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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. II

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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.	)	DEFENDANT D.R. HORTON, INC.'S
	)	MEMORANDUM IN SUPPORT OF
	)	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,	)	
	)	

Defendant D.R. Horton, Inc. (“D.R. Horton” or “Defendant”) submits this Memorandum in Support of its Motion to Stay Action and Compel Arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, et seq., and the South Carolina Uniform Arbitration Act, S.C. Code § 15-48-10, et seq. For the reasons set forth therein, the motion should be GRANTED.

FACTUAL BACKGROUND

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

Contract is attached hereto and incorporated by reference as **Exhibit A**. As part of the Homeowner Contract, Plaintiffs and D.R. Horton mutually agreed to submit all disputes between them to binding arbitration. The entirety of the arbitration provision provides 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.

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 that warranty program.

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. Notwithstanding the foregoing, the arbitration provisions of this subsection (b) shall not apply in the event that the dispute relates to a default by the seller under section 16(f) of this agreement

Ex. A, ¶ 15 (formatting altered).

Plaintiffs have now filed this lawsuit complaining of defects in the construction of the Home and the damages related to same. Plaintiffs allege certain components, including but not limited to the i-joists, roof, roof flashing, roof trusses, siding, and stone veneer cladding, were not constructed in accordance with the building codes and applicable construction and safety

standards. Compl. ¶ 8. Plaintiffs also allege certain claims regarding fraud and misrepresentation related to the alleged defects in the Home. Compl. ¶¶ 12-43. Pursuant to the Homeowner Contract, these construction related disputes should be submitted to binding arbitration.

Separately, D.R. Horton contracted with Defendants Jenkins Plumbing Company, LC (“Jenkins”), Caryl Mechanicals II, Inc. (“Caryl”), L&M Electric, Inc. (“L&M”), Unique Stone Creations (“Unique”), M&L General Construction, Inc. (“M&L”), Alpha Omega Construction Group, Inc. (“Alpha”), and ASC Services and Supply, Inc. (“ASC”) (collectively, “Subcontractors”) to perform various work on the Home. D.R. Horton has filed a third-party complaint against Subcontractors related to their work. D.R. Horton entered into Independent Contractor Agreements (“ICAs”) with Subcontractors. The ICAs provide for the arbitration of disputes. The ICA arbitration provisions are substantially the same and are as follows:

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor’s Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work (“Disputes”) shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements...

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (“FAA”). IN MAKING THIS AGREEMENT, THE PARTIES ARE WAIVING THEIR RIGHTS TO FILE A LAWSUIT, TO HAVE A JURY RESOLVE ANY DISPUTE BETWEEN THEM, AND TO APPEAL THE DECISION OF THE ARBITRATOR TO A COURT OF LAW. All demands for arbitration shall be made before the expiration of the applicable statute of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified or corrected only as permitted by the FAA.

(Subcontractor ICAs, attached as **Exhibit B**)¹. Pursuant to the Homeowner Contracts and the ICA, this matter should be submitted to binding arbitration.

LEGAL STANDARD

The Federal Arbitration Act (“FAA”) provides that legal proceedings must be stayed when any such issues in the suit are “referrable to arbitration under an agreement in writing.” 9 U.S.C. § 3. “The FAA requires courts to stay a proceeding, pending arbitration, if the court determines that a valid arbitration agreement exists, and that the claims alleged fall within the scope of the arbitration agreement.” *LaPoint v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, C/A No. 0:08-3553-CMC, 2009 U.S. Dist. LEXIS 146577, at *4, 2009 WL 10684895 (D.S.C. Dec. 1, 2009) (citing *United States v. Bankers Ins. Co.*, 245 F.3d 315, 319 (4th Cir. 2001); *Whiteside v. Teltech Corp.*, 940 F.2d 99, 102 (4th Cir. 1991)). “Once these criteria are met, the

¹ The Caryl Mechanicals and Alpha Omega ICA 13.3 provision differs slightly:

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

The L&M and ASC ICAs 13.3 provisions differ slightly:

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

district court has ‘no choice but to grant a motion to compel arbitration.’” *Id.* (quoting *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 500 (4th Cir. 2002)).

Because of the well-established federal policy favoring arbitration of disputes, courts must assess the validity and scope of an arbitration agreement with a heavy presumption in favor of arbitration. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 542 S.E.2d 360 (2001). “Accordingly, any doubts concerning the scope of arbitrable issues are resolved in favor of arbitration.” *Bernstein v. Pulte Home Co.*, C/A No. 0:19-cv-02805-JFA, 2019 WL 8014404, at *6 (D.S.C. Dec. 23, 2019) (citing *Hill v. PeopleSoft USA, Inc.*, 412 F.3d 540, 543 (4th Cir. 2005)).

When analyzing arbitrability, the “court must first determine whether the parties’ agreement is governed by the FAA.” *Id.* “A party can compel arbitration under the FAA by establishing (1) a dispute between the parties; (2) a written agreement that includes an arbitration provision purporting to cover that dispute; (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce; and (4) the failure, neglect or refusal of the opposing party to arbitrate the dispute.” *Id.*

After determining that the FAA applies, “courts must apply state law to decide issues of contract formation” when a party challenges the enforceability of the arbitration agreement. *LaPoint*, 2009 U.S. Dist. LEXIS 146577, at *10. “The FAA recognizes arbitration agreements ‘may be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability.’” *Sanders v. Savannah Highway Auto. Co.*, 2023 S.C. LEXIS 154, 892 S.E.2d 112, 115 (S.C. 2023) (quoting *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68 (2010)).

“However, in deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims.” *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (citing *AT&T Techs., Inc. v.*

Comm’n Workers of Am., 475 U.S. 643, 649 (1986)). A court may consider challenges to the arbitration clause itself, but any challenge to the contract as a whole should only be resolved by an arbitrator. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006) (“[U]nless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance.”).

ARGUMENT

I. The Homeowner Contract Satisfies the Notice Provision of the South Carolina Uniform Arbitration Act.

The arbitration provision in the Homeowner Contract covers disputes regarding the Homeowner Contract and construction of the Home and the contract complies with the notice requirements of the South Carolina Uniform Arbitration Act.

The SCUAA provides that:

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.

In accordance with the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10(a), the top of the first page of the Homeowner Contract states the following in bold, underlined, and all capital letters: “**NOTE: THIS CONTRACT PROVIDES FOR MANDATORY BINDING ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTIONS [15]-48-10 ET SEQ., SOUTH CAROLINA CODE OF LAWS (1976, AS AMENDED).**” Ex. A, at 1.

As set forth below, there is no basis to set aside or revoke the arbitration provision and it must be enforced.

II. The Homeowner Contract is Governed by the FAA.

The Homeowner Contract satisfies all four factors courts analyze to determine whether an arbitration provision is governed by the FAA:

- (1) a dispute between the parties;
- (2) a written agreement that includes an arbitration provision purporting to cover that dispute;
- (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce; and
- (4) the failure, neglect or refusal of the opposing party to arbitrate the dispute.

Bernstein, 2019 WL 8014404, at *6 (citing *Wood*, 429 F.3d at 87).

Dispute Between the Parties

Plaintiffs entered into the Homeowner Contract. Plaintiffs now complain of defects in the construction of the Home and related issues. *See generally*, Compl. D.R. Horton has requested that Plaintiffs arbitrate this matter, but Plaintiffs refuse.

Written Agreement Including Arbitration Provision

The Homeowner Contract's mandatory arbitration provision expressly covers disputes related to alleged defects in the development and construction of the Home and disputes regarding the Home.

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

Ex. A, ¶ 15.

Where an arbitration clause, like the one in this case, provides for the arbitration of "any and all disputes which may arise" between the parties, courts will construe the arbitration clause broadly. *Landers v. FDIC*, 402 S.C. 100, 109-10, 739 S.E.2d 209, 213-14 (2013); *see also Prima*

Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 398 (1967) (describing an arbitration clause as “broad” where the clause provided that “[a]ny controversy or claim arising out of or relating to . . . [the] Agreement . . . shall be settled by arbitration”). The Supreme Court of the United States, the Fourth Circuit Court of Appeals, and the South Carolina Supreme Court have found broad arbitration clauses to be “capable of an expansive reach.” *See Prima Paint*, 388 U.S. at 398; *Am. Recovery Corp v. Computerized Thermal Imaging*, 96 F.3d 88, 93 (4th Cir. 1996); *Landers*, 402 S.C. at 109-10, 739 S.E.2d at 213-14.

As such, the language of a broad arbitration clause will apply where there is a “significant relationship” between the claims or disputes and the contract which contains the arbitration clause. *Am. Recovery Corp.*, 96 F.3d at 93. The arbitration clause will in no way be limited “to the literal interpretation or performance of the contract,” but instead will “embrac[e] every dispute between the parties having a significant relationship to the contract regardless of the label attached to the dispute.” *J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315, 321 (4th Cir. 1988); *see also Landers*, 402 S.C. at 111, 739 S.E.2d at 214 (“[U]nder the expansive reach of the FAA a tort claim need not raise an issue that requires reference to or the construction of some portion of the contract in order to be encompassed by a broadly-worded arbitration clause.”).

Accordingly, Plaintiffs’ alleged defects in the development and construction of the Home fall squarely within the Homeowner Contract’s arbitration provision. Plaintiffs’ claims regarding fraud and misrepresentation related to the alleged defects in the Home also falls squarely within the arbitration provision.

Transactions Involves Interstate Commerce

The only remaining factor to analyze is whether the transactions involve interstate commerce. The Homeowner Contract was for the construction of new homes. Ex. A. The FAA provides, in relevant part:

A written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2.

“The United States Supreme Court has held that the phrase ‘involving commerce’ is the same as ‘affecting commerce,’ which has been broadly interpreted to mean Congress intended to utilize its powers to regulate interstate commerce to its full extent.” *Blanton v. Stathos*, 351 S.C. 534, 540, 570 S.E.2d 565, 568 (Ct. App. 2002) (citing *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, (1995)). Congress’ broad power in this area thus extends to any transaction “affecting” commerce. *Allied-Bruce*, 513 U.S. at 273-74; *see also Gonzales v. Raich*, 545 U.S. 1, 17 (2005) (“Our case law firmly establishes Congress’ power to regulate purely local activities that are part of an economic ‘class of activities’ that have a substantial effect on interstate commerce.”). Therefore, for the FAA to apply, a transaction must involve interstate commerce.

The South Carolina Supreme Court has held that construction of new homes “manifestly involve[s] interstate commerce, as they involve the construction of new homes built to [an owner’s] specifications rather than the purchase of pre-existing homes.” *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 608, 879 S.E.2d 746, 753 (2022); *see also Bradley v. Brentwood Homes, Inc.* 398 S.C. 447, 458 n.8, 730 S.E.2d 312, 318 n.8 (2012) (“[O]ur appellate courts have consistently recognized that contracts for construction are governed by the FAA”); *Episcopal*

Hous. Corp. v. Federal Ins. Co., 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977) (observing that new construction implicates interstate commerce because “[i]t would be virtually impossible to construct” the building “with materials, equipment and supplies all produced and manufactured solely within the State of South Carolina.”).

The Homeowner Contracts clearly cover both the construction and the sale of the Home. Specifically, Exhibit C “Stages of Construction,” contemplates the construction of the Home. As another example, Addendum 8 “Variations in Materials and Components,” contains a list of materials to be used to construct the Home, many of which involve interstate commerce. *See, e.g.,* Ex. A at 16, 21; *see generally, Episcopal Hous. Corp.*, 269 S.C. at 640, 239 S.E.2d at 652 (“It would be virtually impossible to construct an eighteen (18) story apartment building . . . with materials, equipment and supplies all produced and manufactured solely within the State of South Carolina.”).

Accordingly, the transactions at issue here fall within the FAA and arbitration must be compelled unless there are common law contract defenses that prevent such enforcement.

III. The Merger Doctrine Does Not Apply to the Arbitration Provision.

The merger doctrine does not apply to the arbitration provision. Plaintiffs argue that the arbitration provision in the Homeowner Contract merged out of existence once the deed was executed. This is not the law in South Carolina or other state and federal jurisdictions. *See, e.g., Carlson v. S.C. State Plastering, LLC*, 404 S.C. 250, 260-61, 743 S.E.2d 868, 874 (2013).

The merger doctrine does not operate to invalidate or extinguish the parties’ agreement to arbitrate all disputes between them. The merger by deed doctrine provides that “[t]he execution, delivery, and acceptance of a deed varying from the term of an 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.” *Shoney’s, Inc. v. Cooke*, 291 S.C. 307, 311, 353 S.E.2d 300, 303 (Ct. App. 1987) (quoting *Charleston & Western Carolina Ry. Co. v. Joyce*, 231 S.C. 493, 99 S.E.2d 187, 193 (1957)). However, agreements that are not intended to be merged in a deed are not merged into the deed. *Hughes v. Greenville Country Club*, 283 S.C. 448, 450-51, 322 S.E.2d 827, 828 (Ct. App. 1984). In fact, there are at least three exceptions to the merger rule. These exceptions are set out in *Dudek v. Commonwealth Land Title Ins. Co.*, 466 F.Supp.3d 610 (D.S.C. 2020) and *Shoney’s, Inc. v. Cooke*, 291 S.C. 307, 353 S.E.2d 300 (Ct. App. 1987).

The first exception is inapplicable to the present case (mistake or fraud in the execution of the deed). The second exception is that the party denying merger can enforce the provisions of a pre-deed contract if it proves by clear and convincing evidence that merger was not intended. *Hughes*, 283 S.C. at 451, 322 S.E.2d at 828.

In *Carlson v. S.C. State Plastering, LLC*, 404 S.C. 250, 743 S.E.2d 868 (2013), the court faced the identical issues presented in the present case. The *Carlson* court applied the second “intent” exception to the merger rule, in part, to defeat the plaintiffs’ argument that the arbitration clause was merged into the deed. The plaintiff homeowners in that case executed a purchase agreement that included an arbitration clause. The deed that was subsequently issued did not provide for arbitration. The plaintiffs argued that the doctrine of merger precluded arbitration of their claims. Specifically, the plaintiffs argued that because the deed, which contained no arbitration clause, superseded the purchase agreement, their claims were not subject to arbitration. *Id.* at 260, 743 S.E.2d at 874. The court disagreed, finding that the purchase agreement expressly provided that the agreement is not deemed merged into the deed. *Id.* at 261, 743 S.E.2d at 874.

Here, the Homeowner Contract contains a number of provisions that similarly evidence the parties’ intent not to merge the terms of the Homeowner Contracts with the deed. (Ex. A ¶¶ 14

(warranty), 15 (arbitration of future disputes), 18 (post-closing remedies)). Most significantly, finding merger would mean that D.R. Horton's obligation to provide the Plaintiffs a ten-year warranty would also be merged out of existence, which the parties could not have intended. (Ex. A ¶ 14). Accordingly, the terms of the agreement clearly indicate that that the parties did not intend for the arbitration provision to be superseded by the deed.

The third exception to the doctrine of merger is the "collateral agreement" exception. Under the collateral agreement exception, the party opposing merger must show that the agreement in question is independent and distinct from the main contract, is consistent with the main contract, and is such an agreement as the parties could not reasonably be expected to embody in the main contract but would naturally make as a separate agreement. *Shoney's*, 291 S.C. at 312, 353 S.E.2d at 304. In addition, "[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." *New Prospect Area Fire Dist. v. New Prospect Ruritan Club*, 311 S.C. 402, 405, 429 S.E.2d 791, 792 (1993).

In the present case, the deed constituted only the part of the agreements that related to the construction and purchase of the property, and the deed does not cover any aspects of construction, dispute resolution post-closing, or warranties to be provided by D.R. Horton and the manufacturers. The arbitration provision is a separate agreement regarding disputes under the Homeowner Contract. It is also consistent with the Homeowner Contract's terms. Finally, it is such an agreement as the parties could not reasonably be expected to place into the deed. It is difficult to imagine a deed incorporating the language of an arbitration provision related to home construction or the warranty obligations of the builder.

In addition to the South Carolina *Carlson* case, other jurisdictions have likewise refused to apply the doctrine of merger to arbitration provisions in real estate purchase contracts. *See, e.g., Bushman Inv. Props. v. DBSI E-470 E. Llc*, Civil Action No. 09-cv-00674-MSK-KLM, 2010 U.S. Dist. LEXIS 21011 (D. Colo. Feb. 15, 2010); *Dress Co. v. Osburg*, 144 S.W.3d 831 (Ky. Ct. App. 2003); *Lakeway Homes, Inc. v. White*, No. 05-15-01455-CV, 2016 Tex. App. LEXIS 6718, at *14-15 (Tex. App. June 23, 2016); *Thomas v. Sloan Homes, LLC*, 81 So. 3d 309, 312-14 (Ala. 2011); *Engle Homes, Inc. v. Jones*, 870 So. 2d 908 (Fla. Dist. Ct. App. 2004); *Stanford Dev. Corp v. Stanford Condo. Owners Ass’n*, 285 S.W.3d 45 (Tex. App 2009).

The Kentucky Court of Appeals’ case of *Dress Co.* involved a contract for the construction and purchase of a new home from a multi-state developer and builder of residential communities. After the purchaser took possession of their new home, they installed an above-ground pool. The company informed them that the pool violated restrictive covenants, and the purchaser filed suit. The company sought to enforce the arbitration clause in the purchase agreement. The trial court ruled that the purchase agreement had been merged into the deed, but on appeal the Kentucky Court of Appeals reversed, holding that the arbitration clause survived closing. 144 S.W.3d at 832. The court first explained the merger doctrine:

The doctrine [of merger] applies to covenants pertaining to title, possession, quantity, or emblements of the property, the covenants commonly addressed in deeds. Covenants in the antecedent contract that are not commonly incorporated in the deed, and that the parties do not intend to be incorporated, are often referred to as collateral agreements. The merger doctrine does not apply to collateral agreements.

Dress Co., 144 S.W.3d at 832-833. The court then found that the arbitration agreement was collateral to the property transfer as “[i]t had nothing to do with the title, possession, quantity, or emblements of the property.” *Id.* at 833. Moreover, as noted by the court:

[I]t is reasonable to suppose that the parties intended post-closing performance of [the arbitration] clause; disputes, after all, frequently arise after closing. The trial court erred, therefore, when it applied the merger doctrine to the arbitration agreement.

Id.

In *Bushman*, the United States District Court for the District of Colorado similarly explained that merger does not apply to agreements in the contract that do not relate to title, quantity, possession, or emblements of the land and are not necessarily satisfied by the execution and delivery of the deed. *Bushman*, 2010 U.S. Dist. LEXIS 21011, at *15-16. (citing *Lazy Dog Ranch v. Telluray Ranch Corp.*, 923 P.2d 313, 318 (Colo. App. 1996) and *Coe v. Crady Davis Corp.*, 60 P.3d 794, 796 (Colo. App. 2002)). As explained by the court in *Bushman* when addressing the merger doctrine and arbitrability in the context of a commercial real estate purchase agreement:

[T]he arbitration agreement is not a covenant relating to the title, quality, possession or emblements of the property itself; it is, quite obviously, not an agreement that can be satisfied by the execution and delivery of the deed. Thus, at least under Colorado law, it did not merge into the terms of the deed, but rather remains enforceable.

Id. at *16 (emphasis added).

Similarly, in *Lakeway Homes, Inc.*, the Texas Court of Appeals reversed a trial court's order denying the defendant's motion to compel arbitration. 2016 Tex. App. LEXIS 6718. Following residential home construction and closing, a dispute arose concerning a stucco wall constructed in the home. The construction contract contained an arbitration provision; however, the plaintiff argued that because there was no arbitration provision in the closing documents or the deed, it was unenforceable under the merger doctrine. As noted by the court, the arbitration provision creates rights collateral to and independent to the sale of the property. *Id.* at *15. Therefore, it was not merged out of existence by subsequent deeds or other closing documents. *Id.*

The arbitration provision at issue in *Lakeway Homes*, similar to the arbitration provision here, did not contain specific survival language. *See id.* at *2-4, n.2.

