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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No.: 2021-CP-27-00069
Appellate Case No. 2025-001116

Mark W. McGilton,..... Respondent,

v.

1223 May River Road, LLC, D.R. Horton, Inc., and
Lotty Trucking, LLC f/k/a Ramos Trucking, LLC,..... Defendants,

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

AND

1223 May River Road, LLC, ...Third-Party Plaintiffs,

v.

Kenneth Scott Builders, Inc., ...Third-Party Defendants.

RECORD ON APPEAL
VOLUME IV

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STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2021-CP-27-00069

Mark W. McGilton,

Plaintiff,

v.

1223 May River Road, LLC;
D.R. Horton, Inc.; and Lotty Trucking, LLC
f/k/a Ramos Trucking, LLC,

Defendants.

1223 May River Road, LLC,

Third-Party Plaintiff,

v.

Kenneth Scott Builders, LLC,

Third-Party Defendant.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

Kenneth Scott Builders, LLC,

Third-Party Defendant.

**SUMMONS TO THIRD-PARTY
COMPLAINT**

**TO: THIRD-PARTY DEFENDANT KENNETH SCOTT BUILDERS, LLC AND ITS
COUNSEL OF RECORD STEPHEN L. BROWN, ESQUIRE AND STEPHEN A.
GRIFFITH, JR., ESQUIRE:**

YOU ARE HEREBY SUMMONED and required to answer the Third-Party Complaint
contained in the Amended Answer of D.R. Horton, Inc., to Plaintiff's Complaint in this action, a

copy of which is hereby served upon you, and to serve a copy of your Answer to said Third-Party Complaint on the subscriber hereto at this office at 704 East McBee Avenue, Greenville, South Carolina, 29601, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

John T. Crawford Jr. (SC Bar # 69682)

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October 26, 2022

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2021-CP-27-00069

Mark W. McGilton,

Plaintiff,

v.

1223 May River Road, LLC;
D.R. Horton, Inc.; and Lotty Trucking, LLC
f/k/a Ramos Trucking, LLC,

Defendants.

1223 May River Road, LLC,

Third-Party Plaintiff,

v.

Kenneth Scott Builders, LLC,

Third-Party Defendant.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

Kenneth Scott Builders, LLC,

Third-Party Defendant.

**D.R. HORTON, INC.'S AMENDED
ANSWER AND THIRD-PARTY
COMPLAINT**

**TO: THIRD-PARTY DEFENDANT KENNETH SCOTT BUILDERS, LLC AND ITS
COUNSEL OF RECORD STEPHEN L. BROWN, ESQUIRE AND STEPHEN A.
GRIFFITH, JR., ESQUIRE:**

Pursuant to Rule 15, SCRCP, Defendant D.R. Horton, Inc. (hereinafter “Defendant” or “D.R. Horton”), hereby amends its answer and asserts a Third-Party Complaint and answers the Complaint of Plaintiff, Mark W. McGilton (“Plaintiff”), as set forth below by denying each and every allegation not hereinafter specifically admitted, demanding strict proof thereof, and further respond as follows:

Each and every allegation set forth in Plaintiff’s Complaint, not expressly admitted herein, is hereby denied.

FOR A FIRST DEFENSE
(Answer to Complaint)

1. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 1 of Plaintiff’s Complaint, and therefore denies the same.
2. D.R. Horton denies the allegations contained in Paragraph 2 of Plaintiff’s Complaint.
3. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 3 of Plaintiff’s Complaint, and therefore denies the same.
4. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 4 of Plaintiff’s Complaint, and therefore denies the same.
5. D.R. Horton admits so much of Paragraph 5 of Plaintiff’s Complaint as alleges that D.R. Horton was a builder in Cypress Ridge community. D.R. Horton denies the remaining allegations contained in Paragraph 5 of Plaintiff’s Complaint.
6. The allegations contained in Paragraph 6 of Plaintiff’s Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

7. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 7 of Plaintiff's Complaint, and therefore denies the same.

8. D.R. Horton denies the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 9 of Plaintiff's Complaint, and therefore denies the same.

10. D.R. Horton denies the allegations contained in Paragraph 10 of Plaintiff's Complaint.

11. D.R. Horton denies the allegations contained in Paragraph 11 of Plaintiff's Complaint.

12. D.R. Horton denies the allegations contained in Paragraph 12 of Plaintiff's Complaint.

13. D.R. Horton denies the allegations contained in Paragraph 13 of Plaintiff's Complaint.

14. D.R. Horton denies the allegations contained in Paragraph 14 of Plaintiff's Complaint.

15. D.R. Horton denies the allegations contained in Paragraph 15 of Plaintiff's Complaint.

16. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 16 of Plaintiff's Complaint, and therefore denies the same.

17. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 17 of Plaintiff's Complaint, and therefore denies the same.

18. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 18 of Plaintiff's Complaint, and therefore denies the same.

19. The allegations contained in Paragraph 19 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

20. The allegations contained in Paragraph 20 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

21. The allegations contained in Paragraph 21 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

22. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 22 of Plaintiff's Complaint, and therefore denies the same.

23. The allegations contained in Paragraph 23 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

24. D.R. Horton denies the allegations contained in Paragraph 24 of Plaintiff's Complaint.

25. Paragraph 25 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

26. The allegations contained in Paragraph 26 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required,

D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 26 of Plaintiff's Complaint and, therefore, denies the same.

27. The allegations contained in Paragraph 27 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 27 of Plaintiff's Complaint and, therefore, denies the same.

28. The allegations contained in Paragraph 28 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 28 of Plaintiff's Complaint and, therefore, denies the same.

29. The allegations contained in Paragraph 29 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 29 of Plaintiff's Complaint and, therefore, denies the same.

30. The allegations contained in Paragraph 30 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 30 of Plaintiff's Complaint and, therefore, denies the same.

31. The allegations contained in Paragraph 31 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 31 of Plaintiff's Complaint and, therefore, denies the same.

32. The allegations contained in Paragraph 32 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 32 of Plaintiff's Complaint and, therefore, denies the same.

33. The allegations contained in Paragraph 33 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 33 of Plaintiff's Complaint and, therefore, denies the same.

34. The allegations contained in Paragraph 34 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 34 of Plaintiff's Complaint and, therefore, denies the same.

