribed loadings from the piggyback roof truss to the base roof truss.

Exterior Wall ▪ Vertical Board and Batten Fiber Cement Board Siding

The weather resistive barrier at the base of the vertical board and batten fiber cement board siding (i.e., first-to-second floor line) was observed to be improperly integrated with the flashing. Since this fiber cement board siding system is a drainage-type cladding, flashing is required at the base of wall to allow any incidental bulk water to exit to the exterior. The improper integration of the weather resistive barrier and flashing can allow water to penetrate behind the cement board siding system and adhered manufactured brick system, and cause damage to the wall sheathing and wood framing components.

Exterior Wall ▪ Adhered Masonry Stone Veneer

The adhered masonry stone veneer cladding was observed to be improper installed at the exposed areas of the first floor on the front elevation. Specifically, the weather resistive barrier (WRB) was observed to be improperly integrated with the flashing at the garage door header and base of wall. These conditions do not allow for the incidental bulk water that penetrates behind the adhered masonry stone veneer cladding to properly discharge to the exterior. Furthermore, the improper integration of the WRB and flashing at the garage door header will serve to trap incidental bulk water and cause damage to the wood framing components, if left in an uncorrected condition.

The adhered masonry stone veneer cladding was observed to be installed abutted to the garage door jambs without the installation of an engineered sealant joint. The engineered sealant joints allow for any differential movement due to temperature and/or moisture change between dissimilar materials and is part of the water management system.

Wood I-Joists

The HomeTeam inspection of the subject residence, which was performed during original construction, identified several issues with the wood I-joists that included, but not limited to, gaps at lateral supports, a cut top flange, and damage to a top flange. Subsequent to the HomeTeam inspection report, Boise Cascade performed an engineering analysis of several of the wood I-joists issues identified in the report.

The Boise Cascade engineering analysis, which was attached to the webs of the wood I-joists, demonstrated that the previously observed damage/issues of the wood I-joists would be considered structural adequate, if required repairs were performed. However, it is the understanding of REI that any cutting, notching, and/or damage to the top flange of a wood I-joist would require complete removal and replacement due to the compressive stresses from the simple beam configuration (i.e., supports at each end). REI did not observe the presence and/or evidence of repairs performed to the wood I-joists as required by Boise Cascade at the subject residence.

Boise Cascade developed a floor performance rating based on owner's expectations and opinions relative to a new floor system. The floor performance system is based on a live load deflections that serve to decrease the deflection to improve occupant desired performance. For example, if the code minimum live load deflection limit is L/360, a live load deflection limit of L/960 would decrease the deflection while increasing floor system stiffness.

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RECOMMENDED OUTLINE SCOPE OF REPAIR

REI recommends the following outline scope of repair to address the construction defects and issues observed at the subject residence. The recommended outline scope of repair should be performed by a qualified general contractor in accordance with the applicable building code, manufacturers literature, and accepted industry standards.

Roof

1. Inspect the roof eave for the installation of the roof underlayment and metal drip edge.
2. If the metal drip edge is observed to be absent or improperly installed.
   - 2.a. Install new eave metal drip edge in a weather lapped manner with the roof underlayment.
   - 2.b. Metal drip edge should be installed on the top surface of the roof deck.
   - 2.c. Roof underlayment should be installed over the top surface of the eave metal drip edge.

Diagonal Roof Base Truss and Piggyback Truss Bracing

1. Inspect the attic for the installation of diagonal truss bracing at all lateral brace lines.
2. Install new diagonal bracing as detailed in the BCSI industry standard, as determined to be necessary.

Roof Base Truss to Piggyback Truss Connection

1. Consult with a licensed professional engineer to perform a structural engineering analysis to determine the adequate connection between the base truss and piggyback truss.

Vertical Board & Batten Fiber Cement Board Siding

1. Remove fiber cement board siding at the first-to-second floor line on the front elevation.
2. Inspect the integration of the weather resistive barrier and horizontal aluminum flashing.
3. If weather resistive barrier is installed behind the vertical leg of the flashing.
   - 3.a. Remove the horizontal flashing. Salvage flashing for reinstallation.
   - 3.b. Cut and temporarily fold the weather resistive barrier upward to be integrated with horizontal flashing.
4. Inspect the wall sheathing for damage.
5. If exterior wall sheathing is damaged.

5.a. Remove damaged section of exterior wall sheathing.

5.b. Inspect wood framing members. Remove and replace damaged wood framing members, as determined to be necessary.

5.c. Replace damaged exterior wall sheathing. Install wood frame blocking at joints, as determined to be necessary.

6. If exterior wall sheathing is stained.

6.a. Treat exterior wall sheathing for microbial growth.