The Supreme Court of Alabama has also rejected this argument in the residential home purchase context. As noted by the Alabama Supreme Court in *Thomas*:

The real merger-exception rule in the sale of realty is that “where the antecedent contract contains provisions imposing obligations upon the vendor other than those relating to title or possession, and collateral thereto such collateral provisions will be held to survive the deed.” Where the antecedent contract contains an agreement to build, repair or construct as well as an agreement to convey, it is too plain to debate that the actual transfer of the deed (which passes only legal title) is “only a part performance of the provisions of the antecedent contract,” and that the agreements to build or construct “come under the collateral agreement theory” and hence are clearly exempted from the operation of merger in the first place. The practice of calling such a dual-purpose antecedent contract a mere “sales contract,” so as to effect its entire merger into the deed, ignores the true nature of the agreement and ignores modern business reality with the result of substantial injustice to uncounted home buyers in this state.

Thomas, 81 So. 3d at 313 (citations omitted).

The rational basis for the merger rule is that where parties enter into a final contract, all prior negotiations, understandings, and agreements “on the same subject” are merged into the final contract, and are accordingly extinguished. Where the antecedent contract or contracts clearly provide for agreements or stipulations to build or construct as well as an agreement to convey, it is plain that the actual transfer of the deed, which is performance only of the agreement to convey, does not extinguish any duties and obligations arising out of the agreement to build. *Id.* The arbitration provision at issue in *Thomas*, like here, also did not include specific survivability language. *See id.* at 310.

In *Cohen v. E.F. Hutton & Co.*, 1989 U.S. Dist. LEXIS 8127, 1989 WL 82010 (N.D. Ill. 1989), the court laid out a further requirement for applying the merger doctrine. The court explained that in order for the doctrine of merger to apply, the second agreement must “embrace

the same terms encompassed by the first: “[I]t is well-settled that where provisions in the former contract are not embraced in the latter, the terms in the first agreement remain unaffected and controlling.” *Id.* at *6 (citing *Alton Banking & Trust Co. v. Schweitzer*, 121 Ill. App.3d 629, 460 N.E.2d 105, 108 (1984) and *Harris Trust & Savings Bank v. Chicago Title & Trust Co.*, 84 Ill. App.3d 280, 405 N.E.2d 411 (1980)). The court, faced with two agreements between the plaintiff and the defendant, held that since the second contract did not discuss arbitration of disputes, the earlier agreement was binding. *Id.*

Recently, the South Carolina Court of Appeals issued two important opinions that send a clear message to litigants and courts alike that South Carolina supports arbitration, supports the Federal Arbitration Act, and will not follow a small string of trial court orders refusing to support an enforceable arbitration provision. *See Mart v. Great Southern Homes, Inc.*, 441 S.C. 304, 893 S.E.2d 360 (Ct. App. 2023) and *Dixon v. Pattee*, 442 S.C. 233, 898 S.E.2d 158 (Ct. App. 2023).

As numerous courts have observed, the merger doctrine applies to issues of title, possession, quantity, or emblements (growing crops) of the property and therefore does not apply to the Arbitration Agreement at issue in this matter. The intent of the merger doctrine is not to extinguish agreements outside of these areas such as arbitration of future disputes, which everyone knows are bound to arise. In sum, there is no authority, either in South Carolina or otherwise, that under the specific facts found in the present case, the merger doctrine should apply to deny arbitration under the Federal Arbitration Act. For these reasons, arbitration should not be precluded due to the merger doctrine.

IV. The Arbitration Provision is Enforceable.

The arbitration clause in the Homeowner Contract is enforceable because there are no general contract defenses that would invalidate the agreement to arbitrate.

After determining that the FAA applies, “courts must apply state law to decide issues of contract formation” when a party challenges the enforceability of the arbitration agreement. *LaPoint*, 2009 U.S. Dist. LEXIS 146577, at *10. “The FAA recognizes arbitration agreements ‘may be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability.’” *Sanders*, 2023 S.C. LEXIS 154, 892 S.E.2d at 115 (quoting *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68 (2010)).

Any challenge to arbitration based on a contract defense must be made specifically to the arbitration clause and not to the contract generally because arbitration clauses are separable. *LaPoint*, 2009 U.S. Dist. LEXIS 146577, at *20 (“[I]t is well established that if a claim calls into question not the fairness of the arbitration process specifically, but rather the validity of the entire contract, the arbitrator must rule on the dispute.”) (citing *Sydnor v. Conseco Fin. Servicing Corp.*, 252 F.3d 302, 305 (4th Cir. 2001)). A party cannot avoid arbitration through rescission of an entire contract when there is no independent challenge to the arbitration clause itself. *Carolina Care Plan, Inc. v. United HealthCare Servs.*, 361 S.C. 544, 551, 606 S.E.2d 752, 755 (2008). There must be fraud in the inducement of the arbitration agreement to avoid arbitration of the contract. *Id.* (citing *South Carolina Pub. Serv. Auth. v. Great Western Coal (Kentucky), Inc.*, 312 S.C. 559, 562-63, 437 S.E.2d 22, 24 (1993)). “Fraud as a defense to an arbitration clause must be fraud *specifically as to the arbitration clause and not the contract generally.*” *Id.* (emphasis in original).

Here, the only contract defense raised by Plaintiffs to challenge the arbitration provision is unconscionability.

a. The Arbitration Provision Is Not Unconscionable.

The Homeowner Contract’s arbitration provision is not unconscionable. “In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party

due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Smith*, 417 S.C. at 49, 790 S.E.2d at 4 (quoting *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007)). Inequity of bargaining power is not “on its own, sufficient basis to invalidate an arbitration agreement.” *LaPoint*, 2009 U.S. Dist. LEXIS 146577, at *11 (citing *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 n.5, S.E.2d 360, 365 n.5 (2001)). “In conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract.” *Smith*, 417 S.C. at 48, 790 S.E.2d at 4.

The Homeowner Contract is different from the contract at issue in *Smith v. D.R. Horton*. In *Smith v. D.R. Horton, Inc.*, the home purchase agreement contained a section titled “Warranties and Dispute Resolution” containing ten subparagraphs that not only addressed arbitration between the parties, but also the various warranties and warranty exclusions. *Smith*, 471 S.C. at 53-59, 790 S.E.2d at 6-9 (J. Kittredge, dissenting) (restating the provisions in their entirety). The parties, and the justices, disagreed on whether these ten paragraphs should be read together as the “arbitration provision,” or whether only the specifically labeled arbitration subparagraph (g) should be reviewed for arbitrability but ultimately a majority of the court determine it should be read as a whole. *Id.* at 48-49, 790 S.E.2d at 3-4. The arbitration subparagraph (g) was not challenged by the homeowner and not found unconscionable by the court. *Smith*, 471 S.C. at 59, 790 S.E.2d at 10 (J. Kittredge, dissenting) (“[I]n opposing arbitration, the Smiths do not challenge any provision of subparagraph (g) titled ‘MANDATORY BINDING ARBITRATION.’”). Rather, the court determined that a separate subparagraph (i) that disclaimed implied warranty claims and prohibited monetary damages was one-sided and oppressive and therefore unconscionable. *Id.* at 50, 790 S.E.2d at 5. Because the entire Warranty and Dispute Resolution section was read together, the

one offending subparagraph invalidated the entirety of the section, including the requirement to submit all disputes to binding arbitration. *Smith*, 417 S.C. at 50, 790 S.E.2d at 4-5.

Here, the arbitration clause is a standalone provision found at Section 15 of the Homeowner Contract, titled “**MANDATORY BINDING ARBITRATION.**” Warranties and related disclaimers are separately located in section 14. Therefore, unlike the combined warranty and dispute resolution section *Smith* that the court determined must be read together, the arbitration provision in the Homeowner Contract is contained in a standalone section and should be reviewed as such and is severable from any other language of the Homeowner Contract under *Prima Paint*. *See generally, Prima Paint*, 388 U.S. at 398. This is precisely how the South Carolina Supreme Court distinguished the arbitration provision in *Damico* from *Smith*. *Damico*, 437 S.C. at 610, 879 S.E.2d at 754 (distinguishing a homeowner contract with separate warranty and arbitration sections from the combined Warranties and Dispute Resolution in *Smith* and finding that the separate arbitration section should be analyzed as a standalone provision).

The questions are: (1) whether Plaintiffs lacked meaningful choice and the arbitration provision is one-sided; and (2) whether the terms of the arbitration provision “are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Smith*, 417 S.C. at 49, 790 S.E.2d at 4. Both questions must be answered in the negative.

First, Plaintiffs had a meaningful choice to enter the Homeowner Contract. Plaintiffs were free to purchase a home from another builder, purchase a pre-existing home, or purchase no home at all. Plaintiffs freely chose to assent to D.R. Horton’s contractual terms, including arbitration of construction disputes. There is nothing inherently unfair about this bargaining process. Arbitration is binding on both Plaintiffs and D.R. Horton, it is not one-sided and nothing in the substance of the arbitration provision is one-sided.

Second, the terms of the arbitration provision are not “so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Smith*, 417 S.C. at 49, 790 S.E.2d at 4. In relevant part, the arbitration provision: (1) binds both D.R. Horton and Plaintiffs to arbitration for construction defect disputes; (2) provides for arbitration in Plaintiffs’ home county; (3) provides for an expedited hearing schedule; and (4) gives the arbitrator complete discretion to assess the filing fees and costs against D.R. Horton. There is nothing so oppressive about these terms such that no fair and honest person would accept them. To the contrary, these are reasonable and customary terms in an arbitration agreement and should be enforced.

b. The South Carolina Court of Appeals’ Decision in *Mart* Supports Arbitration of the Homeowner Contract.

In September 2023, the South Carolina Court of Appeals reversed the lower court and ordered arbitration in a home construction putative class action, *Mart v. Great Southern Homes, Inc.*, 441 S.C. 304, 893 S.E.2d 360 (Ct. App. 2023). In *Mart*, the court enforced an arbitration clause in a home construction contract between a homeowner and a large homebuilder. The purchase agreement in *Mart* contained both an arbitration clause and limited warranties and disclaimers that are very similar to the D.R. Horton clauses at issue in this case:

ARBITRATION: Any dispute between the parties hereto arising out of this contract, related to the contract or the breach thereof, including without limitation, disputes relating to the property, improvements, or the condition, construction or sale thereof and the deed to be delivered pursuant hereto, shall be resolved by final and binding arbitration before three (3) arbitrators, one selected by each party, who shall mutually select the third arbitrator pursuant to the South Carolina Uniform Arbitration Act [(SCUAA)].

LIMITED WARRANTY: The Seller shall furnish the Purchaser, at closing, with a limited warranty issued by a warranty company approved by the South Carolina Real Estate Commission. A sample copy of the warranty shall be available for inspection during reasonable business hours prior to closing at the offices of the Seller. This limited warranty shall warrant workmanship for One (1) year and warrant the structure itself for Ten (10) years from date of closing. Said limited

warranty shall be incorporated in the deed delivered at closing. Purchaser acknowledges that said limited warranty is not a maintenance agreement. FOR QUALITY ASSURANCE PURPOSES WARRANTY VISITS MAY BE VIDEO W/AUDIO TAPED.

This Limited Warranty issued to the Purchaser shall be in lieu of all other warranties, express or impli[e]d, any warranty of habitability, suitability for residential purposes, merchantability, or fitness for a particular purpose is hereby excluded and disclaimed. Seller shall in no event be liable for consequential or punitive damages of any kind. There is no warranty whatsoever on trees, shrubs, grass, vegetation or erosion caused by lack thereof, nor on subdivision improvements, including but not limited to, streets, road[s], sidewalks, sewer, drainage or utilities. Purchaser agrees to accept said limited warranty in lieu of all other rights or remedies, whether base[d] on contract or tort.

Mart, 441 S.C. at 307, 893 S.E.2d at 361.

The lower court read the above arbitration clause and a separate warranty arbitration clause together and ruled that conflicting language in the two clauses indicated a lack of mutual consent to arbitration. *Id.* at 311-12, 893 S.E.2d at 364. The *Mart* court reversed, first noting the well-established rule that “[a]rbitration clauses are separable from the contracts in which they are imbedded” and “[e]ven if the overall contract is unenforceable, the arbitration provision is not unenforceable unless the reason the overall contract is unenforceable specifically relates to the arbitration provision.” *Id.* at 312-13, 893 S.E.2d at 364 (quoting *Huskins v. Mungo Homes, LLC*, 439 S.C. 356, 366, 887 S.E.2d 534, 539-40 (Ct. App. 2023) (internal quotation marks omitted)). Pursuant to *Damico*, the court of appeals concluded that the lower court erred in reading the arbitration clause in the purchase contract and the arbitration clause in the warranty together, holding that “controlling case law does not permit us to consider the language of the separate limited Warranty or the propriety of the waiver of implied warranties in analyzing the standalone arbitration language of the Sales Contract.” *Id.* at 315, 893 S.E.2d at 365. Because *Mart* “did not separately challenge the standalone arbitration provision in the [sales contract] as unconscionable

or lacking material terms, [the court was] handcuffed with respect to Mart's challenge to the validity of the waiver of implied warranties." *Id.* at 316, 893 S.E.2d at 366. As such, the lower court erred in considering terms outside of the arbitration clause to deny arbitration.

The court then reviewed the arbitration clause as compared to other clauses in residential home purchase agreements that have been held unconscionable. The court noted that in *Damico*, the arbitration clause gave the right to arbitrate to the builder at its sole election. The court also looked at the arbitration clause in *Smith*, in which the D.R. Horton clause was intertwined with the warranty clause in the same paragraph, with no severability clause. Next, the court examined the arbitration clause in *Huskins*, noting that it contained a provision that shortened the statutory limitations period to ninety days, which that court struck down. *Id.* at 318, 893 S.E.2d at 367. Ultimately, the court held that the standalone arbitration clause at issue in *Mart* was enforceable because it did not contain any provisions that South Carolina courts have held to be unconscionable.

Here, the Homeowner Contract's standalone arbitration clause does not provide for arbitration at D.R. Horton's sole election; it is not combined with the warranty provision such that the two cannot be separated easily; and it does not contain any other terms that are oppressive or one-sided. Rather, like the clause in *Mart*, the present arbitration clause is fair and even-handed, simply providing for arbitration to be agreed to by both parties and providing for which claims should be arbitrated. Under these standards, D.R. Horton's arbitration clause should stand.

c. Recent South Carolina Circuit Court Opinion Enforced an Identical Provision.

Most recently, in June 2024, in a putative class action construction defect case filed in Berkeley County, South Carolina Circuit Court Judge Diane S. Goodstein considered the arbitrability of D.R. Horton's homeowner contract containing an identical arbitration provision.

Tyler, et al. v. D.R. Horton, et al., Civil Action No. 2022-CP-08-02548. The opposing party argued against arbitration on grounds of unconscionability and merger doctrine, among others. In that case, Judge Goodstein ordered arbitration under an identical arbitration provision and confirmed that order in denying a motion to reconsider. (Order Granting D.R. Horton Mot. Compel Arbitration and Order on Motion Reconsider, attached as **Exhibits C and D**). Judge Goodstein rejected all of plaintiff's arguments against arbitration and specifically ruled that the merger doctrine did not apply to merge the arbitration clause out of existence. This Court should do the same.

CONCLUSION

We hereby ask this Court to compel the parties in this matter to submit to binding arbitration. The Homeowner Contract provides for arbitration of matters like those in this case, and both federal and South Carolina courts strongly favor arbitration. Moreover, the arbitration clause is clearly valid under the FAA and South Carolina Uniform Arbitration Act because it complies with S.C. Code Ann. § 15-48-10(a). Finally, there are no contract defenses that would invalidate the arbitration agreement in the Homeowner Contract. Accordingly, D.R. Horton's Motion should be GRANTED and this matter should be submitted to arbitration.

[Signature Page to Follow]

KENISON, DUDLEY & CRAWFORD, LLC

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August 29, 2024
Greenville, South Carolina

EXHIBIT A

The Villages at Long Cove

159/2020

526492159

**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."

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.

☒ **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.

(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.

(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:

Earnest Deposits					
<u>Due Date</u>	<u>Collection Date</u>	<u>Payment Type</u>	<u>Check Number</u>	<u>Deposit Amount</u>	<u>Collection Amount</u>
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 of 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

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.

(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

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

"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.

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, MERCHANTABILITY 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.

	DS SH	DS CH	
Initials			
	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

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

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.

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

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.

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.

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)

In Process

ELECTRONICALLY FILED - 2024 Aug 29 4:34 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4003510

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

SELLER:

D.R. Horton, Inc.

Date

Purchaser's Current Mailing Address:

US

Purchaser's Home Phone:

Mobile Phone:

Work Phone:

Purchaser's Email:

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

Co-Buyer's Current Mailing Address:

Co-Buyer's Home Phone:

Mobile Phone:

Work Phone:

Co-Buyer's Email:

Sales Rep License Number: 48944



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	Q. v.	Unit Price	Ext. Price	
ARBBXRT	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 SPECIFIC PITCH 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							

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:							

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: FIRST FLOOR FLOORING - REVWOOD				Location:			

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: BLINDS				Location:			

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: VAULTED CEILING OWNERS BEDROOM				Location:			

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: INTERIOR WALL & CEILING PAINT COLOR - SW6070 HERON PLUME				Location:			

Sub-Total \$ 0.00

99 – All Options

<u>Option #</u>	<u>Rev. #</u>	<u>Rev. Date</u>	<u>User</u>	<u>Qty.</u>	<u>Unit Price</u>	<u>Ext. Price</u>	
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 Fluorescent 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: LONG COVE - DRH-E				Location:			

Sub-Total \$ 0.00

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
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
Color:				Location:			
DEAKO LIGHT SWITCHES (WHOLE HOME)							
SWHOMCON	0	12/29/2021	Wayne Vincent Valsecchi		1.0000	\$ 0.00	\$ 0.00
Color:				Location:			
HOME IS CONNECTED (SMART HOME PACKAGE)							

Sub-Total \$ 0.00

Total: \$11,750.00

Color Selections

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."

(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...
12/29/2021

Buyer: Sherman Howell
Date

DocuSigned by:
Claudia Howell
D93629FC3AAF456...
12/29/2021

Co-Buyer: Claudia Howell
Date

DocuSigned by:
Wayne V Valsecchi
E5D1E3E307AB493...
12/29/2021

Sales Rep: Wayne Vincent
Valsecchi
Date

SELLER:

D.R. Horton, Inc.

Date

For Internal Purposes Only:

In Process

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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	3 rd floor/bonus room option	Kitchen island
Media rooms	Bay window (per plan)	4 th /5 th 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.

- ☐ **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: _____

Sherman Howell

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:~~

Wayne V Valsecchi
E5D1E3E307AB493...

12/29/2021

Sales Rep: Wayne Vincent

Date _____

Valsecchi

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The Villages at Long Cove

159

526492159



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.

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 ☒ detached ☐ 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.

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, ☒ on a slab / ☐ 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

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 a y alarm-servicing or monitoring c mpany 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

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

ESD1E3E307AB493...

12/29/2021

Sales Rep: Wayne Vincent Valsecchi

Date

In Process

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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 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*.

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: DocuSigned by: Sherman Howell 07B891A20B7D430... Buyer: Sherman Howell DocuSigned by: Claudia Howell D93629FC3AAF456... Co-Buyer: Claudia Howell	12/29/2021 Date 12/29/2021 Date	Seller: D.R. Horton, Inc. _____ 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/>

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.

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.

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

Date

Buyer: Sherman Howell

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/>

DocuSigned by:

Claudia Howell

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12/29/2021

Date

Co-Buyer: Claudia Howell

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Internal # **The Villages at Long Cove/2159**

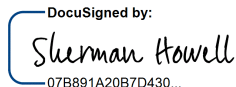
Sherman Howell and Claudia Howell 526492159

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.

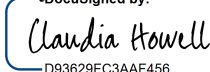
Purchaser, Seller, and Co-Broker hereby certify that (1) the terms and conditions of the Agreement are true to the best of their knowledge and belief, and (2) any other agreement entered into by any of these parties in connection with this real estate transaction is part of, or attached to, the Agreement.

PURCHASER:

DocuSigned by:

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12/29/2021

Buyer: Sherman Howell Date

DocuSigned by:

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12/29/2021

Co-Buyer: Claudia Howell Date

SELLER:

D.R. Horton, Inc.