35. The allegations contained in Paragraph 35 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 35 of Plaintiff's Complaint and, therefore, denies the same.

36. The allegations contained in Paragraph 36 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 36 of Plaintiff's Complaint and, therefore, denies the same.

37. Paragraph 37 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

38. D.R. Horton denies the allegations contained in Paragraph 38 of Plaintiff's Complaint.

39. D.R. Horton denies the allegations contained in Paragraph 39 of Plaintiff's Complaint.

40. D.R. Horton denies the allegations contained in Paragraph 40 of Plaintiff's Complaint.

41. D.R. Horton denies the allegations contained in Paragraph 41 of Plaintiff's Complaint.

42. D.R. Horton denies the allegations contained in Paragraph 42 of Plaintiff's Complaint.

43. D.R. Horton denies the allegations contained in Paragraph 43 of Plaintiff's Complaint.

44. D.R. Horton denies the allegations contained in Paragraph 44 of Plaintiff's Complaint.

45. D.R. Horton denies the allegations contained in Paragraph 45 of Plaintiff's Complaint.

46. D.R. Horton denies the allegations contained in Paragraph 46 of Plaintiff's Complaint.

47. D.R. Horton denies the allegations contained in Paragraph 47 of Plaintiff's Complaint.

48. Paragraph 48 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

49. D.R. Horton denies the allegations contained in Paragraph 49 of Plaintiff's Complaint.

50. D.R. Horton denies the allegations contained in Paragraph 50 of Plaintiff's Complaint.

51. D.R. Horton denies the allegations contained in Paragraph 51 of Plaintiff's Complaint.

52. D.R. Horton denies the allegations contained in Paragraph 52 of Plaintiff's Complaint.

53. D.R. Horton denies the allegations contained in Paragraph 53 of Plaintiff's Complaint.

54. D.R. Horton denies the allegations contained in Paragraph 54 of Plaintiff's Complaint.

55. Paragraph 55 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

56. D.R. Horton denies the allegations contained in Paragraph 56 of Plaintiff's Complaint.

57. D.R. Horton denies the allegations contained in Paragraph 57 of Plaintiff's Complaint.

58. D.R. Horton denies the allegations contained in Paragraph 58 of Plaintiff's Complaint.

59. D.R. Horton denies the allegations contained in Paragraph 59 of Plaintiff's Complaint.

60. Paragraph 60 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

61. The allegations contained in Paragraph 61 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

62. D.R. Horton denies the allegations contained in Paragraph 62 of Plaintiff's Complaint.

63. D.R. Horton denies the allegations contained in Paragraph 63 of Plaintiff's Complaint.

64. D.R. Horton denies the allegations contained in Paragraph 64 of Plaintiff's Complaint.

65. D.R. Horton denies the allegations contained in Paragraph 65 of Plaintiff's Complaint.

66. With respect to the WHEREFORE Paragraph of Plaintiff's Complaint, D.R. Horton denies that Plaintiff is entitled to any relief it seeks by and through the Complaint.

FOR A SECOND DEFENSE

67. D.R. Horton incorporates herein the allegations of their first defense not inconsistent herewith.

68. D.R. Horton alleges that insofar as Plaintiff's Complaint seeks punitive damages, such damages are violative of both the United States and South Carolina Constitutions. As such, Plaintiff's claim for punitive damages is barred.

FOR A THIRD DEFENSE
(Superseding/Intervening Negligence)

69. D.R. Horton incorporates herein the allegations of their first defense not inconsistent herewith.

70. That if D.R. Horton was negligent, which is expressly denied, the superseding and intervening acts of third parties broke the chain of causation and were the proximate cause of any injuries as alleged by Plaintiff and D.R. Horton pleads superseding, intervening negligence of third parties as a complete bar to this action.

FOR A FOURTH DEFENSE

71. D.R. Horton incorporates herein the allegations of their first defense not inconsistent.

72. Defendant reserves and does not waive any additional further defenses that may be revealed by additional information that may be acquired in discovery or otherwise.

FURTHER ANSWERING PLAINTIFF'S COMPLAINT AND BY WAY OF
THIRD-PARTY PLAINTIFF'S COMPLAINT AGAINST THIRD-PARTY
DEFENDANT KENNETH SCOTT BUILDERS, LLC

73. D.R. Horton incorporates herein the allegations of their first defense not inconsistent herewith.

74. D.R. Horton asserts claims against Third-Party Defendant, Kenneth Scott Builders, LLC, ("KSB").

79. To the extent the allegations contained in the Plaintiff's Complaint are not subject to binding arbitration, the Circuit Court has jurisdiction over the claims asserted in the Third-Party Complaint because the claims asserted herein are so related to the claims in the action within the Court's original jurisdiction that they form part of the same case or controversy.

80. Plaintiff, in the underlying litigation, has filed a Complaint against D.R. Horton seeking damages related to a collision on May River Road in Bluffton, Beaufort County, South Carolina (“Collision”).

81. D.R. Horton contracted with KSB such that KSB was obligated to supply certain labor, materials, and designs used or incorporated into the construction one or more of the Cypress Ridge development.

82. KSB entered into an agreement (the “Agreement”) with D.R. Horton regarding its work (attached as **Exhibit A**).

83. The Agreement speaks for itself, and D.R. Horton craves reference to the terms of the agreements, the same being are incorporated herein.

84. As provided in the Agreement, KSB was to supply certain labor, materials, and/or designs regarding one or more of the improvements, including but not limited to the Cypress Ridge development.

85. KSB implicitly and expressly agreed to perform its work in a good and workmanlike manner.

86. KSB was aware of the need and the importance of providing competent and licensed drivers and employees, vehicles, and safety measures, including but not limited to licensed, safe drivers with appropriately maintained and inspected vehicles and liability insurance.

87. D.R. Horton contends that KSB failed to meet its requirements of the Agreement, including, but not limited to, providing competent and licensed drivers and employees, vehicles, and safety measures, including but not limited to licensed, safe drivers with appropriately maintained and inspected vehicles and liability insurance.

88. As part of the Agreement, KSB agreed to indemnify and hold harmless D.R. Horton and provide liability insurance for D.R. Horton on behalf of itself and any subcontractors.

89. D.R. Horton fully satisfied and performed all requirements associated with and with respect to the Agreement.

90. D.R. Horton alleges KSB, and its subcontractor was negligent, improperly licensed, and operating a vehicle that was not road worthy, maintained, or inspected without insurance.