7. If exterior wall sheathing is not damaged or stained.

7.a. No repair is considered to be necessary.

8. Reinstall the existing aluminum horizontal flashing.

9. Install self-adhered flashing from the vertical leg of the horizontal flashing to the exterior surface of the wall sheathing.

10. Install the existing weather resistive barrier over the vertical leg of the horizontal flashing and new self-adhered flashing.

11. Reinstall the existing fiber cement board siding.

Adhered Masonry Stone Veneer

1. Completely remove and replace the exposed adhered masonry veneer system located on the first floor of the front elevation.*

2. Remove and replace the existing trim and flashing at the garage door openings and base of wall.

3. Inspect the wood framing components for water damage. Remove and replace wood framing components that exhibit wood damage.

4. Install new adhered masonry veneer system that is properly integrated with the garage door openings, base of wall, and existing building components.

4.a. General contractor is to reference the MVMA technical document *Installation Guide and Detailing Options for Compliance with ASTM C1780 for Adhered Manufactured Stone Veneer.*

* REI is recommending a complete removal and replacement of the exposed adhered masonry veneer system located on the first floor of the front elevation due to the limited remaining sections if localized repairs at the garage door opening and base of wall.

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Wood I-Joists

1. Remove the existing interior gypsum ceiling board in the kitchen, living room, and sitting room areas.

2. Inspect the existing wood I-joists for cutting, notching, and/or damage to the top flange.

3. Remove and replace existing wood I-joists that exhibit cutting, notching, and/or damage to the top flange.

   3.a. Assume two (2) wood I-joists to be removed and replaced.

4. Inspect the wood I-joists (without top flange cutting, notching, and/or damage) for previous repairs.

   4.a. Consult with the manufacturer Boise Cascade to determine if the previously identified Boise Cascade repairs are considered to still be the appropriate repair for the I-joists (without top flange cutting, notching, and/or damage) located in the kitchen, living room, and sitting room areas.

5. Install new gypsum ceiling board at areas where repairs are performed.

6. Prime and paint new gypsum ceiling board to match existing color and texture.

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CLOSING

This report and all associated opinions are provided to a reasonable degree of engineering certainty. In the event that additional relevant information becomes available, we respectfully reserve the right to amend the opinions expressed herein.

Please feel free to contact me if you have any questions or require additional assistance.

Sincerely,

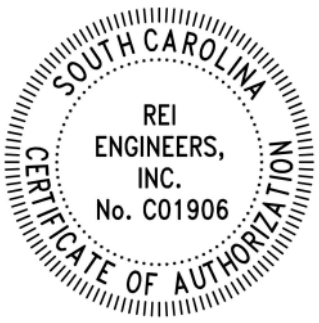
REI Engineers, Inc.



John C. Wylie

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John C. Wylie, P.E., RBEC, REWC, RWC, RRC, RRO
Senior Project Engineer





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(3) Richland County Assessor's Office Database (https://property.spatialest.com/sc/richland#/)

(4) 2018 South Carolina Residential Code, International Code Council (ICC), Country Club Hills, IL (First Printing: December 2019)

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(12) Eastern Installation Guide, Boise Cascade Wood Products, LLC, Auburn, GA (April 1, 2019)

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EXHIBIT

“E”

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Sherman and Claudia Howell, Plaintiff, vs. D.R. Horton, Inc., Defendant	CASE NO. 2024-CP-40-03510
D.R. Horton, Inc. Third-Party Plaintiff, vs. Jenkins Plumbing Company, LLC, Caryl Mechanicals II, Inc., L&M Electric, Inc., Unique Stone Creations, M&L General Construction, Inc., Alpha Omega Construction Group, Inc., and ASC Services and Supply, Inc. Third-Party Defendants.	**AFFIDAVIT OF SHERMAN HOWELL**

PERSONALLY appeared before me, Sherman Howell, who being duly sworn does state as follows:

1. I am over the age of eighteen (18) ears and am competent to make this Affidavit.

2. My wife Claudia Howell and I are the owners of 564 Pine Knot Drive, Blythewood, South Carolina located in the Long Cove Subdivision.

3. Our house was built by Defendant D.R. Horton. After destructive testing and an inspection by engineer John Wylie, P.E., of REI Engineering, we discovered that the I-Joists in our home have defects and that they fail to meet the requirements of the manufacturer.

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4. We bought the home after it was constructed. Before we entered into the purchase and sale agreement, we asked D.R. Horton why the former buyers terminated their agreement. D.R. Horton told us that they "could not get financing."

5. D.R. Horton did not disclose the defects in the I-Joists or that repairs were recommended by the manufacturer of the I-Joists before we executed the purchase and sale agreement.