Date

CO-BROKER:

DocuSigned by:

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12/29/2021

Broker Agent: Tonya Peay Date

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 addition 11% 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

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12/29/2021

Buyer: Sherman Howell

Date

DocuSigned by:

Claudia Howell

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12/29/2021

Co-Buyer: Claudia Howell

Date

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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.

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

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12/29/2021

Seller:

D.R. Horton, Inc.

Buyer: Sherman Howell

Date

DocuSigned by:

Claudia Howell

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12/29/2021

Co-Buyer: Claudia Howell

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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Internal # The Villages at Long Cove/2159

Sherman Howell and Claudia Howell

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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. [REDACTED]

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.

- 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 Base 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.
- 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 \$ [REDACTED]

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.

Internal # The Villages at Long Cove/2159

Sherman Howell and Claudia Howell

526492159

3. **Real Estate Certification.** Co-Broker hereby certifies as follows:

- The terms, conditions, representations and warranties contained in the Agreement are true, to the best of my knowledge and belief; and
- 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

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SELLER:

D.R. Horton, Inc.

12/29/2021

Broker Agent: Tonya Peay

Date

Agent License Number:

[REDACTED]

[REDACTED]

Date

For Internal Purposes Only

SELLER SALES REP:

Wayne V Valsecchi

E5D1E3E307AB493...

12/29/2021

Sales Rep: Wayne Vincent Valsecchi

Date

[REDACTED]

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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 SubdivisionCo-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.

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

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12/29/2021

Broker Agent: Tonya Peay

Date



**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

SELLER:

D.R. Horton, Inc.

DocuSigned by:
Claudia Howell
D93629FC3AAF456...

12/29/2021

Co-Buyer: Claudia Howell

Date

Date

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.

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): [REDACTED] Email Address ([REDACTED])

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...

12/29/2021

Buyer: Sherman Howell Date

DocuSigned by:

Claudia Howell

D93629FC3AAF456...

12/29/2021

Co-Buyer: Claudia Howell Date

In Process



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR M and L General Construction LLC ("Contractor")
 Sole Proprietorship ☐ Partnership ☐ Corporation ☐ LLC ☒ Other (ATTACH W-9) ☐
 Social Security No. or Tax ID No.: [REDACTED]
 Name of Owner(s)/Officer(s): Gustavo Landaverde, Jorge Landaverde
 Address for All Notices: 10840 Turn Notch Rd
 City: SC State: SC Zip Code: 29045
 Telephone: [REDACTED] Fax: [REDACTED] E-Mail Address: [REDACTED]
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 17 day of June, 2015, between DR Horton Inc and DR Horton - Regent LLC ("Owner") and Contractor.

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

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

3. CONTRACT PRICE.

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

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

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

4. PAYMENT.

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

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

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

Executed this 17 day of June, 2015.

By: [Signature]
 Name: Stefan Kugler
 Title: Division President

Contractor:
 By: [Signature]
 Name: Jorge Landaverde
 Title: project manager

INITIALS: OWNER [Signature] CONTRACTOR J.L.

G.L.
 Page 1 of 7

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

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

5. SCHEDULE OF WORK.

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

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

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

6. PERFORMANCE OF THE WORK.

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

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

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

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

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

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

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

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

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

INITIALS: OWNER CONTRACTOR J.L.

requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

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

7. SAFETY.

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

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

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

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

8. CONTRACTOR'S WARRANTIES.

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

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

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

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

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including,

INITIALS: OWNER  CONTRACTOR J. L.

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

9. LIENS AND RETAINAGE.

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

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

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

10. CONTRACTOR'S INDEMNITY.

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

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

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

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

11. INSURANCE.

INITIALS: OWNER , CONTRACTOR J.L.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with products-completed operations coverage, which contains a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit of no less than Two Million Dollars (\$2,000,000.00) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products-completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type, nature, or volume of the Work or limit the type of structure or number of units on which the Work is to be performed. The CGL policy shall not contain a deductible or self-insured retention of more than \$25,000.00, and shall allow the satisfaction of any and all deductible or self-insured retention through payments made by any third party, including but not limited to Owner or any additional insured, co-insureds, co-insurers, or insureds other than the primary or first named insured. Contractor shall continuously maintain a CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work.

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

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

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, portions of policies (including but not limited to declarations pages and endorsements), or certified copies of the required policies, as requested by Owner.

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

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

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

12. REMEDIES.

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

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location as a result of Contractor's acts or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (iv) Contractor

INITIALS: OWNER [Signature], CONTRACTOR J. L.

fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or (viii) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may set off from amounts owing to Contractor hereunder any amounts owing by Contractor to Owner's parent company, any subsidiary or affiliate, under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

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

13. ALTERNATIVE DISPUTE RESOLUTION.

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

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

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

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

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

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

14. TERMINATION.

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

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

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

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

INITIALS: OWNER , CONTRACTOR J. L.

16. GENERAL CONTRACT PROVISIONS.

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

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

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

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

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

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

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

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

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

Framing, Drywall & Paint

SOUTH CAROLINA VERSION (REV. February 11, 2015)

INITIALS: OWNER  CONTRACTOR J. L.



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR L & M Electric INC ("Contractor")

☐ Sole Proprietorship ☐ Partnership ☒ Corporation ☐ L.L.C ☐ Other (ATTACH W-9)

Social Security No. or Tax ID No.: [REDACTED]

Name of Owner(s)/Officer(s): Roger Lee John Mezzles

Division Name: Columbia Area Name: 52500 Assigned Vendor No.: 1741538

Address for All Notices: 2260 A Hewatt Road

City: Snellville State: GA Zip Code: 30039

Telephone: [REDACTED] Fax: [REDACTED] E-Mail Address: [REDACTED]

Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.

This agreement (the "Agreement") is entered into on this 9 day of April, 2014, between DR Horton Inc ("Owner") and Contractor.

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

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

3. CONTRACT PRICE.

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

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

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

Executed this 11th day of April, 2014.

Owner:
By: [Signature]
Name: Brian L. Davidson
Title: Division President

City Manager

Contractor:
By: L & M Electric inc
Name: Roger Lee
Title: President

INITIALS: OWNER [Signature], CONTRACTOR [Signature]

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

4. PAYMENT.

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

~~CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT R.C. CODE ANN. §§ 1343.18 AND 1343.20 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO CONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN. CONTRACTOR AGREES THAT OWNER DOES, AND WILL, NOT OWE INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF ANY DELAYED PAYMENT.~~

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

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

5. SCHEDULE OF WORK.

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

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

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

6. PERFORMANCE OF THE WORK.

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

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall

have absolute authority to act, in all respects, on behalf of and for Contractor.

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

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

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

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

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

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

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

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

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed

INITIALS: OWNER

CONTRACTOR

on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

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

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

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

8. CONTRACTOR'S WARRANTIES.

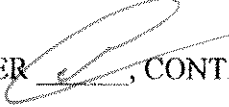
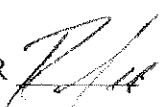
8.1 Against Defective Work. For the longer of ten years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work shall conform to the specifications of this Agreement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

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

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

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

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents

INITIALS: OWNER , CONTRACTOR 

necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

9. LIENS AND RETAINAGE.

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

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

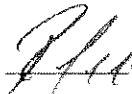
9.3 Lien Claim Indemnity. If any liens, affidavits of claim, stop payment notices, or lis pendens arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such lien, affidavit, stop payment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

10. CONTRACTOR'S INDEMNITY.

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

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

10.3 NO BAILMENT. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, ALL SUBCONTRACTORS, AND SUPPLIERS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND

INITIALS: OWNER , CONTRACTOR 

EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS, MATERIALS, OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS, MATERIALS OR EQUIPMENT.

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

11. INSURANCE.

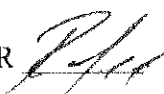
11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with products-completed operations coverage, which contains a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit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

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

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

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

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

INITIALS: OWNER , CONTRACTOR 

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

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

12. REMEDIES.

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

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

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

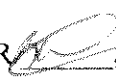
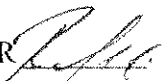
12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION.

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

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

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

INITIALS: OWNER , CONTRACTOR 

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

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

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

14. TERMINATION.

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

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

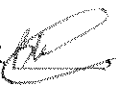
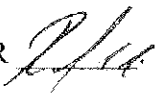
14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

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

16. GENERAL CONTRACT PROVISIONS.

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

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

INITIALS: OWNER  CONTRACTOR 

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

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

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

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

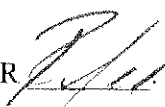
17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit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

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

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

SOUTH CAROLINA VERSION (REV. 12 APRIL 2013)

COST CODES: 42220.01
42220.02

INITIALS: OWNER  CONTRACTOR 

Page 9 of 7



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR ALPHA OMEGA CONSTRUCTION GROUP, INC. ("Contractor")
 Sole Proprietorship Partnership ☒ Corporation ☐ LLC ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No.: [REDACTED]
 Name of Owner(s)/Officer(s): CHRIS STAFFORD
 Division Name: GREENVILLE SC Area Name _____ Assigned Vendor No. _____
 Address for All Notices: PO BOX 3196
 City: MATTHEWS State NC Zip Code: 28106
 Telephone: [REDACTED] Fax: [REDACTED] E-Mail Address: [REDACTED]
 Insurance Carriers ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 11 day of FEBRUARY, 2010, between
D.R. HORTON INC. ("Owner") and Contractor

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

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

3. CONTRACT PRICE.

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

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

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

4. PAYMENT.

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

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR

Executed this 11 day of FEBRUARY, 2010.

Owner:
By D.R. Horton Inc.
Name Edmund P. Stafford Jr.
Title PURCHASING
Division President

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

INITIALS: OWNER [Signature] CONTRACTOR CK

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

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

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

5. SCHEDULE OF WORK.

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

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

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

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

6. PERFORMANCE STANDARDS.

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

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

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

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

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

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

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

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

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

INITIALS: OWNER ELG CONTRACTOR DA

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

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

7. SAFETY.

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

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

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

8. CONTRACTOR'S WARRANTIES.

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

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

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

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

9. LIENS AND RETAINAGE.

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

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

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

INITIALS: OWNER  CONTRACTOR 

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

10. CONTRACTOR'S INDEMNITY.

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

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

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

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

11. INSURANCE.

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

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

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

INITIALS: OWNER EM, CONTRACTOR OK

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

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

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

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

12. REMEDIES.

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

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

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

13. ALTERNATIVE DISPUTE RESOLUTION.

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

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

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

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

INITIALS: OWNER  CONTRACTOR 

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

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

14. TERMINATION.

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

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

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

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

16. GENERAL CONTRACT PROVISIONS.

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

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

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

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

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

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

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

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

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

SOUTH CAROLINA REVISED 7/23/2007

INITIALS: OWNER 6/24, CONTRACTOR OK

PERFORMANCE REQUIREMENTS AND SPECIFICATIONS**"Exhibit A"**

DESCRIPTION: ROOFING-LABOR AND MATERIALS

PERFORMANCE REQUIREMENTS:

Roofed areas shall remain watertight for a period of two (2) years, and shall maintain their uniform appearance while withstanding weather conditions with winds up to fifty (50) mph for a period as specified by the Manufacturer's warranty.

Hard hats and appropriate safety equipment are to be worn at all times while on D.R. Horton's property. The contractor shall ensure that each crew leader has attended the appropriate OSHA approved "Competent Person" training course.

NON-PERFORMANCE REMEDY

The Contractor or Manufacturer shall repair or replace all areas damaged by work not meeting the performance standard. Leaks and damage caused by snow and ice buildup, or homeowner neglect, will not be the Contractor's responsibility. D.R. Horton will make the determination for all remedial actions,

SPECIFICATIONS AND SCOPE OF WORK

1. All places where the roof meets a vertical wall on the rake shall be step flashed. All horizontal roof to wall connections shall be flashed a minimum of 10" in each direction with 28 gauge aluminum flashing.
2. Contractor to inspect and correct, if necessary, all flashing adjoining the roof surface which has been installed by others. Including the reinstallation of any pipe boots and vent pipe flashing that may need to be removed during scope of work. Do not start until all roof vents and pipes are cut through roof.
3. Shingles to lap over rake mold or gable ends one (1") inch.
4. Gable overhang is to be cut square and true.
5. Shingles are to be approved by D.R. Horton specifications.
6. All invoices for completed work must be approved by jobsite Builder.
7. All valleys are to be lapped and cut, closed valley lapped with extra felt run down the valley.
8. Contractor to dispose of debris from jobsite caused by his operation.
9. Contractor's warranty to be two years from closing date.
10. Price includes installing vent-a-ridge where shown on drawings. Cut out felt sufficiently at ridge vent locations to allow proper air passage.
11. Counter flashing to be neat and free from defects on brick applications (where applicable).
12. Contractor to notify Builder of improper cricket construction.
13. Contractor shall not install roofing over improperly nailed roof decking.
14. Contractor shall notify Builder if gap between roof deck and fascia board exceeds ¼".

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

ACKNOWLEDGEMENT

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

All invoices must be accompanied by a notarized lien waiver and must be turned into the job-site Builders for approval prior to standard pay dates.

Contractor:

Builder:

Alana G. G. Construction Group, Inc.

D.R. Horton, Inc.

By: *[Signature]*By: EDMOND G JEANFREAU, JRDate: 2-17-2010Date: 2/23/10



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR CAROL MELHARRALS II ("Contractor")
 Sole Proprietorship ☐ Partnership ☐ ☒ Corporation ☐ L.L.C. ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No. [REDACTED]
 Name of Owner(s)/Officer(s): MATT WALKER
 Division Name COASTAL CAROLINA Area Name COLUMBIA Assigned Vendor No. 1421832
 Address for All Notices 5910 STOCKBERRY DRIVE
 City MURFREESBORO State N.C. Zip Code 28110
 Telephone [REDACTED] Fax [REDACTED] E-Mail Address [REDACTED]
 Insurance Carriers ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 16th day of July, 2010, between D.R. Horton, Inc.
 ("Owner") and Contractor

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

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

3. CONTRACT PRICE.

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

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

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

4. PAYMENT.

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

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-6-30 AND 29-6-50 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR

Executed this 16th day of July, 2010

Owner:
By: Jade L Kirk
Name: Jade L Kirk
Title: Division CFO
Division President

Contractor:
By: Matt Walker
Name: Matt Walker
Title: President

INITIALS: OWNER JK, CONTRACTOR M.W.

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

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

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

5. SCHEDULE OF WORK.

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

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

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

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

6. PERFORMANCE STANDARDS.

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

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

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

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

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

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

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

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

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

INITIALS: OWNER JK, CONTRACTOR MLH

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

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

7. SAFETY.

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

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

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

8. CONTRACTOR'S WARRANTIES.

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

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

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

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

9. LIENS AND RETAINAGE.

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

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

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

INITIALS: OWNER JK, CONTRACTOR MTV

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

10. CONTRACTOR'S INDEMNITY.

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

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

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

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

11. INSURANCE.

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

11.2 Other Insurance. Contractor agrees to carry (i) Worker's Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Worker's Compensation obligations imposed by law; (ii) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than one million dollars (\$1,000,000.00) and an aggregate of no less than one million dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (iii) Commercial Automobile Liability Insurance coverage with limits of not less than \$300,000 per person (Bodily Injury) and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, all owned, leased, hired or non-owned autos."

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

INITIALS: OWNER JK, CONTRACTOR W.W.

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

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

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

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

12. REMEDIES.

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

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

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

13. ALTERNATIVE DISPUTE RESOLUTION.

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

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

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

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

INITIALS: OWNER *JK*, CONTRACTOR *MT-HL*

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

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

14. TERMINATION.

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

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

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

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

16. GENERAL CONTRACT PROVISIONS.

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

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

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

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

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

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

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

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

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

Scope of Work :
HVAC

SOUTH CAROLINA REVISED 7/23/2007

INITIALS: OWNER JE, CONTRACTOR M.A.



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Jenkins Plumbing Company, LC. ("Contractor")
____ Sole Proprietorship ____ Partnership ____ Corporation ____ L L C ____ Other (ATTACH W-9)
Social Security No. or Tax ID No. [REDACTED]
Name of Owner(s)/Officer(s): Michael Jenkins; Mark Jenkins
Division Name: Jenkins Plumbing Co., LC. Area Name: _____ Assigned Vendor No.: _____
Address for All Notices: 86 Columbia Drive
City: Pooler State: GA Zip Code: 31322
Telephone: [REDACTED] ; Fax: [REDACTED] ; E-Mail Address: [REDACTED]
Insurance Certificates: ATTACH OR THERE WILL AUTOMATICALLY BE REDUCTION IN PAYMENT TO CONTRACTOR.

This agreement (the "Agreement") is entered between Jenkins Plumbing Company, LC. ("Owner") and Contractor.

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

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

3. CONTRACT PRICE.

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

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

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

4. PAYMENT.

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

THIS AGREEMENT CONSISTS OF EIGHT (8) PAGES.

Executed this 5th day of February, 2021

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

Contractor: Jenkins Plumbing Company, LC.
By: [Signature]
Name: Mark Jenkins
Title: Authorized Member

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

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

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

4.4 PAYMENT DISPUTE. CONTRACTOR AGREES NOT TO MAKE ANY CLAIM, OR BRING ANY ACTION (INCLUDING BUT NOT LIMITED TO A LAWSUIT OR ARBITRATION), AGAINST OWNER FOR UNPAID WORK MORE THAN TWO (2) YEARS AFTER THE DATE OF A TIMELY SUBMITTED INVOICE OR REQUEST FOR PAYMENT FOR SUCH WORK. ANY CLAIM OR ACTION FOR THESE DAMAGES NOT BROUGHT WITHIN THIS TIME PERIOD SHALL BE BARRED AND WAIVED, WITHOUT REGARD TO ANY OTHER LIMITATIONS PERIOD SET FORTH BY LAW OR STATUTE.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. At all times during the progress of the Work, Contractor shall employ enough skilled workmen, and have on hand and maintain an adequate supply of materials and equipment, to complete the Work in accordance with Owner's construction schedule. Contractor agrees to keep itself continuously informed of the progress of the Project to coordinate with Owner all Work scheduled, and to cooperate with other contractors, architects, and engineers performing work on the Project. Owner, at its sole, absolute discretion, may alter the time, order, and priority for performance of all components of the Work without increase in price from or liability of any kind to Contractor or others. Contractor shall comply with such changes.

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

6. PERFORMANCE OF THE WORK.

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

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

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

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "**Requirements**"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD HARMLESS** Owner from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of

INITIALS: OWNER _____, CONTRACTOR 

action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor. In addition, Contractor shall not discriminate illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform Corrective Services after a house is occupied.

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

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

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

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

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including but not limited to, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site (defined below) safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

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

6.11 Stormwater Management.

6.11.1. Program Participation; Orientation Acknowledgment Receipt. Contractor, by signing this Agreement, acknowledges receipt of Owner's stormwater management program. Contractor agrees to keep itself fully informed, participate in, and comply with Owner's stormwater management program and agrees to provide program documents and training to Contractor's employees and subcontractors. Contractor agrees to hand deliver Owner's stormwater management program materials, when provided by Owner, to Contractor's employees and subcontractors (of every tier) who perform work in or deliver material or supplies to a Work Site. Owner may reasonably modify the stormwater management program and its requirements for future performance of the Work at any time in its sole discretion, and Contractor, its employees, and its subcontractors of every tier will comply with those modifications when provided. Upon Owner's request, Contractor shall provide a separate, signed acknowledgement and agreement that it shall comply with the Owner's stormwater management program and distribute Owner's stormwater management program materials as required.

6.11.2 NPDES and SWPPP Compliance. Without limiting the foregoing Subsections 6.4 and 6.11.1, Contractor represents, warrants and covenants that: (a) prior to performing any Work at a Work Site, Contractor will review and ensure that it understands the federal National Pollutant Discharge Elimination System ("**NPDES**") construction general permit ("**CGP**"), the stormwater construction general permit issued by the authorized state, and construction stormwater requirements of local government bodies applicable to the Work Site or Project (collectively the "**Applicable Permits**"), and the Work Site-specific Storm Water Pollution Prevention Plan and/or plan required by the Applicable Permits ("**SWPPP**"); and, (b) Contractor will comply with the terms, conditions and limitations of each such Applicable Permit and SWPPP, to the extent applicable to the Work. Upon Owner's request, Contractor shall provide a separate, signed acknowledgement and agreement that it shall comply with the Applicable Permits and SWPPP.