91. Although D.R. Horton is without fault, by virtue of the alleged acts and omissions of KSB, D.R. Horton has been subjected to suit and to the costs, expenses, attorneys' fees, and other damages associated therewith.

FOR A FIRST CAUSE OF ACTION
(Contractual Indemnification as to Co-Defendant)

92. D.R. Horton re-alleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

93. Plaintiff has sued D.R. Horton claiming damages related to the Collision.

94. KSB contracted with D.R. Horton to perform certain construction services and/or furnish certain materials on the Property and within the Community.

95. Plaintiff has alleged that damages were incurred in the Collision by the acts of KSB and its subcontractor.

96. D.R. Horton is informed and believes that if, in fact, Plaintiff is entitled to recover under the allegations of the Complaint, that the allegations are the result of the wrongful acts omissions, negligence, gross negligence, and/or representations of KSB, all of which are contrary to the agreements and common laws of the State of South Carolina.

97. To the extent, if any, that D.R. Horton is held liable to Plaintiff in this action, such liability would be the direct and proximate result of the wrongful acts, errors, and/or omissions,

negligence and/or gross negligence of KSB, which have damaged D.R. Horton as it has been subjected to liability and has incurred consequential damages in incurring the attorneys' fees and costs necessary to defend this action.

98. KSB is contractually obligated to indemnify and hold D.R. Horton harmless from damages arising out of KSB's respective work pursuant to the Agreement as well as provide liability insurance to D.R. Horton.

99. The alleged acts or omissions of KSB are the independent, active, primary, superseding, and/or intervening cause of damages allegedly suffered by Plaintiff, if any, and any wrongful acts or omissions by D.R. Horton, which are expressly denied, were passive and secondary only.

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

FOR A SECOND CAUSE OF ACTION
(Equitable Indemnification as to Co-Defendant)

101. D.R. Horton re-alleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

102. Plaintiff has sued D.R. Horton seeking damages related to a collision on May River Road in Bluffton, Beaufort County, South Carolina.

103. D.R. Horton has denied all substantive allegations against it that were made by Plaintiff.

104. A sufficient special relationship exists between D.R. Horton and KSB.

105. D.R. Horton is informed and believes that if, in fact, Plaintiff is entitled to recover under its allegations, that the allegations are the result of the wrongful acts, omissions, negligence, gross negligence, and/or representations of KSB, all of which are contrary to the statutory and common laws of the State of South Carolina.

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

107. To the extent, if any, D.R. Horton is held liable to Plaintiff in this action, the alleged acts or omissions of KSB is the independent, active, primary, superseding, and/or intervening cause of damages allegedly suffered by Plaintiff, and any wrongful acts or omissions by D.R. Horton, which are expressly denied, were passive and secondary only.

108. D.R. Horton is entitled to a judgment for full common law or equitable indemnification from KSB for any liability D.R. Horton is found to have to Plaintiff for the allegations and relief sought in the Complaint, and D.R. Horton would be entitled to damages for the acts, errors, and/or omissions, negligence and/or gross negligence of KSB as afore described, entitling D.R. Horton to recover from KSB its attorneys' fees, costs, and any and all other expenses associated with defending this action as well as any sums for which D.R. Horton may be held liable to Plaintiff, whether by judgment, compromise, settlement, or otherwise.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract as to Co-Defendant)

109. D.R. Horton re-alleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

110. KSB was contractually responsible for performing the requirements in the Agreement correctly.

111. To the extent that Plaintiff proves that KSB was responsible for the damages incurred in the Collision, KSB materially breached the Agreement as set forth above.

112. D.R. Horton is entitled to judgment against KSB for breach of contract plus costs, expenses, attorneys' fees, and other damages associated therewith.

FOR A FOURTH CAUSE OF ACTION
(Negligence/Gross Negligence/Recklessness as to Co-Defendant)

113. D.R. Horton re-alleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

114. Upon information and belief, KSB owed a duty to use due care in ensuring that proper subcontractors and vehicles were used in its work.

115. If due care was not used in ensuring safety was achieved, then KSB breached its duty of care owed pursuant to the requirements under the Agreement and under the laws of South Carolina.

116. D.R. Horton has been damaged as a direct and foreseeable and proximate result of KSB negligence/gross negligence/recklessness, and D.R. Horton is entitled to judgment against KSB for its damages, including costs, expense, attorneys' fees, and other damages associated therewith.

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

- (a) Dismissal of the Complaint and all causes of action contained therein, with prejudice, and an award to D.R. Horton for the attorney fees, costs, and other expenses incurred by D.R. Horton in defending this action;
- (b) On D.R. Horton's First and Second Causes of Action, judgment in favor of D.R. Horton and against KSB in the amount of any liability D.R. Horton is found to have to the Plaintiff and requiring Co-Defendant to defend and indemnify D.R. Horton against any liability which D.R. Horton may be liable with regard to safety or insurance for which KSB was responsible;
- (c) On D.R. Horton's Third Cause of Action, judgment in favor of D.R. Horton and against KSB for any costs, losses, or damages D.R. Horton may incur as it relates to KSB's breach of contract, including, attorneys' fees, costs, and any and all other expenses incurred in defending the Plaintiff's Complaint;
- (d) On D.R. Horton's Fourth Cause of Action, judgment in favor of D.R. Horton and against KSB awarding actual, special, consequential and punitive damages in an amount to be determined at trial;
- (e) Attorneys' fees;
- (f) Costs of this action; and
- (g) Such other and further relief that this Court deems just and proper.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

Jason M. Imhoff (SC Bar # 69355)

704 East McBee Avenue

Greenville, South Carolina 29601

Telephone: (864) 242-4899

Facsimile: (864) 242-4844

imhoff@conlaw.com

Counsel for Defendant D.R. Horton, Inc.