6. At the time we signed the purchase and sale agreement, options for new homes were limited. We signed in 2021 when the real estate market in South Carolina was booming and many people were moving here to get away from urban areas post COVID-19. Prices had increased significantly due to the demand in the market. We did not have a lot of alternative homes that met our timeline to close and family needs.

7. We invested some of our savings in the home. This was part of our long-term investment strategy. We hoped that the home would continue to appreciate in value since South Carolina continues to be a desirable state to relocate to. Now we have a defective home that we cannot sell.

8. After we closed, we found out that the former buyers, Thomas and Leigh Ann Howell, terminated their purchase and sale agreement for our house, because they discovered the I-Joist defects during a home inspection and D.R. Horton refused to let them verify that they were repaired by drywalling over them. This was after Richland County instructed D.R. Horton not to install drywall until the repairs were verified.

9. D.R. Horton lied to us about the reason the former buyers terminated their agreement. It knew that the defects existed, lied that repairs were completed, when they were not, hid the evidence from the former owners and us by installing drywall, and then told us that

the buyers terminated due to lack of financing. This conduct was misleading and was intended to be relied upon by us in entering into the agreement to arbitrate in Paragraphs 14 and 15 of the purchase and sale agreement.

10. My wife and I have no experience in real estate, construction, or the legal industries and we were not represented by counsel at the time we signed the purchase and sale agreement.

11. Before we signed the purchase and sale agreement, Paragraphs 14 and 15 were not explained to us. We understood the arbitration provision to govern disputes related to the real estate transaction, not fraud committed by DR Horton in selling a defective home. The arbitration provision was in the middle of a long contract that we did not take particular notice, and we thought that the terms were standard and that we would be treated fairly by a large national builder.

12. We never anticipated that D.R. Horton would knowingly sell us a defective house that is structurally compromised and then try to use the arbitration provision to stop our lawsuit. Such conduct is unfair, misleading, and unjust.

13. According to D.R. Horton's marketing materials and other court filings, DR Horton proclaims itself as "America's Largest Homebuilder," is a highly sophisticated builder, who has constructed and entered into purchase and sale agreements for nearly 1,000,000 homes in 27 different states. Their reputation led my wife and I to believe that it was company that could be trusted. We were very wrong and have been significantly damaged as a result.

Sherman Howell

SWORN to and subscribed before me this 23rd day of AUG, 2024.

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Notary Public of South Carolina
My Commission Expires: 2033



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EXHIBIT

“F”

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Book 2713-3737
2022007273 2/7/2022 14:23:06:330 Warranty Deed
Fee: $15.00 County Tax: $404.80 State Tax: $956.80
2022007273 John T. Hopkins II Richland County R.O.D.

Prepared by McDonnell & Associates, P.A.
After recording return to:
P.O. Box 12245
Columbia, SC 29211
M&A File No.: SC-21556337

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

SPECIAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **D.R. HORTON, INC.**, hereinafter referred to whether singular or plural as "Grantor" in the State aforesaid, for and in consideration of the sum of **THREE HUNDRED SIXTY SEVEN THOUSAND SEVEN HUNDRED FORTY DOLLARS AND NO CENTS ($367,740.00)**, the receipt and sufficiency of which is here acknowledged, has granted, bargained, sold and released, and by these presents does hereby grant, bargain, sell and release subject to the easements, restrictions, reservations and conditions contained herein, unto **SHERMAN O HOWELL JR. AND CLAUDIA HOWELL**, as joint tenants with the right of survivorship and not as tenants in common, referred to hereinafter whether singular or plural as "Grantee," the following described property:

SEE ATTACHED EXHIBIT "A"

Grantee Address: 304 Pine Knot Road, Blythewood, SC 29016

This conveyance is made subject to taxes and assessments for the year 20 22 and all subsequent years, and to all easements, covenants, restrictions and conditions of record and otherwise affecting the property, including but not limited to rights-of-way indicated by instruments and plats of record, all other matters shown on plats of record, and to all applicable zoning and other land use regulations or restrictions of any political subdivision in which the subject is situate.

TOGETHER with all and singular, subject to the easements, restrictions, reservations and conditions contained herein, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, Grantee's heirs and assigns forever.

AND Grantor does hereby promise, for Grantor and Grantor's successors, assigns, and representatives, that title to the property described herein is the same quality of title which was received by Grantor from the prior title holder and Grantor binds Grantor and Grantor's heirs, successors and assigns to warrant and forever defend all and singular the premises unto the Grantee, Grantee's heirs, successors and assigns, against the Grantor and Grantor's successors, assigns, and representatives only.