6.11.3 Program and Compliance Enforcement. In addition to any remedy for non-compliance within Owner's stormwater management program and any such other Owner deems reasonable given the circumstances in Owner's sole discretion, if Owner reasonably determines that Contractor has failed to comply with this Subsection 6.11, Owner may assess a daily fine against Contractor in such amount as Owner reasonably determines based upon the non-compliance, until Contractor has cured the non-compliant condition or practice. The amounts assessed under this Subsection 6.11.3 shall be deducted from any sums owed to Contractor or shall be immediately payable by Contractor upon demand. Nothing within this Subsection 6.11 shall: (y) relieve or absolve Contractor from its Indemnification Obligations, defined below; or, (z) limit potential consequences for failure(s) to comply with the Applicable Permits, SWPPP, or Owner's stormwater management program.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "**Work Site**"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe

INITIALS: OWNER _____, CONTRACTOR  _____.

working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

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

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

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

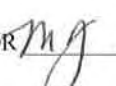
8. CONTRACTOR'S WARRANTIES.

8.1 Defective Work. For the longer of ten (10) years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work performed and provided shall conform to this Agreement (including but not limited to the standards referenced in Subsection 6.1) and shall be free from any defects or deficiencies in workmanship or materials. All Work not conforming to these requirements shall be considered defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects.

8.2 Homeowners Warranty. In addition to Contractor's warranties under Subsection 8.1 above, Contractor acknowledges that Owner provides its residential customers a warranty program, which consists of a limited one-year warranty from Owner, its parent company or one of its subsidiaries or affiliates, and a ten-year limited warranty from the Residential Warranty Company, LLC ("Homeowners Warranty"). Contractor agrees to be bound to Owner as Owner is bound to its customer under the Homeowners Warranty with regard to the warranties, standards, and obligations related to Contractor's Work covered by the warranty program. Contractor acknowledges that it has been provided a copy of the Homeowners Warranty, it has read and understands it, and it may be provided another copy at any time upon request.

8.3 Corrective Period. If the Work is determined by Owner to be defective or in breach of any warranty, including but not limited to the Homeowners Warranty, Contractor shall promptly correct, repair, or replace the defective Work promptly at Contractor's expense after Owner notifies Contractor of the defect and requests corrective work ("Corrective Services"). Corrective Services may be requested at any time after transfer of title from Owner to any initial home purchaser (or owners association) of the property subject to, benefiting from, or improved by the Work through the following periods: (i) for a period of ten (10) years for all structural elements of housing unit included in the Work, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilation/air conditioning components, including but not limited to units, condensers, duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing, pipes (supply and waste), and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, boxes, panels, plates, breakers, and connections up to the public utility connections; and (iii) all other elements of the Work not previously described for a period of one (1) year (the "Corrective Period"). Notwithstanding the foregoing, the Correction Period shall be expanded, but in no way limited, by any statutory warranty applicable to the Work. Owner will endeavor to notify Contractor of any such extension or expansion of the Corrective Period by way of a statutory warranty; however, failure to give such notice will not affect the extension or expansion of the warranty period to the applicable warranty period under the Homeowners Warranty. In the event Contractor's defective Work has damaged other work, or other work must be damaged or removed to correct Contractor's defective Work, Contractor shall bear the cost of correcting, replacing, or repairing such other work. The performance or fulfillment of any Corrective Services by Owner or any other third party will not affect, minimize, waive, or in any way obviate Contractor's liability or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform any Corrective Services thereafter. If Corrective Services are required in or will substantially affect any portion of the property in use by a residential occupier of the home, Contractor will endeavor to coordinate any Corrective Services with the owner and/or occupier as appropriate, and Owner will cooperate in this coordination, if necessary. This Corrective Period is not a limitation or shortening of any statute of limitations or repose, and is not related to or a limitation on when proceedings may be commenced to enforce any of Contractor's obligations under this Agreement.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product

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

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

9. LIENS AND RETAINAGE.

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

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

9.3 Lien Claim Indemnity. If any liens, affidavits of claim, stop payment notices, or lis pendens arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such liens, affidavits of claim, stop payment notices, or lis pendens to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD HARMLESS** Owner from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such liens, affidavits of claim, stop payment notices, or lis pendens, and further agrees immediately upon Owner's request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge any and all liens, affidavits of claim, stop payment notices, or lis pendens, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any of its customers in discharging the liens, affidavits of claim, stop payment notices, or lis pendens, within fifteen (15) days of written request by Owner demanding same, whichever remedy Owner elects in its sole and absolute discretion. This Subsection shall be in addition to any rights Owner has under applicable law with respect to such liens, affidavits of claim, stop payment notices, or lis pendens.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "**INDEMNITEE**"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF, REASONABLE SETTLEMENT AMOUNTS, ATTORNEYS' FEES AND INTEREST), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (a) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (b) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO SERVICES PERFORMED OR MATERIALS SUPPLIED (OR TO BE PERFORMED OR SUPPLIED) BY CONTRACTOR OR ITS AGENTS, SUPPLIERS OR SUBCONTRACTORS OF ANY TIER; (c) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF CONTRACTOR OR ANY OF ITS EMPLOYEES, AGENTS, SUPPLIERS OR SUBCONTRACTORS OF ANY TIER RELATED IN ANY WAY TO THE WORK OR THIS AGREEMENT, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR, (d) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION, OR ANY STRICT LIABILITY, OF INDEMNITEE RELATED IN ANY WAY TO THE WORK, EXCEPTING ONLY LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY, WITH ALL DOUBTS RESOLVED IN FAVOR OF TRIGGERING CONTRACTOR'S DUTY TO DEFEND. THE DEFENSE DUTY IS TRIGGERED BY ALLEGATIONS IN A LAWSUIT OR OTHER SIMILAR ACTION, REGARDLESS OF WHETHER THEY ARE GROUNDLESS, FALSE OR FRAUDULENT, OR ALTERNATIVELY BY ANY FACTS (EXTRINSIC TO THE ALLEGATIONS) NOT PLED, OR NOT PLED WITH SPECIFICITY, BY THE CLAIMANT. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY INDEMNITEE AGAINST LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

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10.2 NON-LIMITATIONS. CONTRACTOR AGREES THAT ITS OBLIGATIONS UNDER THIS SECTION 10 SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION. ANY PAYMENTS BY CONTRACTOR UNDER THIS SECTION TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM. INDEMNITEE IS AN INTENDED THIRD PARTY BENEFICIARY OF THIS AGREEMENT.

10.3 NO BAILMENT. CONTRACTOR AND ITS EMPLOYEES, PERSONNEL, AGENTS, SUPPLIERS, AND SUBCONTRACTORS, OF ANY TIER, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST INDEMNITEE WITH RESPECT TO ANY LOSS OF, OR DAMAGE TO, SUCH TOOLS, MATERIALS, OR EQUIPMENT.

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

11. INSURANCE.

11.1 General Requirements Applicable to All Required Insurance. Prior to commencing any Work under this Agreement, and until expiration of the periods set out below, Contractor shall maintain at its expense such insurance as will protect Contractor and Owner from claims and liabilities that may arise out of Contractor's operations under this Agreement, whether such operations are performed by Contractor or its subcontractors or suppliers, or any other person involved in performing Contractor's obligations under this Agreement. To the fullest extent permitted by law, all policies of insurance provided and maintained by Contractor pursuant to the Agreement shall provide for a waiver of subrogation in favor of Owner, D.R. Horton, Inc., all affiliates and subsidiaries of D.R. Horton, Inc., and their respective affiliates, officers, directors, and employees (collectively "Horton") for damages to the extent covered by such policies. All policies provided and maintained pursuant to this Agreement shall indicate that coverage applies in the state where the Work is being performed; and are written by an insurer licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor determines to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement. In the event that Contractor obtains insurance coverage that is broader than the minimums required by this Agreement, this Agreement shall be deemed to require the broader coverage, including but not limited to any greater limits and any excess or umbrella coverages. Coverage obtained by Contractor with Horton as an additional insured shall be primary and non-contributory, with any insurance of Horton being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work. Contractor shall immediately notify Owner in writing of any incident, occurrence, injury, or damages related in any way to the Work which may give rise to any claim or loss under any of the insurance coverages required by this Section 11. Horton is an intended third party beneficiary of this Agreement. In the event this Agreement is assigned to a third party not included within the definition of 'Horton', Contractor shall, from the date of the assignment, add the assignee as an insured as if it were originally included within the definition of 'Horton;' in addition, Contractor shall continue to maintain Horton as an insured, as required by the Agreement, after the assignment.

11.2 Commercial General Liability. Contractor shall maintain Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with a minimum per occurrence limit of no less than One Million Dollars (\$1,000,000), and a minimum aggregate limit of no less than Two Million Dollars (\$2,000,000). The CGL Policy shall apply separately to Contractor's Work under this Agreement, and shall protect against bodily injury, property damage, and personal injury claims arising from the exposures of: premises-operations; products-completed operations, including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); independent subcontractors; contractual liability covering the indemnity obligations set forth in this Agreement; and where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type, nature, or volume of the Work or limit the type of structure or number of units on which the Work is to be performed. The CGL Policy shall not contain a deductible or self-insured retention of more than Twenty Five Thousand Dollars (\$25,000), and shall allow the satisfaction of any and all deductible or self-insured retention through payments made by any third party, including but not limited to Owner or any additional insured, co-insureds, co-insurers, or insureds other than the primary or first named insured. Contractor shall continuously maintain its CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work. To the fullest extent permitted by law, Contractor shall add Horton as Additional Insureds, specifically identifying Horton, on the CGL Policy covering both ongoing operations and completed operations using endorsement form CG 20 10 11 85 or, if unavailable, both forms CG 20 10 10 01 and CG 20 37 10 01, or endorsement forms providing equivalent coverage.

11.3 Workers Compensation and Employers Liability Insurance. Contractor shall maintain Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law and Employer's Liability Insurance in an amount not

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less than One Million Dollars (\$1,000,000) for each accident for bodily injury, One Million Dollars (\$1,000,000) for bodily injury by disease, and One Million-Dollars (\$1,000,000) for each employee for bodily injury by disease. The Workers Compensation and Employers Liability Policy shall not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner.

11.4 Business Automobile Insurance. Contractor shall maintain Business Automobile Liability Insurance coverage with limits of not less than One Million Dollars (\$1,000,000) per accident, specifying "all autos" coverage or "all owned, leased, hired or non-owned autos." The Business Automobile Liability Policy shall not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner. Owner shall be included as an Additional insured on the Business Automobile Liability Policy.

11.5 Professional Liability Insurance. If Contractor's Work includes design or engineering services, Contractor shall maintain Contractor's Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000) and an aggregate of no less than One Million Dollars (\$1,000,000) protecting against faulty design and faulty professional judgment. The policy obtained to satisfy this requirement not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner.

11.6 Proof of Insured Status. Prior to commencing the Work, Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance signed by a duly authorized representative of the insurers and showing compliance with the insurance requirements set out above, including endorsements adding Horton as Additional Insured and waivers of subrogation. Alternatively, Owner reserves the right to request portions of policies (including but not limited to declarations pages and endorsements) or certified copies of the required policies. Contractor shall not be relieved of any indemnification obligation under this Agreement, including, but not limited to, those undertaken in Section 10 of this Agreement, by securing insurance coverage in accordance with Owner's insurance requirements or by Owner's approval of certificates of insurance or policies. Any acceptance of insurance coverage by Owner shall not be construed as accepting in any way deficiencies in the insurance.

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

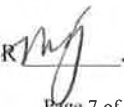
11.8 Subcontractor Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Horton as an additional insured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

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

12. REMEDIES.

12.1 Owner's Remedies. If, at any time prior to the beginning of the Corrective Period, Owners determines, in its sole, absolute discretion, that the Work is defective or incomplete, or if another contractor's work, or other property, is damaged by an act or omission of Contractor, or its employee, agent, supplier, or subcontractor, of any tier, or their respective employee or agent, Owner shall have the right to elect, at its sole, absolute discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs to complete, repair, or replace, plus any related costs or damage including re-inspection fees, with any excess to be paid to Contractor. If such costs exceed the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (a) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (b) claims or liens are filed against the job location as a result of Contractor's acts or omissions; (c) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (d) Contractor fails to perform, or to pay the costs and expenses of Corrective Services incurred by Owner, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (e) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (f) Contractor

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fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (g) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or, (h) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may offset from amounts owing to Contractor hereunder any amounts owing by Contractor to Horton under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

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

13. ALTERNATIVE DISPUTE RESOLUTION.

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

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

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("FAA"). **IN MAKING THIS AGREEMENT, THE PARTIES ARE WAIVING THEIR RIGHTS TO FILE A LAWSUIT, TO HAVE A JURY RESOLVE ANY DISPUTE BETWEEN THEM, AND TO APPEAL THE DECISION OF THE ARBITRATOR TO A COURT OF LAW.** All demands for arbitration shall be made before the expiration of the applicable statutes of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified, or corrected only as permitted by the FAA.

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

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

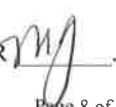
13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor,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

14. TERMINATION.

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

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

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

INITIALS: OWNER _____, CONTRACTOR  _____

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

16. GENERAL CONTRACT PROVISIONS.

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

16.2 Final Expression of Terms for Materials. The terms of this Agreement and the applicable Purchase Order or other ordering document from Owner constitute the final written expression of all the terms for each purchase of materials within the Work, and are a complete and exclusive statement of those terms. Owner accepts no changes in or additions to the provisions of this Agreement unless in writing, signed by Owner's duly authorized representative and such amendment conspicuously states it amends this Agreement, with a specific reference to this Agreement by title and date executed. Notwithstanding the foregoing, no signature upon any Contractor form or invoice shall constitute Owner's acceptance of or consent to any terms or conditions therein that differ from or add to the terms and conditions of this Agreement.

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

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

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

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

16.7 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina, and is applicable to Work for all construction projects in this State. In the event Contractor performs any work for Owner, or its parent company, affiliate or subsidiary, for a project in another State, and Contractor has not executed a written Independent Contractor Agreement for that State or a project specific agreement related to that work, Contractor hereby agrees that such work shall be governed by the terms and conditions of the form Independent Contractor Agreement of Owner (in use at the time of execution of this Agreement) for that State, which shall be deemed effective on the day this Agreement is executed. Upon request, Owner will provide Contractor with applicable Independent Contractor Agreements.

17. CONFIDENTIALITY, DATA PRIVACY, AND DATA SECURITY.

17.1 Confidentiality. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner, including Personal Information, defined below, as confidential and proprietary information of Owner ("**Confidential Information**"), and, except as permitted by this Section, shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, except as permitted by

INITIALS: OWNER _____, CONTRACTOR  _____.

this Section, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

17.2 Data Privacy. To the extent Contractor receives or generates personal information (including, but not limited to, name and contact information) regarding individuals including, but not limited to, Owner's homebuyers, in the course of performing the Work ("Personal Information"), Contractor shall comply with all laws applicable to collection, processing, protection and destruction of Personal Information ("Applicable Data Protection Legislation"), including state data breach laws. Contractor agrees that it is a "service provider," or similar classification, under Applicable Data Protection Legislation. Contractor will not access, sell, use, disclose, reproduce or retain such Personal Information for purposes other than performance of the Work under the Agreement or to comply with applicable law. Contractor certifies, it understands and will comply with, the foregoing restrictions, and will ensure that third-parties to which it discloses Personal Information, if any, are likewise restricted pursuant to a written contract. Furthermore, Contractor shall comply with Owner's directions as to Personal Information, as may be necessary to comply with applicable law including, but not limited to:

17.2.1 Deletion of Personal Information. Upon written request from Owner regarding the Personal Information of an individual who has requested its deletion, Contractor will promptly, but in all cases within twenty (20) days of the request, delete the Personal Information in its possession or control and certify in writing to Owner that it has complied with the request. If Contractor is required or permitted to maintain such individual's Personal Information under applicable law, Contractor will not be required to comply with the deletion requirements of this Subsection as to such Personal Information and will instead provide, within twenty (20) days of the request, a written statement to Owner that identifies the reason for the non-deletion.

17.2.2 Access to Personal Information. Within twenty (20) days of a request by Owner, Contractor shall reasonably cooperate with Owner to identify and provide to Owner the specific pieces of Personal Information regarding an individual who has requested access to their Personal Information.

17.2.3 Correction of Personal Information. Within twenty (20) days of a request by Owner, Contractor shall reasonably cooperate with Owner to correct Personal Information regarding an individual who has requested correction to their Personal Information.

17.2.4 Individual Requests Received Directly by Contractor. If Contractor receives a request to delete, access, or correct Personal Information directly from an individual, Contractor will promptly, but in all cases within ten (10) days of receipt of the request, inform Owner of the request and, after consultation with Owner, instruct the individual to contact Owner directly.

17.3 Data Security. In compliance with applicable law and generally accepted industry practices, Contractor will implement and maintain organizational, administrative, physical, and technical safeguards ("Safeguards") to ensure the confidentiality and security of Confidential Information, including Personal Information, and to protect against any threats, hazards, and unauthorized, unlawful or accidental access, damage, destruction, loss, disclosure, processing, acquisition or use of Personal Information. These Safeguards will include, without limitation: (a) generally accepted industry practices for physical security of all premises; (b) generally accepted industry practices for precautions with respect to the employment, or hiring, of Contractor's personnel and third party service providers; (c) generally accepted industry practices for precautions with respect to access by Contractor's personnel and third party service providers; (d) an appropriate network security program with generally accepted industry practices for access and data integrity controls, testing and auditing of all controls, and appropriate corrective action and incident response plans; and (e) generally accepted industry practices for virus and malware protection. As part of such Safeguards, Contractor will only store and access Personal Information in the United States. Furthermore, within twenty (20) days of the expiration or termination of the Agreement or the request of Owner, Contractor will destroy all, or a requested portion, of Personal Information, all copies, reproductions, summaries or extracts thereof and all evaluations and analyses created by Contractor based on or derived from any Personal Information that are in Contractor's possession, and Contractor shall not retain copies, extracts or other reproductions of the Personal Information; provided, however, that, absent a request by Owner to delete specific Personal Information for which no legal basis exists for Contractor to retain such Personal Information, Contractor: (a) may retain one copy of the Personal Information with its legal counsel for use in connection with the obligations of Contractor hereunder; (b) shall not be required to destroy or return any system back-up media such as copies of any computer records or files containing Personal Information that have been created pursuant to automatic archiving or back-up procedures on secured central storage servers, which cannot reasonably be deleted or returned; and (c) may retain such copies as necessary for compliance with applicable law.

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

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

SOUTH CAROLINA VERSION (REV. AUGUST 26, 2020)

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INITIALS: OWNER _____, CONTRACTOR  _____



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR ASC Services & Supply Inc. ("Contractor")
Sole Proprietorship ☐ Partnership ☒ Corporation ☐ L.L.C. ☐ Other (ATTACH W-9)
Social Security No. or Tax ID No.: [REDACTED]
Name of Owner(s)/Officer(s): Terry Brooks Jr. 525 1711460
Division Name: Columbia Area Name: _____ Assigned Vendor No.: 525 1794543
Address for All Notices: 308 Archibald Rd.
City: Concord State: NC Zip Code: 28025
Telephone: [REDACTED] Fax: () _____ E-Mail Address: [REDACTED]
Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
This agreement (the "Agreement") is entered into on this 5 day of September, 2019, between
DR Horton Inc. or Club at Cobblestone LLC ("Owner") and Contractor.

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

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

3. CONTRACT PRICE.

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

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

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

4. PAYMENT.

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

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

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

Executed this 5th day of September, 2019.

Owner:

By: [Signature]

Name: [Signature]

Title: Division President

Contractor:

By: [Signature]

Name: Terry Brooks Jr.

Title: Owner

INITIALS: OWNER [Signature]

CONTRACTOR [Signature]

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

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

5. SCHEDULE OF WORK.

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

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

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

6. PERFORMANCE OF THE WORK.

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

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

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

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

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

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

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

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

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including but not limited to, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not

INITIALS: OWNER , CONTRACTOR 

limited to trash, unused building materials, garbage, refuse or rubbish ("Waste"), caused by its operations and shall remove all of Contractor's materials at the conclusion of the Work. If materials are furnished by Owner, Contractor shall move all usable materials at the conclusion of the Work to a location designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon Owner's demand and may be deducted from any sums owed Contractor.