October 26, 2022
Greenville, South Carolina



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Kenneth Tesley DBA Kenneth Scott Builders ("Contractor")
 _____ Sole Proprietorship _____ Partnership ☒ Corporation _____ L.L.C _____ Other (ATTACH W-9)
 Social Security No. or Tax ID No.: 27-0393282
 Name of Owner(s)/Officer(s): Kenneth J. Tesley
 Division Name: COASTAL CAROLINA Area Name: HILTON HEAD / SAVANNAH Assigned Vendor No.: 2016181
 Address for All Notices: PO Box 1590
 City: Hilton State: SC Zip Code: 29910
 Telephone: 843-247-1025 Fax: (843) 813-3491 E-Mail Address: Kenc@KennethScottBuilders.com
 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 February 2016 between DR Horton, INC ("Owner") and Contractor.

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

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

3. CONTRACT PRICE.

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

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

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

4. PAYMENT.

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

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-4-30 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

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

Executed this 17 day of February 2016.

Owner:
By: [Signature]
Name: DR Horton
Title: Assistant Vice-President

Contractor:
By: [Signature]
Name: Kenneth Tesley
Title: Owner

INITIALS: OWNER [Signature] CONTRACTOR [Signature]

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 those 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. 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

INITIALS: OWNER  CONTRACTOR 

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 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.

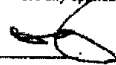
8. CONTRACTOR'S WARRANTIES.

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.

INITIALS: OWNER  CONTRACTOR 

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 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.

INITIALS: OWNER  CONTRACTOR 

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, 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 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

INITIALS: OWNER  CONTRACTOR 

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 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 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 

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.

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. 22 JUNE 2015)

INITIALS: OWNER  CONTRACTOR 



GEORGIA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Kenneth Tashy DBA Kenneth Scott Builders,
("Contractor")
Sole Proprietorship ☐ Partnership ☒ Corporation ☐ L.L.C. ☐ Other (ATTACH W-9)
Social Security No. or Tax ID No.: 27-0393282
Name of Owner(s)/Officer(s): Kenneth S. Tashy HT-201618
Address for All Notices: PO Box 1590
City: Blakethen State: SC Zip Code: 29910
Telephone: 803 247-1025 Fax: 803 815-3410 E-Mail Address: Ken@KennethScottBuilders.com
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 February, 2016, between DR Horton, INC ("Owner") and Contractor.

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

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

3. CONTRACT PRICE.

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

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

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

4. PAYMENT.

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

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

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

Executed this 17 day of February, 2016

Owner:

By:

Name:

Title:

DR Horton President

ASSISTANT VICE-PRESIDENT

INITIALS: OWNER DR

Contractor:

By:

Name:

Title:

Owner

Owner

INITIALS: CONTRACTOR KT

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ELECTRONICALLY FILED - 2025 Jan 27 4:34 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069

made) of all items 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. 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 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

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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 FHIA/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 FHIA. 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 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, EXCEPTING ONLY LIABILITY OR CLAIMS ARISING OUT OF BODILY INJURY TO PERSONS, DEATH, OR DAMAGE TO PROPERTY 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 DEFEND, INSURE, INDEMNIFY OR HOLD INDEMNITEE HARMLESS FOR LIABILITY OR CLAIMS ARISING OUT OF BODILY INJURY TO PERSONS, DEATH, OR DAMAGE TO PROPERTY 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.

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)

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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 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 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) Employer's Liability Insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for each accident for bodily injury, Five Hundred Thousand Dollars (\$500,000.00) policy limit for bodily injury by disease, and Five Hundred Thousand Dollars (\$500,000.00) for each employee for bodily injury by disease; (c) 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 (d) Commercial Automobile Liability Insurance coverage with limits of not less than Five Hundred Thousand Dollars (\$500,000.00) per person for bodily injury and Five Hundred Thousand Dollars (\$500,000.00) for 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 0704 and CG 2037 0704). 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 and any excess or umbrella coverages. 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.

11.4 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  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 ("Dispute") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

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

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

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

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

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

14. TERMINATION.

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

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

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

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

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to amend and supersede all prior Independent Contractor Agreements (other than any Master National Independent Contractor Agreement) or other prior understandings or written or oral agreements, specifically including but not limited to all prior pre-printed standard contractor/subcontractor

INITIALS: OWNER M CONTRACTOR [Signature]

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.

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 Georgia.

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.

GEORGIA VERSION (REV. February 11, 2015)

INITIALS: OWNER *M* , CONTRACTOR *S*



Exhibit "A" Part I-General Scope Of Work

General & Miscellaneous

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

Clearing and Demolition

- Clear and grub site

Drainage

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

Erosion Control

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

Initials: Contractor

A handwritten signature in black ink, appearing to be "J. [unclear]", written over a horizontal line.

DR Horton

A handwritten signature in black ink, appearing to be "JH", written over a horizontal line.

Earthwork

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

Grading

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

Asphalt Paving & Pavement Marking

- Asphalt surface and binder

Concrete

- Concrete curb
- Installation of handicap ramps

Utilities

- Utility layout and record drawings

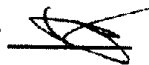
Sanitary Sewer

- Installation of sewer
- Pump stations

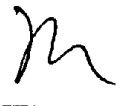
Water Distribution

- Installation of water

Initials: Contractor



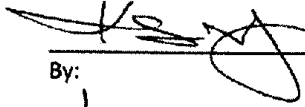
DR Horton



Contractor

Owner

Kenneth Tasly DBA Kenneth Scott Builders D.R. Horton, Inc.
Company Name:


By:

Ken S. Tasly
Name:

Owner
Title:

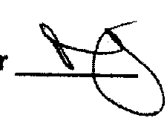
2/12/16
Date:


By:

Ron Bunn
Name:

A.V.P
Title:

2/22/16
Date:

Initials: Contractor 

DR Horton 

EXHIBIT K



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Kenneth Tesley DBA Kenneth Scott Builders ("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): Kenneth S. Tesley
 Division Name: COASTAL CAROLINA Area Name: HILTON HEAD / SAVANNAH Assigned Vendor No.: 20161B 1
 Address for All Notices: PO Box 1590
 City: Bluffton State: SC Zip Code: 29910
 Telephone: [REDACTED] FAX: [REDACTED] 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 February 2016 between DR Horton, INC ("Owner") and Contractor.

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

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

3. CONTRACT PRICE.

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

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

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

4. PAYMENT.

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

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-4-30 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

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

Executed this 17 day of February 2016

Owner:
By: [Signature]
Name: RON BURKE
Title: ASSISTANT VICE-PRESIDENT

Contractor:
By: [Signature]
Name: Kenneth Tesley
Title: Owner

INITIALS: OWNER [Signature] CONTRACTOR [Signature]

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 those 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. 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

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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 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.