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Any reference in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words on inheritance shall be applicable as are required by the gender to the Grantee.

IN WITNESS WHEREOF, the Grantor, D.R. HORTON, INC., has caused these presents to be executed in its name by TIM CORNELIUS , CHIEF FINANCIAL OFFICER, and its corporate seal to be affixed hereto on this 3rd day of February, 2022.

Signed, Sealed and Delivered
in the presence of:

Witness #1

Witness #2

Grantor: **D.R. Horton, Inc.**

By: Tim Cornelius
Tim Cornelius, **CHIEF FINANCIAL OFFICER**

CORPORATE SEAL [AFFIX BELOW]

STATE OF North Carolina)
COUNTY OF Mecklenburg)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 3rd day of February 2022, on behalf of **D.R. HORTON, INC.,** by TIM CORNELIUS , **CHIEF FINANCIAL OFFICER** of D.R. Horton,Inc., **A DELAWARE CORPORATION.** Further, I have verified that pursuant to SC Code Section 26-1-120 (E), "The subscribing witness identified above who witnessed the principal sign the instrument or witnessed the principal acknowledge his/her signature on the instrument is not a party to or beneficiary of the transaction."

(Place Notary Seal Below)

Signature of Notary

Judy L. Anderson
Print Notary Name

Notary Public of the State of North Carolina

My Commission expires: NOV. 12, 2023

Judy L. Anderson
NOTARY PUBLIC
Gaston County
North Carolina
My Commission Expires November 12, 2023

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EXHIBIT "A"

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina; being shown and delineated as Lot 159 on a plat of The Villages at Long Cove, Phase 2-A prepared by Civil Engineering of Columbia, Inc., by Clayton H. Walsh, PLS No. 36748, for Rimer Pond Land Investors, LLC dated October 20, 2020 last revised recorded December 2, 2020 in the Office of the Register of Deeds for Richland County in Book 2557 at Page 722. Reference is made to said plat for a more complete and accurate description of said lot, all measurements being a little more or less.

For Informational Purposes Only:

Being the same property conveyed to D.R. Horton, Inc. by deed of Coatbridge Development, LLC dated March 10, 2021 and recorded March 22, 2021 in Book 2599 at Page 3809 in the Land Records of Richland County, South Carolina.

TMS: 20507-10-11

Property Address: 526492159 Lot: 159, in The Villages at Long Cove, 564 Pine Knot Road, Blythewood, SC 29016

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STATE OF SOUTH CAROLINA)
COUNTY OF Richland)

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY, appeared before me the undersigned, who being duly sworn, deposes and says:
1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 526492159 Lot: 159, in The Villages at Long Cove, 564 Pine Knot Road, Blythewood, SC 29016, bearing County Tax Map Number 20507-10-11, was transferred by D.R. Horton, Inc. to Sherman O Howell Jr. and Claudia Howell on 2-3-2022.
3. Check one of the following: The deed is
(a) XX subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) _____exempt from the deed recording fee because (See Information section of affidavit):

_____
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):
(a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $367,740.00.
(b) The fee is computed on the fair market value of the realty which is _____.
(c) The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.
6. The deed recording fee is computed as follows:
(a) Place the amount listed in item 4 above here: $367,740.00
(b) Place the amount listed in item 5 above here: _____ (If no amount is listed, place zero here.)
(c) Subtract Line 6(b) from Line 6(a) and place result here: $367,740.00
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $1361.60
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: **[Check the correct title]: _____ Seller _____ Buyer ___✓___ Attorney.**
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

_____
Responsible Person Connected with the Transaction

Jennifer M Cooper
Print or Type Name Here

SWORN to and subscribed before me this 7th day of February 2022.

[AFFIX NOTARY SEAL BELOW]

Notary Public for State of: SC
My Commission Expires: 6-4-2030
Notary (L.S.): Samantha Irick
Notary (printed name): Samantha Irick

SAMANTHA IRICK NOTARY PUBLIC SOUTH CAROLINA Exp. June 4, 2030

INFORMATION
Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's

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worth for the realty.' Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

(1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;

(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;

(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;

(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);

(5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;

(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;

(7) that constitutes a contract for the sale of timber to be cut;

(8) transferring realty to a corporation, a partnership, or a trust as a stockholder, partner, or trust beneficiary of the entity or so as to become a stockholder, partner, or trust beneficiary of the entity as long as no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in the stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration or transfers from a trust established for the benefit of a religious organization to the religious organization, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee, even if the realty is transferred to another corporation, a partnership, or trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);

(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;

(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;

(12) that constitutes a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;

(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceeding;

(14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty;

(15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.