7. SAFETY.

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

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

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

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

8. CONTRACTOR'S WARRANTIES.

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

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

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

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

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

INITIALS: OWNER , CONTRACTOR 

9. LIENS AND RETAINAGE.

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

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

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

10. CONTRACTOR'S INDEMNITY.

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

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

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

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

11. INSURANCE.

11.1 General Requirements Applicable to All Required Insurance. Prior to commencing any Work under this Agreement, and until expiration of the periods set out below, Contractor shall maintain at its expense such insurance as will protect Contractor and Owner from claims and liabilities that may arise out of Contractor's operations under this Agreement, whether such operations are performed by Contractor or its subcontractors or suppliers, or any other person involved in performing Contractor's obligations under this Agreement. All policies of insurance provided and maintained by Contractor pursuant to the Agreement shall provide for a waiver of subrogation in favor of Owner, D.R. Horton, Inc., all affiliates and subsidiaries of

INITIALS: OWNER AB, CONTRACTOR TD

D.R. Horton, Inc., and their respective affiliates, officers, directors, and employees (collectively "**Horton**") for damages to the extent covered by such policies. All policies provided and maintained pursuant to this Agreement shall indicate that coverage applies in the state where the Work is being performed; and are written by an insurer licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor determines to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement. In the event that Contractor obtains insurance coverage that is broader than the minimums required by this Agreement, this Agreement shall be deemed to require the broader coverage, including but not limited to any greater limits and any excess or umbrella coverages. Coverage obtained by Contractor with Horton as an additional insured shall be primary, with any insurance of Horton being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work. Contractor shall immediately notify Owner in writing of any incident, occurrence, injury, or situation related in any way with the Work which may give rise to any claim or loss under any of the insurance coverages required by this Section 11.

11.2 Commercial General Liability. Contractor shall maintain Commercial General Liability Insurance on an Occurrence Form (the "**CGL Policy**"), with a minimum per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and a minimum aggregate limit of no less than Two Million Dollars (\$2,000,000.00). The CGL Policy shall apply separately to Contractor's Work under this Agreement, and shall protect against bodily injury, property damage, and personal injury claims arising from the exposures of: premises-operations; products-completed operations, including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); independent subcontractors; contractual liability covering the indemnity obligations set forth in this Agreement; and where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type, nature, or volume of the Work or limit the type of structure or number of units on which the Work is to be performed. The CGL Policy shall not contain a deductible or self-insured retention of more than Twenty Five Thousand Dollars (\$25,000.00), and shall allow the satisfaction of any and all deductible or self-insured retention through payments made by any third party, including but not limited to Owner or any additional insured, co-insureds, co-insurers, or insureds other than the primary or first named insured. Contractor shall continuously maintain its CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work. To the fullest extent permitted by law, Contractor shall add Horton as Additional Insureds, specifically identifying Horton, on the CGL Policy covering both ongoing operations and completed operations using endorsement form CG 2010 1185 or, if unavailable, both forms CG 2010 1001 and CG 2037 1001, or endorsement forms providing equivalent coverage.

11.3 Workers Compensation and Employers Liability Insurance. Contractor shall maintain Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law and Employer's Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) for each accident for bodily injury, One Million Dollars (\$1,000,000.00) for bodily injury by disease, and One Million Dollars (\$1,000,000.00) for each employee for bodily injury by disease. The Workers Compensation and Employers Liability Policy shall not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner.

11.4 Business Automobile Insurance. Contractor shall maintain Business Automobile Liability Insurance coverage with limits of not less than One Million Dollars (\$1,000,000.00) per accident, specifying "all autos" coverage or "all owned, leased, hired or non-owned autos." The Business Automobile Liability Policy shall not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner. Owner shall be included as an Additional insured on the Business Automobile Liability Policy.

11.5 Professional Liability Insurance. If Contractor's Work includes design services, Contractor shall maintain Contractor's Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment. The policy obtained to satisfy this requirement not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner.

11.6 Proof of Insured Status. Prior to commencing the Work, Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance signed by a duly authorized representative of the insurers and showing compliance with the insurance requirements set out above, including endorsements adding Horton as Additional Insured and waivers of subrogation. Alternatively, Owner reserves the right to request portions of policies (including but not limited to declarations pages and endorsements) or certified copies of the required policies. Contractor shall not be relieved of any indemnification obligation under this Agreement, including, but not limited to, those undertaken in Section 10 of this Agreement, by securing insurance coverage in accordance with Owner's insurance requirements or by Owner's approval of certificates of insurance or policies. Any acceptance of insurance coverage by Owner shall not be construed as accepting in any way deficiencies in the insurance.

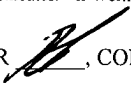
11.7 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED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

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

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

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or if another contractor's

INITIALS: OWNER , CONTRACTOR .

work, or other property, is damaged by an act or omission of Contractor, or its employee, agent, supplier, or subcontractor, of any tier, or their respective employee or agent, Owner shall have the right to elect, at its sole, absolute discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs to complete, repair, or replace, plus any related costs or damage including re-inspection fees, with any excess to be paid to Contractor. If such costs exceed the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

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

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

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

13. ALTERNATIVE DISPUTE RESOLUTION.

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

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

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

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator(s) mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes against Owner, is for One Million Dollars (\$1,000,000.00) or more, but only one arbitrator shall be appointed if the Dispute is for less than One Million Dollars (\$1,000,000.00). If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

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

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

14. TERMINATION.

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

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

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

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor

INITIALS: OWNER

CONTRACTOR

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

16. GENERAL CONTRACT PROVISIONS.

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

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

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

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

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

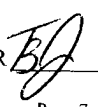
16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina, and is applicable to Work for all construction projects in this State. In the event Contractor performs any work for Owner, or its parent company, affiliate or subsidiary, for a project in another State, and Contractor has not executed a written Independent Contractor Agreement for that State, Contractor hereby agrees that such work shall be governed by the terms and conditions of the form Independent Contractor Agreement of Owner (in use at the time of execution of this Agreement) for that State, which shall be deemed effective on the day this Agreement is executed. Upon request, Owner will provide Contractor with applicable Independent Contractor Agreements.

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

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

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

SOUTH CAROLINA VERSION (DECEMBER 9, 2016)

INITIALS: OWNER , CONTRACTOR 

SCOPE OF WORK

The following is a description of Basic Services performed by the Independent Contractor:

ASC Services & Supply Inc.

We install Siding(Vinyl, Hardie Plank). We install Boxing and Cornice for overhangs(Vinyl, Hardie Plank), We install stone and Brick Kills per plan, Wrap Garage Doors in Aluminum over untreated lumber, Wrap Facia's and Freeze Boards in aluminum Per plan, Install Hardie Plank Trim on Fascia's per plan. Install Hardie Plank as Freeze board per plan. Install PVC Columns per plan. Install Porch Ceilings (Vinyl, Hardie Plank). We install Mounts for Electrical and Hose Bibs. Install Window decorations per Plan(Headers, Shutters, Trim). Install Decorative Brackets Per plan. Install decorative Vents per plan.

SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Unique Stone Creations, Inc. ("Contractor")
Sole Proprietorship ☐ Partnership ☒ Corporation ☐ L.L.C. ☐ Other (ATTACH W-9)
Social Security No. or Tax ID No.: [REDACTED]
Name of Owner(s)/Officer(s): Cristobal Cortes
Division Name: _____ Area Name: _____ Assigned Vendor No.: 5251794562
Address for All Notices: P.O. Box 49436
City: Charlotte State: NC Zip Code: 28277
Telephone: [REDACTED] Fax: () _____ E-Mail Address: [REDACTED]
Insurance Certificates: **ATTACH OR THERE WILL AUTOMATICALLY BE REDUCTION IN PAYMENT TO CONTRACTOR.**

This agreement (the "**Agreement**") is entered between DR Horton Inc or Club at Cabidestone LLC ("Owner") and Contractor.

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

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

3. CONTRACT PRICE.

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

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

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

4. PAYMENT.

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

THIS AGREEMENT CONSISTS OF EIGHT (8) PAGES.

Executed this 29 day of March, 2021

Owner:

By:

Name:

Title: Division President

Contractor:

By:

Name:

Title:

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

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

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

4.4 PAYMENT DISPUTE. CONTRACTOR AGREES NOT TO MAKE ANY CLAIM, OR BRING ANY ACTION (INCLUDING BUT NOT LIMITED TO A LAWSUIT OR ARBITRATION), AGAINST OWNER FOR UNPAID WORK MORE THAN TWO (2) YEARS AFTER THE DATE OF A TIMELY SUBMITTED INVOICE OR REQUEST FOR PAYMENT FOR SUCH WORK. ANY CLAIM OR ACTION FOR THESE DAMAGES NOT BROUGHT WITHIN THIS TIME PERIOD SHALL BE BARRED AND WAIVED, WITHOUT REGARD TO ANY OTHER LIMITATIONS PERIOD SET FORTH BY LAW OR STATUTE.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. At all times during the progress of the Work, Contractor shall employ enough skilled workmen, and have on hand and maintain an adequate supply of materials and equipment, to complete the Work in accordance with Owner's construction schedule. Contractor agrees to keep itself continuously informed of the progress of the Project to coordinate with Owner all Work scheduled, and to cooperate with other contractors, architects, and engineers performing work on the Project. Owner, at its sole, absolute discretion, may alter the time, order, and priority for performance of all components of the Work without increase in price from or liability of any kind to Contractor or others. Contractor shall comply with such changes.

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

6. PERFORMANCE OF THE WORK.

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

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

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

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "Requirements"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD HARMLESS** Owner from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of

INITIALS: OWNER PP, CONTRACTOR U

action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor. In addition, Contractor shall not discriminate illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform Corrective Services after a house is occupied.

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

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

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

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

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including but not limited to, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site (defined below) safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

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

6.11 Stormwater Management.

6.11.1. Program Participation; Orientation Acknowledgment Receipt. Contractor, by signing this Agreement, acknowledges receipt of Owner's stormwater management program. Contractor agrees to keep itself fully informed, participate in, and comply with Owner's stormwater management program and agrees to provide program documents and training to Contractor's employees and subcontractors. Contractor agrees to hand deliver Owner's stormwater management program materials, when provided by Owner, to Contractor's employees and subcontractors (of every tier) who perform work in or deliver material or supplies to a Work Site. Owner may reasonably modify the stormwater management program and its requirements for future performance of the Work at any time in its sole discretion, and Contractor, its employees, and its subcontractors of every tier will comply with those modifications when provided. Upon Owner's request, Contractor shall provide a separate, signed acknowledgement and agreement that it shall comply with the Owner's stormwater management program and distribute Owner's stormwater management program materials as required.

6.11.2 NPDES and SWPPP Compliance. Without limiting the foregoing Subsections 6.4 and 6.11.1, Contractor represents, warrants and covenants that: (a) prior to performing any Work at a Work Site, Contractor will review and ensure that it understands the federal National Pollutant Discharge Elimination System ("NPDES") construction general permit ("CGP"), the stormwater construction general permit issued by the authorized state, and construction stormwater requirements of local government bodies applicable to the Work Site or Project (collectively the "Applicable Permits"), and the Work Site-specific Storm Water Pollution Prevention Plan and/or plan required by the Applicable Permits ("SWPPP"); and, (b) Contractor will comply with the terms, conditions and limitations of each such Applicable Permit and SWPPP, to the extent applicable to the Work. Upon Owner's request, Contractor shall provide a separate, signed acknowledgement and agreement that it shall comply with the Applicable Permits and SWPPP.

6.11.3 Program and Compliance Enforcement. In addition to any remedy for non-compliance within Owner's stormwater management program and any such other Owner deems reasonable given the circumstances in Owner's sole discretion, if Owner reasonably determines that Contractor has failed to comply with this Subsection 6.11, Owner may assess a daily fine against Contractor in such amount as Owner reasonably determines based upon the non-compliance, until Contractor has cured the non-compliant condition or practice. The amounts assessed under this Subsection 6.11.3 shall be deducted from any sums owed to Contractor or shall be immediately payable by Contractor upon demand. Nothing within this Subsection 6.11 shall: (y) relieve or absolve Contractor from its Indemnification Obligations, defined below; or, (z) limit potential consequences for failure(s) to comply with the Applicable Permits, SWPPP, or Owner's stormwater management program.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe

INITIALS: OWNER AB, CONTRACTOR CC.

working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

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

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

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

8. CONTRACTOR'S WARRANTIES.

8.1 Defective Work. For the longer of ten (10) years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work performed and provided shall conform to this Agreement (including but not limited to the standards referenced in Subsection 6.1) and shall be free from any defects or deficiencies in workmanship or materials. All Work not conforming to these requirements shall be considered defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects.

8.2 Homeowners Warranty. In addition to Contractor's warranties under Subsection 8.1 above, Contractor acknowledges that Owner provides its residential customers a warranty program, which consists of a limited one-year warranty from Owner, its parent company or one of its subsidiaries or affiliates, and a ten-year limited warranty from the Residential Warranty Company, LLC ("Homeowners Warranty"). Contractor agrees to be bound to Owner as Owner is bound to its customer under the Homeowners Warranty with regard to the warranties, standards, and obligations related to Contractor's Work covered by the warranty program. Contractor acknowledges that it has been provided a copy of the Homeowners Warranty, it has read and understands it, and it may be provided another copy at any time upon request.

8.3 Corrective Period. If the Work is determined by Owner to be defective or in breach of any warranty, including but not limited to the Homeowners Warranty, Contractor shall promptly correct, repair, or replace the defective Work promptly at Contractor's expense after Owner notifies Contractor of the defect and requests corrective work ("Corrective Services"). Corrective Services may be requested at any time after transfer of title from Owner to any initial home purchaser (or owners association) of the property subject to, benefiting from, or improved by the Work through the following periods: (i) for a period of ten (10) years for all structural elements of housing unit included in the Work, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilation/air conditioning components, including but not limited to units, condensers, duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing, pipes (supply and waste), and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, boxes, panels, plates, breakers, and connections up to the public utility connections; and (iii) all other elements of the Work not previously described for a period of one (1) year (the "Corrective Period"). Notwithstanding the foregoing, the Correction Period shall be expanded, but in no way limited, by any statutory warranty applicable to the Work. Owner will endeavor to notify Contractor of any such extension or expansion of the Corrective Period by way of a statutory warranty; however, failure to give such notice will not affect the extension or expansion of the warranty period to the applicable warranty period under the Homeowners Warranty. In the event Contractor's defective Work has damaged other work, or other work must be damaged or removed to correct Contractor's defective Work, Contractor shall bear the cost of correcting, replacing, or repairing such other work. The performance or fulfillment of any Corrective Services by Owner or any other third party will not affect, minimize, waive, or in any way obviate Contractor's liability or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform any Corrective Services thereafter. If Corrective Services are required in or will substantially affect any portion of the property in use by a residential occupier of the home, Contractor will endeavor to coordinate any Corrective Services with the owner and/or occupier as appropriate, and Owner will cooperate in this coordination, if necessary. This Corrective Period is not a limitation or shortening of any statute of limitations or repose, and is not related to or a limitation on when proceedings may be commenced to enforce any of Contractor's obligations under this Agreement.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product

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

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

9. LIENS AND RETAINAGE.

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

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

9.3 Lien Claim Indemnity. If any liens, affidavits of claim, stop payment notices, or lis pendens arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such liens, affidavits of claim, stop payment notices, or lis pendens to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD HARMLESS** Owner from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such liens, affidavits of claim, stop payment notices, or lis pendens, and further agrees immediately upon Owner's request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge any and all liens, affidavits of claim, stop payment notices, or lis pendens, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any of its customers in discharging the liens, affidavits of claim, stop payment notices, or lis pendens, within fifteen (15) days of written request by Owner demanding same, whichever remedy Owner elects in its sole and absolute discretion. This Subsection shall be in addition to any rights Owner has under applicable law with respect to such liens, affidavits of claim, stop payment notices, or lis pendens.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "**INDEMNITEE**"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF, REASONABLE SETTLEMENT AMOUNTS, ATTORNEYS' FEES AND INTEREST), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (a) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (b) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO SERVICES PERFORMED OR MATERIALS SUPPLIED (OR TO BE PERFORMED OR SUPPLIED) BY CONTRACTOR OR ITS AGENTS, SUPPLIERS OR SUBCONTRACTORS OF ANY TIER; (c) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF CONTRACTOR OR ANY OF ITS EMPLOYEES, AGENTS, SUPPLIERS OR SUBCONTRACTORS OF ANY TIER RELATED IN ANY WAY TO THE WORK OR THIS AGREEMENT, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR, (d) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION, OR ANY STRICT LIABILITY, OF INDEMNITEE RELATED IN ANY WAY TO THE WORK, EXCEPTING ONLY LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY, WITH ALL DOUBTS RESOLVED IN FAVOR OF TRIGGERING CONTRACTOR'S DUTY TO DEFEND. THE DEFENSE DUTY IS TRIGGERED BY ALLEGATIONS IN A LAWSUIT OR OTHER SIMILAR ACTION, REGARDLESS OF WHETHER THEY ARE GROUNDLESS, FALSE OR FRAUDULENT, OR ALTERNATIVELY BY ANY FACTS (EXTRINSIC TO THE ALLEGATIONS) NOT PLED, OR NOT PLED WITH SPECIFICITY, BY THE CLAIMANT. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY INDEMNITEE AGAINST LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

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10.2 NON-LIMITATIONS. CONTRACTOR AGREES THAT ITS OBLIGATIONS UNDER THIS SECTION 10 SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION. ANY PAYMENTS BY CONTRACTOR UNDER THIS SECTION TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM. INDEMNITEE IS AN INTENDED THIRD PARTY BENEFICIARY OF THIS AGREEMENT.

10.3 NO BAILMENT. CONTRACTOR AND ITS EMPLOYEES, PERSONNEL, AGENTS, SUPPLIERS, AND SUBCONTRACTORS, OF ANY TIER, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST INDEMNITEE WITH RESPECT TO ANY LOSS OF, OR DAMAGE TO, SUCH TOOLS, MATERIALS, OR EQUIPMENT.

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

11. INSURANCE.

11.1 General Requirements Applicable to All Required Insurance. Prior to commencing any Work under this Agreement, and until expiration of the periods set out below, Contractor shall maintain at its expense such insurance as will protect Contractor and Owner from claims and liabilities that may arise out of Contractor's operations under this Agreement, whether such operations are performed by Contractor or its subcontractors or suppliers, or any other person involved in performing Contractor's obligations under this Agreement. To the fullest extent permitted by law, all policies of insurance provided and maintained by Contractor pursuant to the Agreement shall provide for a waiver of subrogation in favor of Owner, D.R. Horton, Inc., all affiliates and subsidiaries of D.R. Horton, Inc., and their respective affiliates, officers, directors, and employees (collectively "Horton") for damages to the extent covered by such policies. All policies provided and maintained pursuant to this Agreement shall indicate that coverage applies in the state where the Work is being performed; and are written by an insurer licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor determines to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement. In the event that Contractor obtains insurance coverage that is broader than the minimums required by this Agreement, this Agreement shall be deemed to require the broader coverage, including but not limited to any greater limits and any excess or umbrella coverages. Coverage obtained by Contractor with Horton as an additional insured shall be primary and non-contributory, with any insurance of Horton being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work. Contractor shall immediately notify Owner in writing of any incident, occurrence, injury, or damages related in any way to the Work which may give rise to any claim or loss under any of the insurance coverages required by this Section 11. Horton is an intended third party beneficiary of this Agreement. In the event this Agreement is assigned to a third party not included within the definition of "Horton", Contractor shall, from the date of the assignment, add the assignee as an insured as if it were originally included within the definition of "Horton"; in addition, Contractor shall continue to maintain Horton as an insured, as required by the Agreement, after the assignment.