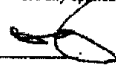
8. CONTRACTOR'S WARRANTIES.

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.

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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 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.

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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, 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 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

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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 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 

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.

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. 22 JUNE 2015)

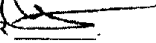
INITIALS: OWNER  CONTRACTOR 

EXHIBIT L



Exhibit "A" Part I-General Scope Of Work

General & Miscellaneous

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

Clearing and Demolition

- Clear and grub site

Drainage

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

Erosion Control

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

Initials: Contractor

A handwritten signature in black ink, appearing to be "J. J. [unclear]", written over a horizontal line.

DR Horton

A handwritten signature in black ink, appearing to be "J. J. [unclear]", written over a horizontal line.

Earthwork

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

Grading

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

Asphalt Paving & Pavement Marking

- Asphalt surface and binder

Concrete

- Concrete curb
- Installation of handicap ramps

Utilities

- Utility layout and record drawings

Sanitary Sewer

- Installation of sewer
- Pump stations

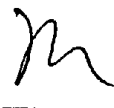
Water Distribution

- Installation of water

Initials: Contractor



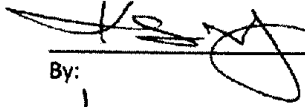
DR Horton



Contractor

Owner

Kenneth Tasly DBA Kenneth Scott Builders D.R. Horton, Inc.
Company Name:


By:

Ken S. Tasly
Name:

Owner
Title:

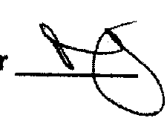
2/12/16
Date:


By:

Ron Bunn
Name:

A.V.P
Title:

2/22/16
Date:

Initials: Contractor 

DR Horton 

EXHIBIT M

Building Permit CNEW-11-17-12846

Issue Date: 05/03/2018

Parcel: R614 028 000 0916 0000

Parcel R614 028 000 0916 0000	Permit Type Com New	Heated Sq Ft 8,895	Unheated Sq Ft 2,122	Total Sq Ft 11,017
Address 30 SILVER LAKE RD BLUFFTON SC 29909	Lot	Unit Number 0	Building	# of Units 0
Place Name CYPRESS RIDGE	Total Sq Ft of Lot 22,145	Pervious 10,694	New Impervious 11,451	Value \$1,393,430.00
Construction Type V-B	Occupancy Business	Use Office Building	Change of Use	Existing Use
# Stories 2	Type Exterior hardie plank	Elevators 1	Sprinklered Yes	# Stories 2
# Bedrooms 0	Type Roofing metal	Fireplace 0	Existing Occupancy	Floodzone
# Bathrooms 4	Heat/Air Gas	Fire Alarm No	Sewage Type PSD	Total Res Rooms 0

APPLICANT: D R HORTON INC ADDRESS: 209 ARGO CIR BUSINESS PHONE: (843) 706-4037
OWNER: D R Horton Inc OKATIE, SC 29909 BUSINESS PHONE: (843) 540-2283
CONTRACTOR: D R Horton Inc PO Box 3558 Bluffton, SC 29910 BUSINESS PHONE: (843) 540-2283
ENGINEER: PO Box 3558 Bluffton, SC 29910 BUSINESS PHONE: BUSINESS PHONE:
ARCHITECT: 109 S Main ST Greer, SC 29650 BUSINESS PHONE: (864) 968-0224

Description of Work: new office building for home sales

Acknowledgement

All work must comply with Town of Bluffton adopted codes and any conditions resulting from the review and approval of this permit. No actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than eight years after substantial completion of the improvement. An owner has a right to extend this period by entering into a contractual agreement for extended liability under Section 15-3-640 of the South Carolina state code. Construction activity hours of operation are Mon. thru Sat. 7am to 7pm and Sun. 12pm to 7pm. Work outside these hours must be certified by the Town Manager or his designee to be necessary to address an emergency situation maybe exempt. Article III Sections 12-82 and 12-85 of the Muni Code.

PRINT NAME Mark Strange SIGNATURE Mark Strange RELATIONSHIP OWNER DATE 5/3/18

ELECTRONICALLY FILED 2018 JAN 27 4:34 PM



TOWN OF BLUFFTON
BUILDING PERMIT APPLICATION
COMMERCIAL MASTER APPLICATION



Growth Management Customer Service Center
 20 Bridge Street
 Bluffton, SC 29910
 (843)706-4522
www.townofbluffton.sc.gov
applicationfeedback@townofbluffton.com

Office Use Only		Permit Number: CNEW 11-17-12846		Date Received: 11/13/17	
Project Address:		30 Silver Lake Road			Lot #:
Subdivision: Cypress Ridge			Parcel ID: R614 028 000 0916 0000		
Property Owner			Job Site Contact		
Name: DR Horton			Name: Mark Strange		
Address: PO BOX 3558			Address:		
City/State/Zip: Bluffton, SC 29910			City/State/Zip:		
Phone: 843-706-4037			Office Phone: 843-706-4037		
Cell Phone:			Cell Phone: 843-368-9503		
Email Address:			Email Address: mstrange@drhorton.com		
Contractor			Design Professional		
Name: DR Horton			Name: Langley & Associates Architects		
Address: PO BOX 3558			Address: 109 South Main St.		
City/State/Zip: Bluffton SC. 29910			City/State/Zip: Greer, SC 29650		
Phone:			Phone: 864-968-0224		
Contractor License/Registration #: G114610			State License #: 98012		
Bluffton Business License #: 04-17-022208			Email Address: www.la-architects.com		
Permit Type					
☒ New ☐ Addition ☐ Remodel					
Permit Workclass					
☒ Structure	☐ Shell	☐ Tenant Upfit	☐ Accessory		
☐ Electrical	☐ HVAC	☐ Gas	☐ Plumbing		
☐ Irrigation	☐ Pool/spa	☐ Moving Permit	☐ Tent		
☐ Demo	☐ Construction Trailer	☐ Re-Roof	☐ Fence		
☐ Retaining Wall	☐ Water feature	☐ Fire Sprinkler System	☐ Fire Alarm System		
Num of Units: one			Total Square Footage: 11017		
Type of Construction (circle one): IA IB IIA IIB IIIA IIIB IV VA VB					
Value of Construction (include materials, labor, profit)					
Plumbing:		Gas:			
\$ 23160		\$ 1200			
Electrical:		Building:			
\$ 143500		\$ 1,145,402.00			
Heating/Air:		Total Value of Construction:			
\$ 80168		\$ 1,393,430.00			



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Detailed Description of Work					
Change of Use: Y or N; If Yes, indicate existing use:			Proposed Use:		
New office building for home sales					
Construction Details					
Total Parcel Area Sq. Ft.	22145	Total Pervious Sq. Ft.	10694	Total Impervious Sq. Ft.	11451
Heated Sq.Ft. (new or added)	8895	Type of Roofing Materials		Metal	
Unheated Sq.Ft. (new or added)	2122	Size of LP Tank			
Number of Stories	2	Gas		☒ Yes ☐ No	
Number of Bathrooms	4	Septic Tank Number			
Number of Fireplaces	0	Type of Sewage Disposal		☒ Public Sewer ☐ Septic	
Type of Exterior Materials	Hardi Plank	Fire Sprinkler System		☒ Yes ☐ No	
Number of Elevators	1	Fire Alarm System		☐ Yes ☒ No	
Type of Heating/Air	☐ Elec ☒ Gas				

Application is hereby made for a permit to perform work as described in this application along with accompanying drawings if required. The information on this application is complete and accurate and I am authorized to submit this application. I understand that all work must be according to approved plan and in compliance with all Town of Bluffton adopted codes and other regulations as applicable. Individuals and entities involved in the construction, repair, or renovation of structures are required to comply with licensing requirements of the State of South Carolina and the Town of Bluffton.

Mark Strange
Print name

Signature of owner/authorized agent

11/02/17
Date

Everyone doing business in the Town of Bluffton is required to have a town business license.



**TOWN OF BLUFFTON
BUILDING PERMIT APPLICATION
RESIDENTIAL MASTER APPLICATION**

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20 Bridge Street
Bluffton, SC 29910
(843) 706-4522
www.townofbluffton.sc.gov
applicationfeedback@townofbluffton.com

License Requirements

Please read carefully. This form is required at time of application.

Permit Number:

- *Individuals and entities involved in the construction, repair, or renovation of structures including mechanical construction are required to comply with licensing requirements of the State of South Carolina and the Town of Bluffton.*
- *Persons engaging in Business in the Town of Bluffton are required to have current Town Business Licenses.*
- *The contractor is aware that the sub-contractors, also known as independent contractors, which are hired by the contractor to perform services, are not employees. Sub-contractors are required to maintain a valid Town business license and state/local licenses or registrations as applicable when conducting business inside the town limits of Bluffton. This requirement also applies to individuals such as craftsmen or artisans not regularly employed by the contractor, but who are performing work on the job. Code enforcement inspectors will require proof of a current Town of Bluffton business license or proof of employment if an employee.*
- *No deductions shall be made on the permit application by a general or independent contractor for value of work performed by a subcontractor.*
- ***In no case** will a permanent service or final inspection (if there is not a permanent service inspection) be processed until all required documentation is submitted to the office.*

I, the undersigned have read and understand the above. I am the contractor in charge or authorized agent for the contractor in charge, or Owner.

Print: Mark Strange

Signature: Mark Strange ***Date:*** 11/02/17



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BUILDING PERMIT APPLICATION
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ELECTRONICALLY FILED - 2025 Jan 27 4:34 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069

Refuse Disposal Plan

You are required to dispose of all construction waste in accordance with related local, state, and federal regulations.

Permit Number:

Site Debris:

- 1. It shall be the responsibility of the permit holder to clean up and remove all construction debris as well as other related material or organic materials prior to receiving a final inspection approval.*
- 2. Waste shall be contained in such a manner as to prevent contamination of any adjacent property by any means.*

Hurricane Protection:

- 1. No permit holder shall allow construction related materials to remain loose or unsecured at a site from 24 hours after a hurricane watch has been issued until the hurricane watch/warning has been lifted. Materials shall be removed from the site or secured in such a manner as to minimize the danger of such materials causing damage to persons or property from weather emergencies.*
- 2. Failure to comply with this section will subject the permit holder to fines in accordance with the Town of Bluffton Municipal Code.*

Owner Name: D. R. Horton

Contractor: D. R. Horton

Location: Bluffton, SC

Solid Waste Containment Method: 10 Yard Metal Bins

Waste Pick-Up and Disposal Schedule: Multiple times per week

Disposal Location (Site): Waste Management-- Hickory Hill

Name of Party or Company Responsible for Removal: East Coast Construction Cleanup Inc.

Signature of Responsible Person Mark Strange ***Date:*** 11/02/17

EXHIBIT N

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	FOURTEENTH JUDICIAL CIRCUIT
MARK W. MCGILTON,	CIVIL ACTION NO. 2021-CP-27-00069
Plaintiff,	
vs.	
1223 MAY RIVER ROAD, LLC, D.R. HORTON, INC., AND LOTTY TRUCKING, LLC F/K/A RAMOS TRUCKING, LLC,	D.R. HORTON, INC.'S RESPONSE AND OBJECTIONS TO PLAINTIFF'S PROPOSED ORDER ON RULE TO SHOW CAUSE, TO STRIKE PLEADINGS AND FOR CONTEMPT
Defendants.	
1223 MAY RIVER ROAD, LLC,	
Third-Party Plaintiffs,	
vs.	
KENNETH SCOTT BUILDERS, LLC,	
Third-Party Defendants.	

Counsel for D.R. Horton has reviewed the proposed Order related to Plaintiff McGilton's, Motion for Rule to Show Cause, to Strike Pleadings and for Contempt and provides the following comments/observations. As an initial matter and as more detailed in this response, D.R. Horton disagrees and objects to any ruling that finds it engaged in willful disobedience as well as gross indifference to the prior orders of this Court. As a practical matter, to revise the Order to provide for all of the factual items that have been left out and/or misrepresented would essentially entail re-writing the Order in total. Accordingly, D.R. Horton identifies the areas where it believes Plaintiff's proposed Order is deficient or is a misrepresentation of the underlying facts.