11.2 Commercial General Liability. Contractor shall maintain Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with a minimum per occurrence limit of no less than One Million Dollars (\$1,000,000), and a minimum aggregate limit of no less than Two Million Dollars (\$2,000,000). The CGL Policy shall apply separately to Contractor's Work under this Agreement, and shall protect against bodily injury, property damage, and personal injury claims arising from the exposures of: premises-operations; products-completed operations, including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); independent subcontractors; contractual liability covering the indemnity obligations set forth in this Agreement; and where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type, nature, or volume of the Work or limit the type of structure or number of units on which the Work is to be performed. The CGL Policy shall not contain a deductible or self-insured retention of more than Twenty Five Thousand Dollars (\$25,000), and shall allow the satisfaction of any and all deductible or self-insured retention through payments made by any third party, including but not limited to Owner or any additional insured, co-insureds, co-insurers, or insureds other than the primary or first named insured. Contractor shall continuously maintain its CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work. To the fullest extent permitted by law, Contractor shall add Horton as Additional Insureds, specifically identifying Horton, on the CGL Policy covering both ongoing operations and completed operations using endorsement form CG 20 10 11 85 or, if unavailable, both forms CG 20 10 10 01 and CG 20 37 10 01, or endorsement forms providing equivalent coverage.

11.3 Workers Compensation and Employers Liability Insurance. Contractor shall maintain Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law and Employer's Liability Insurance in an amount not

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less than One Million Dollars (\$1,000,000) for each accident for bodily injury. One Million Dollars (\$1,000,000) for bodily injury by disease, and One Million-Dollars (\$1,000,000) for each employee for bodily injury by disease. The Workers Compensation and Employers Liability Policy shall not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner.

11.4 Business Automobile Insurance. Contractor shall maintain Business Automobile Liability Insurance coverage with limits of not less than One Million Dollars (\$1,000,000) per accident, specifying "all autos" coverage or "all owned, leased, hired or non-owned autos." The Business Automobile Liability Policy shall not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner. Owner shall be included as an Additional insured on the Business Automobile Liability Policy.

11.5 Professional Liability Insurance. If Contractor's Work includes design or engineering services, Contractor shall maintain Contractor's Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000) and an aggregate of no less than One Million Dollars (\$1,000,000) protecting against faulty design and faulty professional judgment. The policy obtained to satisfy this requirement not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner.

11.6 Proof of Insured Status. Prior to commencing the Work, Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance signed by a duly authorized representative of the insurers and showing compliance with the insurance requirements set out above, including endorsements adding Horton as Additional Insured and waivers of subrogation. Alternatively, Owner reserves the right to request portions of policies (including but not limited to declarations pages and endorsements) or certified copies of the required policies. Contractor shall not be relieved of any indemnification obligation under this Agreement, including, but not limited to, those undertaken in Section 10 of this Agreement, by securing insurance coverage in accordance with Owner's insurance requirements or by Owner's approval of certificates of insurance or policies. Any acceptance of insurance coverage by Owner shall not be construed as accepting in any way deficiencies in the insurance.

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

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

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

12. REMEDIES.

12.1 Owner's Remedies. If, at any time prior to the beginning of the Corrective Period, Owners determines, in its sole, absolute discretion, that the Work is defective or incomplete, or if another contractor's work, or other property, is damaged by an act or omission of Contractor, or its employee, agent, supplier, or subcontractor, of any tier, or their respective employee or agent, Owner shall have the right to elect, at its sole, absolute discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs to complete, repair, or replace, plus any related costs or damage including re-inspection fees, with any excess to be paid to Contractor. If such costs exceed the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (a) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (b) claims or liens are filed against the job location as a result of Contractor's acts or omissions; (c) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (d) Contractor fails to perform, or to pay the costs and expenses of Corrective Services incurred by Owner, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (e) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (f) Contractor

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fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (g) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or, (h) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may offset from amounts owing to Contractor hereunder any amounts owing by Contractor to Horton under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

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

13. ALTERNATIVE DISPUTE RESOLUTION.

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

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

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("FAA"). **IN MAKING THIS AGREEMENT, THE PARTIES ARE WAIVING THEIR RIGHTS TO FILE A LAWSUIT, TO HAVE A JURY RESOLVE ANY DISPUTE BETWEEN THEM, AND TO APPEAL THE DECISION OF THE ARBITRATOR TO A COURT OF LAW.** All demands for arbitration shall be made before the expiration of the applicable statutes of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified, or corrected only as permitted by the FAA.

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

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

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

14. TERMINATION.

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

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

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

INITIALS: OWNER *AP* , CONTRACTOR *UL* .

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

16. GENERAL CONTRACT PROVISIONS.

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

16.2 Final Expression of Terms for Materials. The terms of this Agreement and the applicable Purchase Order or other ordering document from Owner constitute the final written expression of all the terms for each purchase of materials within the Work, and are a complete and exclusive statement of those terms. Owner accepts no changes in or additions to the provisions of this Agreement unless in writing, signed by Owner's duly authorized representative and such amendment conspicuously states it amends this Agreement, with a specific reference to this Agreement by title and date executed. Notwithstanding the foregoing, no signature upon any Contractor form or invoice shall constitute Owner's acceptance of or consent to any terms or conditions therein that differ from or add to the terms and conditions of this Agreement.

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

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

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

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

16.7 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina, and is applicable to Work for all construction projects in this State. In the event Contractor performs any work for Owner, or its parent company, affiliate or subsidiary, for a project in another State, and Contractor has not executed a written Independent Contractor Agreement for that State or a project specific agreement related to that work, Contractor hereby agrees that such work shall be governed by the terms and conditions of the form Independent Contractor Agreement of Owner (in use at the time of execution of this Agreement) for that State, which shall be deemed effective on the day this Agreement is executed. Upon request, Owner will provide Contractor with applicable Independent Contractor Agreements.

17. CONFIDENTIALITY, DATA PRIVACY, AND DATA SECURITY.

17.1 Confidentiality. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner, including Personal Information, defined below, as confidential and proprietary information of Owner ("Confidential Information"), and, except as permitted by this Section, shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, except as permitted by

INITIALS: OWNER PP, CONTRACTOR CC.

this Section, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

17.2 Data Privacy. To the extent Contractor receives or generates personal information (including, but not limited to, name and contact information) regarding individuals including, but not limited to, Owner's homebuyers, in the course of performing the Work ("Personal Information"), Contractor shall comply with all laws applicable to collection, processing, protection and destruction of Personal Information ("Applicable Data Protection Legislation"), including state data breach laws. Contractor agrees that it is a "service provider," or similar classification, under Applicable Data Protection Legislation. Contractor will not access, sell, use, disclose, reproduce or retain such Personal Information for purposes other than performance of the Work under the Agreement or to comply with applicable law. Contractor certifies, it understands and will comply with, the foregoing restrictions, and will ensure that third-parties to which it discloses Personal Information, if any, are likewise restricted pursuant to a written contract. Furthermore, Contractor shall comply with Owner's directions as to Personal Information, as may be necessary to comply with applicable law including, but not limited to:

17.2.1 Deletion of Personal Information. Upon written request from Owner regarding the Personal Information of an individual who has requested its deletion, Contractor will promptly, but in all cases within twenty (20) days of the request, delete the Personal Information in its possession or control and certify in writing to Owner that it has complied with the request. If Contractor is required or permitted to maintain such individual's Personal Information under applicable law, Contractor will not be required to comply with the deletion requirements of this Subsection as to such Personal Information and will instead provide, within twenty (20) days of the request, a written statement to Owner that identifies the reason for the non-deletion.

17.2.2 Access to Personal Information. Within twenty (20) days of a request by Owner, Contractor shall reasonably cooperate with Owner to identify and provide to Owner the specific pieces of Personal Information regarding an individual who has requested access to their Personal Information.

17.2.3 Correction of Personal Information. Within twenty (20) days of a request by Owner, Contractor shall reasonably cooperate with Owner to correct Personal Information regarding an individual who has requested correction to their Personal Information.

17.2.4 Individual Requests Received Directly by Contractor. If Contractor receives a request to delete, access, or correct Personal Information directly from an individual, Contractor will promptly, but in all cases within ten (10) days of receipt of the request, inform Owner of the request and, after consultation with Owner, instruct the individual to contact Owner directly.

17.3 Data Security. In compliance with applicable law and generally accepted industry practices, Contractor will implement and maintain organizational, administrative, physical, and technical safeguards ("Safeguards") to ensure the confidentiality and security of Confidential Information, including Personal Information, and to protect against any threats, hazards, and unauthorized, unlawful or accidental access, damage, destruction, loss, disclosure, processing, acquisition or use of Personal Information. These Safeguards will include, without limitation: (a) generally accepted industry practices for physical security of all premises; (b) generally accepted industry practices for precautions with respect to the employment, or hiring, of Contractor's personnel and third party service providers; (c) generally accepted industry practices for precautions with respect to access by Contractor's personnel and third party service providers; (d) an appropriate network security program with generally accepted industry practices for access and data integrity controls, testing and auditing of all controls, and appropriate corrective action and incident response plans; and (e) generally accepted industry practices for virus and malware protection. As part of such Safeguards, Contractor will only store and access Personal Information in the United States. Furthermore, within twenty (20) days of the expiration or termination of the Agreement or the request of Owner, Contractor will destroy all, or a requested portion, of Personal Information, all copies, reproductions, summaries or extracts thereof and all evaluations and analyses created by Contractor based on or derived from any Personal Information that are in Contractor's possession, and Contractor shall not retain copies, extracts or other reproductions of the Personal Information; provided, however, that, absent a request by Owner to delete specific Personal Information for which no legal basis exists for Contractor to retain such Personal Information, Contractor: (a) may retain one copy of the Personal Information with its legal counsel for use in connection with the obligations of Contractor hereunder; (b) shall not be required to destroy or return any system back-up media such as copies of any computer records or files containing Personal Information that have been created pursuant to automatic archiving or back-up procedures on secured central storage servers, which cannot reasonably be deleted or returned; and (c) may retain such copies as necessary for compliance with applicable law.

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

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

SOUTH CAROLINA VERSION (REV. AUGUST 26, 2020)

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INITIALS: OWNER RS, CONTRACTOR C.C.



**KENISON, DUDLEY
& CRAWFORD, LLC**
ATTORNEYS AT LAW

Cara Smith
Paralegal
325 West McBee Avenue,
Suite 301
Greenville, SC 29601
864.242.4899
smith@conlaw.com

September 20, 2024

Via Electronic Filing

Clerk of Court for the Fifth Judicial Circuit
Post Office Box 2766
Columbia, South Carolina 29202

Re: *Sherman Howell, et al. v. D.R. Horton, Inc., et al.*
CA No.: 2024-CP-40-03510

To Whom It May Concern,

Please find enclosed D.R. Horton, Inc.'s Supplemental Exhibit to its Memorandum in Support of Motion to Stay and Compel Arbitration in the above-referenced matter.

Should you have any questions, please contact our office at 864-242-4899.

With kindest regards,

A handwritten signature in blue ink, appearing to read "Cara Smith", written over a horizontal line.

Cara Smith, Paralegal

The Villages at Long Cove
159/2020
526492159

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."

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.

☒ **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.

(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.

(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:

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

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.

(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

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

“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.

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, MERCHANTABILITY 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.

	DS 	DS 	DS 
Initials	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

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	DS	DS
	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

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.

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

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.

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.

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)

ELECTRONICALLY FILED - 2024 Sep 20 4:22 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4003510

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

Date

Buyer: Sherman Howell

DocuSigned by:

Claudia Howell

D93629FC3AAF456...

12/29/2021

Date

Co-Buyer: Claudia Howell

Date

Purchaser's Current Mailing Address:

465 Fairford Rd
Blythewood, SC 29016
US

Purchaser's Home Phone:
Mobile Phone: [REDACTED]
Work Phone:
Purchaser's Email: [REDACTED]

Co-Buyer's Current Mailing Address:

465 Fairford RdBlythewood, SC 29016
Co-Buyer's Home Phone:
Mobile Phone: [REDACTED]
Work Phone:
Co-Buyer's Email: [REDACTED]

SELLER:

D.R. Horton, Inc.

DocuSigned by:

Judy L Anderson

7C8A91A22024485...

1/4/2022

Date

Judy L Anderson

Asst. Secretary

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

[REDACTED]

Sales Rep License Number: 48944



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								

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:					

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							

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 Fluorescent 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
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
Color:			Location:				
DEAKO LIGHT SWITCHES (WHOLE HOME)							
SWHOMCON	0	12/29/2021	Wayne Vincent Valsecchi		1.0000	\$ 0.00	\$ 0.00
Color:			Location:				
HOME IS CONNECTED (SMART HOME PACKAGE)							

Sub-Total \$ 0.00

Total: \$11,750.00

Color Selections

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.”

Buyer(s): Sherman Howell and Claudia Howell, Community: The Villages at Long Cove, Plat: 159/2020/P2AM1, Address: 564 Pine Knot Road, Sales Rep: Wayne Vincent Valsecchi

Job: 526492159
Printed: 12/29/2021

(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...
12/29/2021
Date
Buyer: Sherman Howell
DocuSigned by:
Claudia Howell
D93629FC3AAF456...
12/29/2021
Date
Co-Buyer: Claudia Howell
DocuSigned by:
Wayne V Valsecchi
E5D1E3E307AB493...
12/29/2021
Date
Sales Rep: Wayne Vincent Valsecchi

SELLER:

D.R. Horton, Inc.
DocuSigned by:
Judy L Anderson
7C8A91A22024485...
1/4/2022
Date
Judy L Anderson
Asst. Secretary
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	3 rd floor/bonus room option	Kitchen island
Media rooms	Bay window (per plan)	4 th /5 th 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 CH
 Buyer 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.

☐ **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**

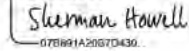
☐ **10 – Final Inspection**

☐ **11 – Certificate of Inspection**

☐ **12 – Quality Control**

- Washer (Optional)
- Dryer (Optional)
- Refrigerator (Optional)

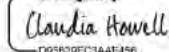
- Lead Glass Window Insert (per Plan)
- Blinds
- Screens

13 - Buyer Walkthrough**Purchaser:** by:
07B691A2007D430

12/29/2021

Buyer: Sherman Howell

Date


D05B29FC3A4F456

12/29/2021

Co-Buyer: Claudia Howell

Date

SELLER:**D.R. Horton, Inc.**

DocuSigned by:


7C9AB1A22024M05

1/4/2022

Judy L. Anderson

Date

Asst. Secretary

For Internal Purposes Only:
F6D1F3E07AB408

12/29/2021

Sales Rep: Wayne Vincent

Date

Valsecchi

The Villages at Long Cove

159

526492159

**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.

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

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12/29/2021

Buyer: Sherman Howell

Date

DocuSigned by:

Claudia Howell

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12/29/2021

Co-Buyer: Claudia Howell

Date

Seller:

DocuSigned by:

D.R. Horton, Inc.

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1/4/2022

Judy L Anderson

Date

Asst. Secretary

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 ☒ detached ☐ 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.
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, ☒ on a slab / ☐ 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

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

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

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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.

DocuSigned by:

Judy L Anderson

7C8A91A22024485...

1/4/2022

Judy L Anderson

Date

Asst. Secretary

For Internal Purposes Only

Seller's Sales Representative:

DocuSigned by:

Wayne V Valsecchi

E5D1E3E307AB493...

12/29/2021

Sales Rep: Wayne Vincent Valsecchi

Date

ELECTRONICALLY FILED - 2024 Sep 20 4:22 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4003510



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*.

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: DocuSigned by: <i>Sherman Howell</i> 07B891A20B7D430... Buyer: Sherman Howell DocuSigned by: <i>Claudia Howell</i> D93629FC3AAF456... Co-Buyer: Claudia Howell 12/29/2021 Date 12/29/2021 Date	Seller: D.R. Horton, Inc. DocuSigned by: <i>Judy L Anderson</i> 7C8A91A22024485... Judy L Anderson Asst. Secretary 1/4/2022 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/>

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.

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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SOUTH CAROLINA DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS

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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.

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:

 07B891A20B7D430...

Buyer: Sherman Howell

12/29/2021

Date

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/>

DocuSigned by:
Claudia Howell
D93629FC3AAF466...

Co-Buyer: Claudia Howell

12/29/2021
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
07E891A2087D430

12/29/2021

Buyer: Sherman Howell

Date

DocuSigned by:
Claudia Howell
D33629FC3A4F48E

12/29/2021

Co-Buyer: Claudia Howell

Date



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.

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:	Seller:
DocuSigned by: Sherman Howell 07B891A20B7D430... 12/29/2021	DocuSigned by: Judy L Anderson 7C8A91A22024485... 1/4/2022
Buyer: Sherman Howell	Date
DocuSigned by: Claudia Howell D93629FC3AAF456... 12/29/2021	Judy L Anderson
Co-Buyer: Claudia Howell	Date
	Asst. Secretary
	<u>For Internal Purposes Only</u> SELLER’S SALES REP:
	DocuSigned by: Wayne V Valsecchi E5D1E3E307AB493... 12/29/2021
	Sales Rep: Wayne Vincent Valsecchi
	Date

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Internal # The Villages at Long Cove/2159

Sherman Howell and Claudia Howell

526492159



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

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.

Internal # The Villages at Long Cove/2159

Sherman Howell and Claudia Howell

526492159

3. **Real Estate Certification.** Co-Broker hereby certifies as follows:

- The terms, conditions, representations and warranties contained in the Agreement are true, to the best of my knowledge and belief; and
- 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...

Broker Agent: Tonya Peay

12/29/2021

Date

Agent License Number:

[REDACTED]

SELLER:

D.R. Horton, Inc.

DocuSigned by:
Judy L Anderson
7C8A91A22024485...

Judy L Anderson

Asst. Secretary

1/4/2022

Date

For Internal Purposes Only

SELLER SALES REP:

DocuSigned by:
Wayne V Valsecchi
E5D1E3E307AB493...

Sales Rep: Wayne Vincent Valsecchi

12/29/2021

Date

[REDACTED]

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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 SubdivisionCo-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.

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**



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 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.

DocuSigned by:
Judy L Anderson
7C8A91A22024485...

1/4/2022

Judy L Anderson

Date

Asst. Secretary

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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.

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 #: [REDACTED] Work Phone #: Home Phone #:

Email Address (primary): [REDACTED] Email Address (secondary): [REDACTED]

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

12/29/2021

Buyer: Sherman Howell

Date

DocuSigned by:
Claudia Howell
D93629FC3AAF456...

12/29/2021

Co-Buyer: Claudia Howell

Date

ELECTRONICALLY FILED - 2024 Sep 20 4:22 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4003510

RECEIVED

Nov 15 2024

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

Case No. 2024-CP-40-03510

Sherman and Claudia Howell,

Respondents,

v.

D.R. Horton, Inc.,

Appellant.

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.

NOTICE OF APPEAL

D.R. Horton, Inc. (“Appellant”) appeals the Honorable Martha M. Rivers’ Order denying D.R. Horton’s Motion to Stay and Compel Arbitration, attached as **Exhibit 1**. Counsel for the Appellant received notice of entry of the Order on October 22, 2024.

[SIGNATURE ON FOLLOWING PAGE]

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RECEIVED

Nov 15 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

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APPEAL FROM RICHLAND COUNTY

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The Honorable Martha M. Rivers

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D.R. Horton, Inc.,

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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.

PROOF OF SERVICE

The undersigned does hereby certify that on November 15, 2024, a copy of the Notice of Appeal was served by email on all counsel of record as follows and filed with the Clerk of Court for Richland County Court of Common Pleas via electronic filing. A copy of the sent email is enclosed as **Exhibit 1** with this Proof of Service.

I certify that I have caused the service of the Notice of Appeal on the Third-Party Defendants L&M Electric, Inc. and Unique Stone Creations by depositing a copy in the U.S. Mail, postage pre-paid, addressed as follows:

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EXHIBIT 1

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Cc: [John Crawford](#); [Kim Wooten](#); [David Paavola](#); [Jacob Henerey](#); [Amelia Farmer](#); [Angelia Shaw](#); [Cara Smith](#)
Subject: Sherman and Claudia Howell v D.R. Horton, Inc. (Case No. 2024-CP-40-03510)
Date: Friday, November 15, 2024 12:46:00 PM
Attachments: [24.11.15 Howell Notice of Appeal.pdf](#)
[image001.png](#)
[Ex 1 24.10.22 Order Denying DRH Mtn to Stay and Compel Arbitration.pdf](#)

Dear Counsel:

Attached please find a Notice of Appeal and Exhibit regarding Sherman and Claudia Howell v D.R. Horton, Inc. (Case No. 2024-CP-40-03510). We plan on filing this in Circuit Court and in the Court of Appeals shortly.

With kindest regards,

****PLEASE NOTE THAT OUR GREENVILLE OFFICE IS NOW LOCATED AT 325 W. MCBEE AVENUE, SUITE 301, GREENVILLE, SC 29601. ****



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STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 5
COUNTY OF RICHLAND) DOCKET NO. 2024-CP-40-3510

SHERMAN and CLAUDIA HOWELL
Plaintiff,
versus
D.R. HORTON, INC, et al
Defendant.

H E A R I N G
BEFORE THE HONORABLE MARTHA M. RIVERS

DATE: September 4, 2024
LOCATION: South Carolina Circuit Court 5

TRANSCRIBED BY: LATASHA JEFFERSON

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EXHIBITS

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: All right. Next on the roster is Sherman
2 Howell versus D.R. Horton, Inc., 2024-CP-40-3510. A lot of
3 attorneys on this one: Ms. Babcock, Mr. Dellweller (ph), Mr.
4 Duggan, Mr. Hills, Mr. Lewis, Mr. Richardson,
5 Mr. Thompson, Mr. Wiley, are all potentials for the
6 Plaintiff. John Crawford, Amelia Morgan Farmer, David
7 Paavola, and Ms. -- see I want to say Tebow again. I don't
8 know if she's still here. She was here earlier today.

9 MR. PAAVOLA: Your Honor, this is David Paavola on
10 behalf of D.R. Horton. He's with me today.

11 THE COURT: I -- I -- I -- I make her name
12 Shakespearean, and she told me that wasn't correct, but.

13 MR. PAAVOLA: Tebow -- Tebow is the --

14 THE COURT: Thank you.

15 MR. PAAVOLA: Yeah.

16 THE COURT: Thank you.

17 MR. PAAVOLA: Like Tim Tebow

18 THE COURT: Oh, yeah.

19 MR. PAAVOLA: The way I remember it.

20 MR. DUGGAN: Your Honor, good afternoon. This is Ian
21 Duggan and Will Lewis, on behalf of the Plaintiffs in the
22 house.

23 THE COURT: All right. Thank you. And I saw
24 Mr. Richardson's name earlier. Did he go off? No, he's
25 (crosstalk).

1 MR. DUGGAN: Yes, your Honor, he is on behalf of the
2 Plaintiffs as well.

3 THE COURT: I'm sorry? Does anyone --

4 MR. RICHARDSON: (Inaudible) here.

5 THE COURT: Okay. Do you all know of anyone else who
6 is here that we need to let in?

7 MR. DUGGAN: Alicia Turner, perhaps, ma'am, with Mullen
8 Wiley. If she's not here, your Honor, we can go ahead and
9 proceed.

10 THE COURT: I do not see Alicia Turner.

11 MR. HILLS: Thompson, your Honor.

12 THE COURT: Thompson, yes. I do see Ms. Thompson.

13 MR. DUGGAN: Alicia Thompson. My apologies, Alicia.

14 MR. HILLS: Your Honor, this is Jamie Hills. I'm here
15 on behalf of the Plaintiffs as well, but Mr. Duggan --

16 THE COURT: You're in. You just haven't turned on your
17 video, or else you're here by phone I'm not sure.

18 MR. HILLS: Yes, ma'am.

19 THE COURT: Mr. Richardson is not turning on his video.
20 There he is. Mr. Hills, do you want to turn on your video?
21 There we go. Anyone else that you all know of?

22 MR. DUGGAN: No, your Honor.

23 MR. PAAVOLA: I don't know anybody else for
24 (crosstalk).

25 THE COURT: I don't think so. We don't see anyone on

1 this. All right.

2 MR. PAAVOLA: Okay.

3 THE COURT: All right. I believe this is the motion of
4 D.R. Horton, is that correct?

5 MR. PAAVOLA: Yes, your Honor.

6 THE COURT: All right. You may proceed.

7 MR. PAAVOLA: May it please the Court, your Honor.
8 David Paavola, on behalf of D.R. Horton. We are -- before
9 the -- your court on our motion to compel arbitration. This
10 is a residential construction defect case. D.R. Horton built
11 a home at 564 Pine Knot Road in Blythewood, South Carolina,
12 and sold to the Howells in 2021. The Howells are now
13 complaining of a number of defects, all rise out of
14 construction of the home. We are looking at whether an
15 agreement disputes arbitrable. There's two questions you
16 have to ask. So one: Does an arbitration provision to
17 exists? And two: To the claims fall from the scope of that
18 provision?

19 So as the first question, whether an arbitration
20 provision exists, we point the Court to Exhibit A. Our memo
21 support or motion to compel. Exhibit A is a home purchase
22 agreement between D.R. Horton and the Howells. Paragraph 15
23 of that agreement is an arbitration provision, complies with
24 South Carolina requirements, and how specifically initialed
25 that provision as -- as well.

1 We also have of all the -- the construction defects are
2 alleged, and the work was completed by subcontractors, not
3 D.R. Horton. And we've -- have independent contract
4 agreements. All of the subcontractors, we've attached those
5 Exhibit B, those also require arbitration. And so those are
6 the agreements that exist to -- to propel arbitration in this
7 instance.

8 And the second question is whether the -- the claims
9 fall from the scope of the arbitration provision in that
10 contract. So in this instance, the Court's not looking to
11 the merits of the claim. It's just really analyzing the
12 validity of the arbitration provision on a standalone basis,
13 and asking, "Does that -- does the clause apply to the
14 dispute?" And then after that, it will ask, "Is there
15 anything objectionable about the arbitration clause stuff
16 that would invalidate it?"

17 Here, the -- the Howells' complaint of numerous
18 construction defects including: ceiling joists, or four
19 joists of the second story, roof installation, roof flashing,
20 roof cross installation, site installation, stone near
21 cladding. And their cause of action, I won't go through them
22 all, but they all arise out of D.R. Horton's construction of
23 the home, and the sales of the house. Installation of
24 materials, allegations that -- that were not -- the house
25 wasn't built in accordance with manufacturer's instructions,

1 and building codes, and whatnot. So all our cause of actions
2 arise out of the construction sale of the home. So clearly,
3 falls within the scope of the arbitration provision in the
4 contract that they signed with -- with D.R. Horton.

5 We were asking what law governs this -- your analysis?
6 It's important that the Court understand that this is
7 governed by the Federal Arbitration Act, as well as
8 South Carolina Arbitration Act. But in order to determine if
9 an agreement is governed by the FAA, we have to establish
10 that there's a dispute between the parties, which we have.

11 A written agreement that includes arbitration provision
12 purporting to cover the dispute, and here we have all the
13 cause of action rights out of construction. Refusal
14 arbitrate, which we have in the last element is just the
15 relationship to interstate commerce. Does this transaction
16 affect interstate commerce?

17 As in regards to the construction of new homes, the
18 South Carolina Supreme Court has held repeatedly that the
19 construction of new homes clearly involves the interstate
20 commerce, and that's the Damico case, a number of cases from
21 the Supreme Court. And so that situation, the FAA applies --
22 the FAA is broad. There's a number of cases that we cited in
23 our brief, discussing how broad the FAA is, and applies to
24 all disputes are arguably part of the fault in the
25 arbitration provision.

1 The -- the next question, I -- after -- I think the
2 Court finds the -- our provision -- provision is applicable
3 to this dispute, and it applies as well as any basis to set
4 it aside. The Plaintiffs have identified, I think, just two
5 basis where they say to set aside, one being the merger
6 doctrine, merger by D doctrine, and two being
7 unconscionability.

8 So I'll address each of those. In the merger -- under
9 the merger doctrine, we've not been able to find any report
10 appellate cases upholding the merger doctrine to merge an
11 arbitration clause out of a home construction contract.
12 We've cited a number of cases from other jurisdictions, and
13 that courts have dealt with this very issue, and have
14 rejected the idea that the merger doctrine merges out an
15 arbitration provision in a current construction contract.

16 Even so, there's a couple exceptions to the merger
17 doctrine. One is -- is it's intent is shown that it was
18 never the party's intent to -- to merge that provision into
19 the deed. There's one South Carolina case on this issue,
20 Carlson v. SC State Plastering, 44 SC 250, really the only
21 Carolina case -- appellate case address in this merger of
22 doctrine issue. In that -- in that case, the court ruled
23 that the provision was not merged into the deed.

24 Here, there's -- I mean -- it's clearly reading the
25 contract, there's no intent to merge the arbitration

1 provision out into the deed. The Paragraph 15 -- the
2 arbitration clause, talks about how it applies to the
3 construction of the home itself, disputes over the
4 construction of the home, and dispute related to agreement.
5 Clearly, a homeowner is not going to have dispute about the
6 construction dollar in it living in -- inside the home. So
7 the eckler(ph) is intended to last beyond the deed.

8 Paragraph 14 also provides warranties that are not in
9 the deeds. And so it would make -- it wouldn't make sense to
10 have those provisions being merged out of existence in the
11 deed. And it really wouldn't make any sense to have a deed
12 as a huge arbitration provision in it. And that compares
13 with the contract.

14 Another exception to the merger doctrine is the
15 collateral agreement exception. All we have to do under this
16 exception is show that the agreement to -- to arbitrate is
17 independent distinct from the main contract. It's
18 consistent, and the parties would not reasonably have
19 expected to -- it to be a in the deed. And here, that's --
20 that's the same -- really the same situation I just
21 described, which is the arbitration provision itself is a
22 separate agreement within the contract, and probably would
23 not reasonably expect that whole provision to go into a deed.
24 That's just not how, you know, how deeds are done.

25 And finally, this merge by doctrine dispute, we --

1 again, besides a number of jurisdictions that have looked at
2 this very question in the home construction context, and all
3 rejected it. You know, merger is really limited covenants,
4 subtitle, possession, and quantity, and other things like
5 growing crops on the property. It's not intended to merge
6 out things like arbitration provisions in a related
7 construction contract.

8 THE COURT: Okay.

9 MR. PAAVOLA: And then finally -- just finally,
10 your Honor, just brings that (inaudible) brought the
11 unconsciously argument that, you know, in order to be
12 successful in general contract defenses to the arbitration
13 provision, the court has to look at the specific arbitration
14 provision itself. So is there anything unconscionable about
15 the provision?

16 So here, we would say there's not the -- the provision
17 we've set forth on page two of our brief, every provision of
18 it -- it's fairly standard. There's nothing I'd say
19 objectionable about it. It requires both parties to
20 arbitrate in the county where the property is located. AAA
21 -- AAA rules apply, probably has to pay the fee, but the
22 arbitrator can allocate fees later, and it's binding on both
23 parties. None of these terms are unconscionable,
24 unreasonable, and -- and none of these are the types of terms
25 that courts in the past have found unconscionable. So such

1 as -- you know, trying to shorten statute of limitations, or
2 only allowing the builder itself to determine whether
3 something is arbitrary, or not. Those are some provisions
4 that courts in the past have -- have said are unconscionable.
5 But here, we don't have anything like that.

6 And finally, I just point the Court to at least a
7 couple cases we cited, Mark v. Great Sergeant Holmes, recent
8 South Carolina Appellate Court case, upholding very similar
9 arbitration provision in the construction contract context.
10 We've cited that and explained that in brief.

11 And then we also attached a recent order from
12 Judge -- Judge Goodstein in Brooklyn County, in a
13 construction -- construction case where she took out
14 arbitration as well. Same provision we have here. So just -
15 - that's for the Court's information. I know the Plaintiffs
16 provide other certain courts that have denied arbitration,
17 but we also have some of the opposite way as well. So, Your
18 Honor, I'll -- that's -- that's all I'll say for now. If I
19 can answer the questions and respond to the -- the
20 Plaintiffs.

21 THE COURT: Oh, we'll head over to the other side right
22 now. Who's arguing first? Are all of you arguing?

23 MR. DUGGAN: No, your Honor. I think it's just going
24 to be me, and I appreciate having the rest of my co-counsel
25 here today. I'm Ian Duggan with

1 Callison Tighe & Robinson in Columbia, South Carolina, here
2 on behalf of the Howells. And for the same reasons, this
3 Court should deny D.R. Horton's motion to compel arbitration
4 as set forth in the Supreme Court and the Court of Appeals
5 decisions in Smith v. D.R. Horton, cited throughout our
6 brief. And the three sisters circuit court opinions
7 referenced on page seven are brief.

8 I -- I'd like to start in a similar fashion before
9 getting to our -- our legal arguments, like Mr. Paavola did,
10 and sort of set the scene with the facts here, and -- and
11 talk about the unconscionable behavior of D.R. Horton, and
12 how it informs the negotiations here. Briefly, your Honor,
13 this house the Howells now own was originally supposed to be
14 sold to another couple. They went in and inspected the home,
15 and noticed some issues that they put D.R. Horton on notice
16 for the same issues that are subject to this dispute.

17 The county was informed, the county called D.R. Horton
18 to fix the issues. In particular, this I-joists, this
19 structural beam issue that we have focused on in our
20 complaint. D.R. Horton said, "No problem, we'll take care of
21 it." And then they covered up the I-joists, but never took
22 care of the issue. Subsequently, those parties backed out of
23 the deal and D.R. Horton marketed this home to my clients.
24 The Howells asked, "Hey, what happened with the other
25 parties?" And D.R. Horton told them, "They couldn't get

1 financing." That wasn't true. And so the Howells purchased
2 this home, not knowing what was going on, which was fraud.

3 Later, they started to see symptoms of these
4 construction defects. And we know D.R. Horton didn't do the
5 fixes because we put a camera up in the ceiling and saw the
6 same issues. In fact, what we found, and this is on page
7 three of our brief, is the actual engineer report that
8 D.R. Horton had commissioned, pasted it to the joists saying,
9 "You all need to do this fix." They just never did it. It
10 is a -- a literal, in addition to being a metaphorical cover
11 up, and, your Honor, what's even more concerning to us, this
12 is -- is not the only instance of D.R. Horton performing this
13 same defect. There's a multitude of other homes in this same
14 neighborhood constructed both before and after with this same
15 mission. And indeed, there's hope across the state. So with
16 that initial sort of scene setter in mind, I want to talk
17 about our legal arguments here. I'm going to start like Mr.
18 Paavola did with this doctrine of merger, then I'm going to
19 turn to the unconscionable argument.

20 I start with a merger doctrine because we do not even
21 get to the question of whether this arbitration provision is
22 enforceable, until we find out if the one still exists. And
23 the -- basically, the merger doctrine says "Once the property
24 transaction closes, the deed regulates the rights and
25 liabilities of the parties." D.R. Horton says that two

1 exceptions apply here, but it also concedes in its brief that
2 it bears the burden of showing to the Court that these
3 exceptions apply by clear and convincing evidence. And in
4 other words, you have to be firmly convinced of their
5 position, not just preponderance of the evidence.

6 The first exception they point to is that merger was
7 not intended here. And of course, that -- that focuses on
8 the party's intentions. The first place we should look to
9 for evidence of the party's intentions is the actual
10 agreement, the contract -- purchase contract itself. If you
11 look at Paragraph 18(c) of that agreement, it says "From and
12 after the closing, each party shall have the right to pursue
13 the other party for breach of any covenant agreement that
14 expressly survives the closing."

15 In other words, the agreement itself says, "In order
16 for something to survive closing, it's got to say it
17 expressly survives." Now, I won't make, your Honor, turn
18 throughout the -- this agreement, but I would point you to
19 paragraph 9(b), 9(d), and paragraph 10, where D.R. Horton
20 says, "This obligation expressly survives the close." It
21 uses that same language, and none of those paragraphs are
22 applicable to this dispute here. Where you do not see that
23 "Expressly survives" language is in the arbitration
24 provision. Paragraphs 14 and 15 here. No such express
25 language is set forth, and there -- and therefore, D.R.

1 Horton cannot meet its clear and convincing burden.

2 D.R. Horton cites to this Carlston case. It's Court of
3 Appeals decision from 2013. And we agree that it's very
4 instructive here, but not for the reasons that D.R. Horton
5 pauses. What Carlson first did was acknowledge and recognize
6 that an arbitration provision could be merged into a deed.
7 Otherwise, there would've been no point to have the
8 discussion about whether the merger doctrine applied in that
9 instance. And in fact, the Court of Appeals said that, "The
10 merger document did not apply." But why -- why is the key
11 answer? And there, the Court of Appeals looked to the
12 agreement. And the language in that agreement in Carlson
13 said, "After closing, every controversy, or claim arising out
14 of, or relating to this agreement shall be settled by binding
15 arbitration." That's express language, that's clear and
16 convincing evidence of the party's intention. We simply do
17 not have that here, your Honor. And to the extent that
18 D.R. Horton contends to have to put an arbitration --
19 arbitration provision, and a deed, that -- that -- that's not
20 true.

21 Carlson again, ruled on in 2013, roughly eight years
22 before the Howells purchased this home -- gave D.R. Horton
23 this road map that they needed to have an arbitration
24 agreement survive close. They simply elected not to follow
25 it. And for that reason, there's no arbitration agreement

1 that survived the closing, and D.R. Horton's motion to compel
2 arbitration should be denied.

3 I'll -- I'll turn to the second exception that
4 D.R. Horton says applies here. And that is the so-called,
5 "Collateral Agreement Exception." One of the elements that
6 D.R. Horton must show, is that by the time closing came
7 around, it had only partially performed its obligations, and
8 there were other obligations you had to perform. I return to
9 the language of the agreement. If you look at Paragraph 14
10 of this agreement, D.R. Horton said, "After closing, it shall
11 have no liability or obligation to the Howells, the
12 purchasers, of any nature whatsoever."

13 Confirming the sentence sentiment, Paragraph 14 goes on
14 to say, "D.R. Horton should not be liable for any reason
15 under any circumstances for monetary damages of any cause."
16 But in another way, D.R. Horton cannot say that it has a
17 collateral obligation to do something after closing when the
18 agreement itself dissolves D.R. Horton of any post-closing
19 obligations. Can't use this provision both as his Horton
20 shield. But that brings me to my second point on this
21 exception. And -- and for purposes of this analysis, I just
22 want to accept for now D.R. Horton's position that -- that
23 the arbitration agreement is a separate agreement for
24 purposes of proving this exception to the merger doctrine.

25 So D.R. Horton says, "It's a separate agreement,

1 separate contract to arbitrate." Among other things in order
2 to have an enforceable contract, your Honor, you have to have
3 an offer and an acceptance. So I will turn the Court's
4 attention to the signature page. And -- and, your Honor, can
5 use either our brief or D.R. Horton's brief. We pointed this
6 out to our footnote that the copy that we submitted to the
7 Court did not have a D.R. Horton's signature. The next day
8 D.R. Horton filed its brief, your Honor, and attached the
9 same agreement without a D.R. Horton's signature. Turning to
10 it myself right now, your Honor, and I'm just looking at the
11 copy that D.R. Horton submitted.

12 And you'll see that blank space where a representative
13 of D.R. Horton was supposed to sign. If you go back -- but
14 you will see this -- this Mr. Wayne Vincent Valsecchi, my
15 apologies to Mr. Valsecchi if I'm mispronouncing his last
16 name. If you turn to the proceeding page, it says that "The
17 seller sale representative, Mr. Valsecchi here, does not have
18 authority to execute this contract on behalf of seller, or
19 otherwise buy and sell."

20 If you go up just a paragraph above that, it says "This
21 instrument shall be regarded as an offer by the first party
22 to sign until fully executed by the both parties. At which
23 time, shall be (inaudible) on both parties." Your Honor,
24 certainly, did the Howells appear to have signed this
25 contract? They closed on the home, that contract was

1 performed, and now D.R. Horton is saying there's a separate
2 agreement to arbitrate. Well, your Honor, that's not
3 correct. Based on the evidence that D.R. Horton has
4 submitted, and the language of this agreement, the Howells --
5 the Howells arguably made an offer to arbitrate. That offer
6 was never signed and acknowledged by D.R. Horton, rather, the
7 Howells withdrew that offer by the filing of this lawsuit,
8 and serving it on D.R. Horton.