In that vein, D.R. Horton would note that the proposed Order is devoid of all evidence as further explained below, related to agreements on the production of discovery that were all presented at the hearing and supported by affidavit. These facts would certainly be relevant to any determination that D.R. Horton willfully disregarded prior Court Orders. More importantly, the Plaintiff has not in this proposed Order nor at the hearing disputed the existence of the agreements between counsel and contrary to representations made at the hearing, the underlying agreement was not raised in the prior hearing before Judge Goodstein.

The following comments track the provisions of the proposed Order:

DISCUSSION

The Plaintiff cites only the case law that supports a granting of sanctions and does not include the analysis and the competing items that the Court must consider when evaluating a motion for sanctions. For example, the Order fails to cite to any of following relevant cases listed below:

- When the court orders a sanction that itself results in default or dismissal, the end result is harsh medicine that should not be administered lightly. *Orlando v. Boyd*, 320 S.C. 509, 466 S.E.2d 353 (1996). *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999).
- When deciding the severity of sanction for failure to disclose evidence during the discovery process, the trial court should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice. *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997).

- "An 'abuse of discretion' may be found by this Court where the appellant shows that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and, therefore, amounted to an error of law." Dunn v. Dunn, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989)
- Where there is no evidence of willfulness on the part of the allegedly non-compliant party, our appellate courts have reversed sanctions orders issued by trial courts. See, e.g. *Rickerson v. Karl*, 412 S.C. 215, 770 S.E.2d 767 (Ct. App. 2015) (holding that there was no evidence of willfulness in failing to meet a court-ordered deadline); *Orlando v. Boyd*, 320 S.C. 509, 511-12, 466 S.E.2d 353, 355 (1996) (sanction of dismissal reversed when the violation was not “intentional”). See also, *Baughman*, supra
- The Court erred in exclusion of a witness that had the effect of granting judgement by default or dismissal. “Where the effect will be the same as granting judgment by default or dismissal, a preclusion order may be made only if there is some showing of willful disobedience or gross indifference to the rights of the adverse party.” *Baughman v. AT&T*, 305 S.C. 101, 410 S.E.2d 537 (1991). In *Baughman*, the trial court’s sanction was reversed when the opposing party “took lengthy depositions regarding his claims and was clearly not prejudiced by the failure to receive formal answers to interrogatories.” *Baughman*, 378 S.E.2d at 601. Here, the Plaintiff received all of the 1,205 documents that the parties had agreed upon in their discussions¹. The documents that the Plaintiff allegedly obtained from FOIA requests,(i.e., building permits for vertical construction that are wholly unrelated to the work performed by the Defendant truck driver who worked only on horizontal

¹ Since the hearing, D.R. Horton has provided the land development documents for the remaining phases of the agreement, bringing the total documents produced to date to 4,603.

construction), were irrelevant to the issues in this case and thus not discoverable under SCRCp 26(b)(1) (“parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. . .”). In addition, the Plaintiff in this case took a lengthy of D.R. Horton’s employee Jared O’Sako for specific purposes of identifying documents and the manner in which D.R. Horton maintained its land development records. Plaintiff has not shown that its tenuous case has been prejudiced in any way by D.R. Horton’s alleged failure to produce documents that are irrelevant to his case.

A. Plaintiff’s Rule to Show Cause

1. Agreement related to production of discovery.

As referenced above, the timeline of events referenced by Plaintiff fails to identify and address any of the agreements between counsel related to the production of discovery in the matter. These written agreements, which were supported by a detailed timeline and affidavits submitted in the record, include but are not limited to: the agreed deposition of Jared O’Sako to provide an understanding of how documents are kept in their ordinary course; the agreement related to the production of documents identified at the O’Sako deposition; Plaintiff’s failure to request additional documents after its initial review as agreed; and Plaintiff’s failure to identify or raise in any subsequent Rule 11 letters issues related to the alleged failure of D.R. Horton to comply with its agreement for the production of discovery.

2. Alfredo Uriostegui Deposition.

Plaintiff incorrectly cites to portions of Mr. Uriostegui deposition that were referenced in Plaintiff’s motion but are not supported in the record by deposition excerpts or affidavit.

Accordingly, these improperly cited excerpts may not be considered by the Court and may not be cited in any Order on the Motion.

3. Findings related to D.R. Horton as the general contractor for the subject property.

Page 7 of the Order is replete with proposed findings and conclusions related to D.R. Horton's position as a general contractor and not merely the owner of the project; D.R. Horton's alleged breach of its duty as a general contractor; and that D.R. Horton concealed certain facts from the Plaintiff. As Plaintiff's counsel raised at the hearing, the motion before the court was for sanctions and not a motion for summary judgment. Therefore, any findings related to D.R. Horton's role, duties and alleged breaches thereof would be inappropriate at this juncture.

In addition, the driver of the dump truck at issue was working on the site work infrastructure of the Cypress Ridge Development (also known as horizontal construction). D.R. Horton does not hold the requisite license to perform this type of work and could not act as the general contractor for the scope of work at issue. This position is supported by the affidavit of Jared O'Sako which was submitted in response to the Plaintiff's Motion. Moreover, the Plaintiff has submitted no evidence in the record contrary to this position. The facts alleged by Plaintiff in the proposed Order are irrelevant to its theory of liability. This is not a construction case regarding the entirety of the Cypress Ridge project. This is a motor vehicle accident case where Plaintiff allege that the at-fault driver who was hired as a subcontractor by the general contractor Kenneth Scott Builders at some point performed work on the site development owned by D.R. Horton (but admittedly not at the time immediately preceding the accident) and that D.R. Horton somehow should be responsible for the actions of the dump truck owner/operator who is three degrees removed from D.R. Horton. There is no "gotcha" on the permit provided by Plaintiff. It is uncontested that D.R. Horton performed vertical construction of the homes in the development

and the sales center, which it is licensed to perform. The permit was related to that work. D.R. Horton is not licensed to perform the horizontal construction and therefore as the owner of the property, entered into an agreement with Kenneth Scott Builders to perform that scope of work. As such, the Plaintiff's tenuous theories of recovery, cannot support discovery requests like the ones the Plaintiff claims D.R. Horton did not properly respond to. Findings

As previously referenced herein, D.R. Horton objects to any ruling that it "engaged in willful disobedience as well as gross indifference to the prior orders of this Court...", and that any actions or inactions between the parties support the disfavored and severe sanction of striking D.R. Horton's pleadings. Further, D.R. Horton would object to Plaintiff's newly requested relief that D.R. Horton be placed in default. This relief was not contained within Plaintiff's motions and/or supporting memorandum of law.