9 And the law on this is explained "The law does not
10 require a notice of withdrawal of an offer to be in any
11 particular form. Rather, it is sufficient that the offer
12 does some act inconsistent with it. And the offer has
13 knowledge of Subjects Act." And that's *Shirey v. Bishop*, 431
14 SC 412. I believe that's a 2020 Court of Appeals opinion,
15 and that's citing to *Masonic Temple v. Ebert*, 199 SC 5 of
16 1942 Supreme Court opinion.

17 And so, your Honor, in the context of withdrawing an
18 offer to arbitrate, there can be no act more inconsistent
19 with that offer than filing the summons in complaint, and
20 serving it on the opposing party. Your Honor, for the sake
21 of clarity, in case that wasn't enough, any such offers are
22 now withdrawn, and was rescinded on behalf of the Howells.
23 There is no agreement to arbitrate based on the -- the -- the
24 evidence that D.R. Horton has submitted in support of its
25 position today.

1 I -- I'll now turn to the unconscionable argument that
2 we've prepared, your Honor. It's our position that there is
3 no agreement to arbitrate any such agreement that did exist,
4 was merged in the deed. And if you -- that's your
5 conclusion, you really don't need to reach this
6 unconscionability argument, but if the Court desires to go
7 there we would turn the Court's attention to -- to Smith v.
8 D.R. Horton. Again, this was a trial court ruling, a -- a
9 firm by the Court of Appeal and subsequently the Supreme
10 Court. And there could really be no question under that
11 binding precedent that the various terms contained within
12 D.R. Horton's contract are unconscionable, this entire idea
13 substantially -- subsequently unconscionable, this very idea
14 that you can sell a home, and then not let anyone come back
15 against you for any damages whatsoever after you present it,
16 after they close in, I -- I mean -- that is the very
17 opinionated subsequently unconscionable. And there's really
18 no argument that what we saw here was procedure
19 unconscionable. I mean, the Howells are -- are a very lovely
20 couple, but they're not professionals in real estate or legal
21 questions, and they're up against D.R. Horton, which is the
22 self-admitted largest residential home builder in America.
23 Obviously, a very sophisticated entity. And we're dealing
24 with the same type of parties here that we're dealing with in
25 Smith. And so we both have the procedural and unconscious --

1 and substantive unconscionability here, really as a matter of
2 law.

3 The only question before the Court is whether this
4 wordsmithing that D.R. Horton performed following the Supreme
5 Court's decision in Smith v. D.R. Horton was sufficient to
6 extricate the intertwined nature of what D.R. Horton
7 previously had as a subparagraph, Paragraph 14(g), and --
8 Smith v. D.R. Horton, at which now since as Paragraph 15,
9 and, your Honor, we have -- have gone into this in great
10 detail in our written submissions. And the basic premise is
11 that, is the same that -- that was found in Smith v. D.R.
12 Horton, that this newly-graduated Paragraph 15 is so
13 intertwined and interconnected with paragraph 14 that they
14 really must be read as a whole to understand. You cannot
15 understand the various rights and obligations of parties to
16 arbitrate under Paragraph 15 without reading Paragraph 14,
17 which incorporates by reference in a multitude of areas.

18 And again, what D.R. Horton is engaged in some clever
19 wordsmithing here, what they're attempting to do today is put
20 form over function, and -- and the -- the differences here
21 really make no legal distinctions.

22 So in -- in conclusion, your Honor, we would ask this
23 Court not grant -- it's in perimeter on this sort of
24 unconscionable behavior that this Court read Paragraphs 14,
25 15 together in the same way that the Supreme Court and the

1 Court of Appeals read them together in Smith v. D.R. Horton,
2 and -- and -- and likewise our three sister's circuit courts
3 that assimilated come down and refused to compel arbitration
4 under very similar circumstances. And D.R. Horton's motion
5 to compel should be state -- we -- we expressed no opinion as
6 to these subcontractors, that's we're not privy to contract
7 with them. If they want to go arbitrate it amongst
8 themselves, that's fine, Judge.

9 THE COURT: Thank you, sir.

10 MR. PAAVOLA: Your Honor, may I respond?

11 THE COURT: I do have a question for you before you
12 respond.

13 MR. PAAVOLA: Sure.

14 THE COURT: Your -- in your motion, the attachment, the
15 signature that is attached?

16 MR. PAAVOLA: Is it a A, your Honor?

17 THE COURT: Well, I have it stapled to your memorandum
18 in support.

19 MR. DUGGAN: Yes, your Honor. That's what I was
20 referring to. I'm sorry if I was unclear in that regard.

21 THE COURT: We may have stapled it incorrectly, I don't
22 know, but it says it's page two of two. Yeah, it printed out
23 twice, apparently. It was originally part of your Exhibit A.
24 It's gotten moved around in my sheets, but it is
25 Mr. Wayne Vincent Valsecchi, and it says down at the bottom,

1 page two of two, it has "For internal purposes only", it
2 looks, like, I think that's what it says of where his digital
3 signatures overlaid on that. And then one of you has
4 provided me with the signature page from the contract, which
5 I assume that was the Plaintiffs that provided this, which
6 didn't have the D.R. Horton.

7 MR. DUGGAN: Your Honor, I believe the distinguishing
8 characteristic between the copy that we submitted, and the
9 copy that D.R. Horton submitted is that the copy that D.R.
10 Horton submitted actually had some redactions. We did not
11 redact that on our copy. And that's how I've been able to
12 tell the difference.

13 THE COURT: Okay.

14 MR. PAAVOLA: Your Honor, I don't -- I don't have any
15 -- if you're asking if there's missing signatures -- is that
16 your question?

17 THE COURT: No -- no. It is just this page and this
18 page. I don't know if this signature is supposed to be with
19 one of those subcontractors, but I went through and looked at
20 your subcontract -- subcontractor agreement during the
21 argument, and they seem very different. These do not appear
22 to be the same page. Now, if you had redacted them in some
23 way --

24 MR. PAAVOLA: I'm sorry. I can't -- I can't tell what
25 -- what page that is. If -- if --

1 THE COURT: This says it's a page two of two, I don't
2 know what page one is, I don't know.

3 MR. PAAVOLA: Okay.

4 THE COURT: I just hold it up. I don't have it to
5 share. I'm actually looking on a different computer. I
6 don't know if you all know this, but the state doesn't give
7 us extra monitors, so I haven't purchased one yet.

8 MR. DUGGAN: Your Honor -- your Honor, I -- I've --
9 I've done a quick word search, and there's a couple page two
10 of twos, the agreement itself and several addendums to it.
11 And so it -- it appears that you're looking at one of those
12 addendums.

13 THE COURT: That may be -- that's why I'm asking.

14 MR. DUGGAN: Signature page that I'm looking at is --
15 pardon me, would be found at Exhibit B to R exhibit, and that
16 would also be Exhibit A to D.R. Horton's Exhibit. And the
17 one that we're referring to, which is sort of the -- the main
18 body of the contract, Judge, is page 11 of 11.

19 THE COURT: Well, on your B -- okay, I see your B. All
20 right, now I see page 11, and then this was an Exhibit A
21 house features and options that did not have a signature.

22 MR. DUGGAN: Yes, your Honor.

23 THE COURT: Okay. And then on page 11 -- and again,
24 this one's slightly different than the other digital
25 signature, but it says "For internal purposes only

1 seller/sales representative", that's what you're talking
2 about.

3 MR. DUGGAN: Yes, your Honor --

4 THE COURT: There's no seller signature up above that,
5 which is the portion that says "D.R. Horton." So this is the
6 redacted one, it looks like. Because it doesn't have the
7 sales rep license number, anything like that, and this one
8 has all that information below it. Is that what you're
9 saying?

10 MR. DUGGAN: Yes, your Honor. And -- and by everything
11 that I've been able to look at -- at both documents, they're
12 -- they're the same documents, just D.R. Horton, and what it
13 submitted, just redacted some of that -- I guess -- sort of
14 personal information there.

15 THE COURT: Okay. Yeah. Because it has the same
16 DocuSign number on the topic. Okay. So what this page -- I
17 guess what I'm asking to Mr. Paavola, is -- is -- is this
18 supposed to be attached to your memorandum in support, these
19 two? I want to make sure I've got my documents straight.
20 These two pages here, they're the same page. They have been
21 filed with the Court. So let me see if I can find filing,
22 because I don't want to make sure we haven't mixed up any
23 filings. But I'm not sure why I have this signature from the
24 sales rep that says "Internal signature only."

25 MR. PAAVOLA: And, your Honor, I -- I -- I see the

1 document itself has a watermark says "In Process." It's --
2 it's possible that what we have in our possession is
3 something that wasn't -- not the final version of the
4 contract. That does not seem to be were Mr. Duggan is going.
5 And I'm -- I'm happy to -- I -- I see the words on there. I
6 don't -- I don't know the answer to that. If we --

7 THE COURT: Okay. It does have the watermark in parts
8 in process?

9 MR. PAAVOLA: Yes. But that says --

10 THE COURT: That. All right. First of all, is that
11 supposed to be attached to your memorandum, or did we somehow
12 get that?

13 MR. PAAVOLA: No -- I mean -- I -- we attached the
14 contract that we had in our possession from the client. And
15 -- I mean -- I'm -- I'm -- I see that now. Do I know? I do
16 not have an answer as to why I have a copy. This is in
17 process versus a final copy maybe. I'm happy to contain a
18 final copy and submit to the Court. You know, there's
19 nothing substantively different. Perhaps there's not -- if
20 there's a signature missing on this one, and is on the final,
21 that may -- may be the only difference.

22 THE COURT: Well, I think that is part of his argument
23 that there was no final signature by your client.

24 MR. PAAVOLA: You know, that I -- it seems -- I don't
25 know. Yeah, I don't know if that answer -- that is, your

1 Honor, that -- that they have a lot of processes in place. I
2 would be surprised that we don't have a -- a final contract,
3 but Plaintiffs are also alleging cause of action under the
4 contract. So they're making use of it, at the same time,
5 they're trying to get out of it. I don't think that should
6 be allowed either. So -- but I'm happy to find a different
7 person to submit the Court to replace this version.

8 THE COURT: You know, weird things have happened as you
9 -- as to what you see is there. Okay.

10 MR. PAAVOLA: I was -- it's kind of reply?

11 THE COURT: (Inaudible) to reply?

12 MR. PAAVOLA: Yeah. I just wanted to -- right -- I
13 just want to start a couple -- a couple points. First, the
14 allegations -- the factual allegations are in dispute. So
15 the background of how the sale came to be, those -- those are
16 merits against the merits of the case. Those are factual
17 disputes. So that's not part of the -- the determination of
18 whether they should be arbitrated or not. So I want to make
19 that point.

20 On -- going backwards on the unconscionability
21 argument, we brief this substantially in our memo in support,
22 and, you know, the Supreme Court made the distinction of a --
23 a combined warranty and arbitration provision versus one
24 that's separate. So Smith v. D.R. Horton, the Supreme Court
25 said, "Warranty and arbitration is combined, we can't

1 separate it." And Damico v. Lennar warranty, is separate
2 from arbitration, and Supreme Court said, "That's okay." So
3 it -- it is a distinction, and that's what the Court's done
4 is, so it's not anything we can do about that. That's --
5 that's how the Court is looking at it. So that's the
6 distinction that has to be applied in this instance.

7 The question is: Can you -- is the arbitration
8 provision a standalone? And here it is a standalone, and
9 then looking at the provision, what about it is
10 unconscionable? And here, there are no terms that are
11 unconscionable. So that's what you have to look at, which is
12 the actual language of Paragraph 15. Nothing in there is
13 unconscionable to, in the context of an arbitration
14 agreement. I got a merger doctrine. We don't think the
15 merger doctrine even applies, you know, we have to address it
16 because Plaintiffs in this instance and other instances keep
17 raising it. But unfortunately, South Carolina does not have
18 a -- a law on the merger doctrine -- much law at all. So we
19 have to look at other jurisdictions, and I've attached I
20 think five, at least five of our jurisdictions until this
21 very question that said merger in this context of a home
22 construction, it does not apply. The intent is to merge
23 things related to the deed, and -- and not these other
24 agreements. Because it wouldn't make sense to -- there's
25 that homeowners have rights as well in here, that when we

1 merge out of existence, we were to apply to the home -- the
2 whole home purchase agreement.

3 THE COURT: Let me -- let me flip this just for
4 argument's sake. Can you tell me -- you may not have thought
5 about this, but can you tell me what in the agreement did
6 merge, if it is in purposes of the deed?

7 MR. PAAVOLA: Well, I think it's -- it is -- it is the
8 title. It's all the things we've identified, you know, in
9 the -- in the --

10 THE COURT: That they have to convey title? Uh-huh.

11 MR. PAAVOLA: Yeah. It is title, possession -- let's
12 say quantity of title implements, you know, things, the
13 covenants, things that address in deeds. So it's -- it
14 really limits that transfer of the property itself. That's -
15 - the transfer of the property is part of the agreement.
16 It's not the entire agreement. It's much more in the
17 construction piece. That's not all part of the -- the
18 transfer of the property is one -- one part of the agreement.
19 The rest of it is -- is still survives, so I'll stress the
20 point --

21 THE COURT: So you're separating out the construction
22 of the home on the property with the transfer of the property
23 itself?

24 MR. PAAVOLA: Right. Transferring it is one part of
25 the agreement, it's not the entire part of the agreement.

1 And the -- the arbitration provision, it -- it -- it
2 envisions that disputes over construction will be brought up,
3 it may arise to the future, and those will be arbitrated as
4 what the parties agreed to. Those clearly wouldn't be
5 something that would arise before the homeowners in the
6 house, living there, owns it. So we (inaudible) merger
7 doctrine even applies. And again, we've said a number of
8 cases from our jurisdiction, so directly on point that reject
9 that application of the merger and move to doctrine.

10 THE COURT: Okay.

11 MR. PAAVOLA: I'm sure there's probably something else
12 I forgot to say, but --

13 THE COURT: I know, because I interrupt you.

14 MR. PAAVOLA: -- at this point -- at this point --

15 THE COURT: And that's why I want to give you a chance
16 to -- to talk about it. I did want to ask you too -- and you
17 -- you are -- in your argument, you're saying the arbitration
18 clause itself is not unconscionable, and that's where
19 unconscionability comes into play, is whether the arbitration
20 clause is unconscionable. Am I -- am I correct in that
21 statement?

22 MR. PAAVOLA: Yes, your Honor. Sure.

23 THE COURT: No, that's fine. Is that --

24 MR. PAAVOLA: Yes, that's right.

25 THE COURT: -- did I correctly state that?

1 MR. PAAVOLA: That's right.

2 THE COURT: Okay. So -- and I think what the
3 Plaintiffs are arguing is that there may be some -- if they
4 are getting the facts of the case, because they want to say,
5 "Hey, their -- your clients' behavior has been
6 unconscionable", but, you know, well, pin that, right? But
7 also there are other parts of this agreement that could be
8 seen as unconscionable. Specifically, they keep pointing out
9 that the attempt to waive all potential warranties and
10 liabilities, which is a -- as you said, was separated out
11 pursuant to the -- the Court rulings. What do you have to
12 say to the fact that if -- if you find unconscionability in
13 one part of the contract, how it would affect the remaining
14 provisions of the contract?

15 MR. PAAVOLA: Yeah, so the analysis is -- is specific
16 to the arbitration provision itself. And we said that in the
17 Little Point (ph) v. John Wieland Holmes case, 2009 Westlaw
18 106 84 895, the District South Carolina case. But the -- the
19 -- the analysis is specific to the arbitration clause itself.
20 So whether other parts of the contract itself are
21 unconscionable, or should be struck, that's a decision that's
22 going to be for the arbitrary in the future. It's not --
23 it's not at issue here. And the problem with Smith v. D.R.
24 Horton, is because the warranty provisions that the court
25 found unconscionable were meshing the same provision as the

1 arbitration provision itself. The court felt like it
2 couldn't, you know, slice and dice it -- it had to treat it
3 all as the arbitration clause itself. So this separation,
4 you know, purports with the law, and we have to --

5 THE COURT: Have to fix that issue, is your argument?

6 MR. PAAVOLA: Okay. Yeah. Well -- and that's what the
7 court said in Damico v. Lennar case, that's the exact
8 analysis that it went through saying that these are separate,
9 not like Smith, these are separate now. So that's, you know,
10 that's where we are here. It's the same analysis.

11 THE COURT: Okay. Anything else?

12 MR. PAAVOLA: Nothing from me, your Honor.

13 THE COURT: Thank you, sir. Have I misstated anything
14 to any counsel? Did I misstate something that you want to
15 make sure I understand, or correct non analysis?

16 MR. DUGGAN: Yes, your Honor, just clarify our position
17 on the unconscious --

18 THE COURT: Nice way of putting it, sorry.

19 MR. DUGGAN: Yeah, I -- I -- I would draw the Court's
20 attention to -- this is covered in page 12 through 15 of our
21 brief, but what Smith stands for foundationally is the
22 Supreme Court there viewed the arbitrations and warranty
23 sections of the purchase contract as an inseparable whole
24 finding, that they referenced a certain -- that certain
25 disputes are to be resolved by mandatory binding arbitration

1 along with an entire (inaudible) way of importantly remedies.
2 And that's hard to say in position here. Following Supreme
3 Court decision and Smith until D.R. Horton, slightly modified
4 the ways that it had its warranty style -- warranty and style
5 arbitration provisions. What our position is that -- that is
6 -- that is the distinction without a difference, and that
7 this Court shouldn't let D.R. Horton accomplish the same
8 intent by not making any different function to the form.
9 That's our argument, is that you cannot -- you need to look
10 at the arbitration in isolation, determine whether it's
11 unconscionable or not. That -- that is both Supreme Court's
12 opinions. But what we're arguing here is the same argument
13 that was Smith -- that was upheld in Smith, which is to say
14 that the arbitration here, provision here is both the
15 warranty and arbitration. You need to read them as a whole.
16 And that's why all these unconscionable provisions about not
17 having any liability whatsoever, and never having to pay any
18 money, get roped in.

19 THE COURT: Okay.

20 MR. PAAVOLA: And, your Honor, I would just add that
21 that's the distinction that the State Supreme Court made.
22 That's not our distinction, that's the -- that's the
23 distinction that the court has made. And subsequent to
24 Smith, looked at other cases where it was separated, and --
25 and it's not problematic. And so I -- I, you know, they want

1 to say it -- it is all the same, but that's not our
2 distinction. That's the Supreme Courts' distinction. That's
3 what we have to live with.

4 THE COURT: I understand. Mr. Pablo -- Paavola, I want
5 to call you Pablova instead of --

6 MR. PAAVOLA: That's pretty common.

7 THE COURT: Paavola?

8 MR. PAAVOLA: Paavola.

9 THE COURT: Paavola. Thank you.

10 MR. PAAVOLA: That's fine.

11 THE COURT: I'm sorry.

12 MR. PAAVOLA: No, that's fine. It's hard to say it.

13 THE COURT: Let me ask you, you did mention the
14 agreements with -- between the contractor and the
15 subcontractor, I don't think you touched on that any further.
16 Is there anything else in relating -- in relation to that
17 that I need to know?

18 MR. PAAVOLA: No -- no. I mean -- we've -- we've
19 included the provisions. All the contracts have arbitration
20 provisions in them, and so --

21 THE COURT: Between the two of you all?

22 MR. PAAVOLA: Yes, ma'am.

23 THE COURT: Between D.R Horton and --

24 MR. PAAVOLA: And so this is very common -- this is
25 very common -- this is very common. How this proceeds is

1 that we --

2 THE COURT: Uh-huh.

3 MR. PAAVOLA: If it's granted, we will pull out every
4 kind of (inaudible) that goes into arbitration.

5 THE COURT: Sure. Okay. Well, everyone, thank you for
6 being on and your arguments and your succinctness. I will
7 take a look at all of this, and some additional information
8 and get back to you as soon as I can. Okay.

9 MR. PAAVOLA: Thank you, your Honor.

10 MR. DUGGAN: Good afternoon.

11 THE COURT: Thank you. You all have a good day.

12 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED.)

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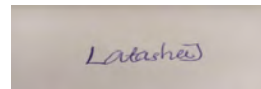
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I, LATASHA JEFFERSON, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 5 of Richland County, South Carolina, on September 4, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

DECEMBER 16, 2024

A rectangular box containing a handwritten signature in blue ink that reads "Latasha".

LATASHA JEFFERSON

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