Based on the observations and comments provided herein, D.R. Horton would respectfully request that Plaintiff's Order not be entered by the Court and further that the Court not grant the severe relief of striking D.R. Horton's pleadings or contempt.

KENISON, DUDLEY & CRAWFORD, LLC

s/ John T. Crawford

John T. Crawford, Jr. (SC Bar # 69682)

Kimila L. Wooten (SC Bar # 64516)

Amelia M. Farmer (SC Bar #105750)

325 West McBee Avenue, Suite 301

Greenville, South Carolina 29601

Telephone: (864) 242-4899

Facsimile: (864) 242-4844

crawford@conlaw.com

wooten@conlaw.com

farmer@conlaw.com

Counsel for Defendant D.R. Horton, Inc.

December 23, 2024
Greenville, South Carolina

EXHIBIT O

STATE OF SOUTH CAROLINA)
 COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
 C.A. NO.: 2021-CP-27-00069

Mark W. McGilton,)
)
 Plaintiff,)

v.)

1223 May River Road, LLC;)
 D.R. Horton, Inc.; and Lotty Trucking, LLC)
 f/k/a Ramos Trucking, LLC,)
 Defendants.)

AFFIDAVIT OF JOHN CRAWFORD

1223 May River Road, LLC,)
)
 Third-Party Plaintiff,)

v.)

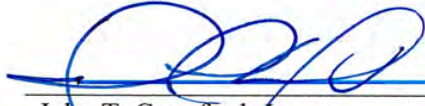
Kenneth Scott Builders, Inc.,)
)
 Third-Party Defendant.)

1. My name is John T. Crawford, Jr. I have been licensed to practice law in South Carolina since November of 2001.
2. I along with Jason Imhoff and other attorneys at Kenison, Dudley & Crawford, LLC represent Defendant D.R. Horton in the present matter.
3. This affidavit is provided in support of D.R. Horton's opposition to Plaintiff's Motion For Rule To Show Cause ("Motion") which alleges that D.R. Horton willfully failed and refused to provide emails and various other communications.
4. As detailed in Plaintiff's Motion, On August 22, 2022, after having reached a Consent Order related to discovery, Mr. Imhoff reached out to Mr. Shelton and proposed various

ESI search terms to use in identifying emails and other correspondence. Those terms included key parties to the litigation. **See Exhibit A at page 6.** Further in the email Mr. Shelton was requested to, “please check to see if we owe you anything else?”

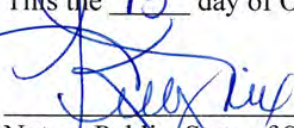
5. In response, on October 25, 2022, Mr. Shelton responded with a list of thirty-nine (“39”) search terms that included but were not limited to generic terms such as, “Top soil”, “Grade”, “Broke*”, “Haul*”, “Fill” and “Dirt”. **See Exhibit A at pages 1-2.**
6. On November 8, 2022, Mr. Imhoff responded suggesting a conference call to discuss concerns with the requested ESI terms. **See Exhibit B.**
7. After various scheduling emails, I attended a conference call with Mr. Shelton on April 4, 2023 where we discussed the issues with the proposed ESI terms and agreed to a deposition of Jared O’Sako, the D.R. Horton employee most involved with the project at issue, so that Mr. Shelton could obtain an understanding on how electronic documents were kept and also determine what items would be requested moving forward. **See Exhibit C.**
8. At Mr. O’Sako’s deposition, the parties reached an agreement where D.R. Horton would supplement discovery responses by, among other things, providing a file “tree” of the filing system discussed by Mr. Osaka. **See Exhibit D at page 1.**
9. After reviewing the referenced file and “tree” I advised that the entire land development file for Cypress Ridge contains 400+ items including subfolders with documents that date back to 2012. **See Exhibit E at page 1.** As a result, the parties agreed to D.R. Horton providing a mapping for Phase 7. **See Exhibit E at page 1.**
10. On August 11, 2023, I provided Mr. Shelton with a “tree” of the Phase 7 folder and after reviewing the “tree” Mr. Shelton requested all documents contained in the Phase 7 folder. **Exhibit F** with attached copy of the screenshot of the folder content.

11. After reviewing the folder and determining that sensitive information was contained in the requested production, the parties reached a confidentiality agreement and the entire content of the Phase 7 folder was produced to Mr. Shelton on December 6, 2023. **See Exhibit G.**
12. Thereafter, Mr. Shelton did not raise any issues with the production until June 24, 2024 when he requested that the D.R. Horton's discovery responses be immediately supplemented to provide a "Table of Contents" for the materials that were produced on December 6, 2023. **See Exhibit H**, "collectively" June 24, 2024, correspondence from Mr. Shelton at page 2 and D.R. Horton's response on June 27, 2024. No other deficiencies were identified related to D.R. discovery responses with the exception of an unrelated issue raised regarding deposition topics and expert witnesses identification.
13. Nonetheless, D.R. Horton agreed to produce the requested "Table of Contents" information on July 9, 2024. **See Exhibit I.**
14. The parties have never reached an agreement on ESI search terms and after the Phase 7 documents were provided, Plaintiff has not raised any questions related to those search terms and any related emails.



John T. Crawford, Jr.
SC Bar #69682
Kenison, Dudley & Crawford, LLC
325 W McBee Avenue, Suite 301
Greenville, SC 29601

SWORN to and subscribed before me
This the 15 day of October, 2024.



Notary Public, State of South Carolina
My Commission Expires: 8/28/2025

EXHIBIT A

John Crawford

From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Tuesday, October 25, 2022 8:50 AM
To: Stephanie Simpson; Jason Imhoff; Brooklyn Valentine
Cc: Harrison Williams; Kathryn Harden; Amanda Hammond; John Crawford
Subject: RE: Mark McGilton v. DR Horton, Inc. | Civil Action No. 2021-CP-27-00069
Attachments: Rule 11 Ltr to DRH.final.pdf

Importance: High

Hi Stephanie and Jason,

Thank you for helping get the order filed. I thought I had sent the below email and had a reminder set to follow-up with you on search terms and discovery. Then, I looked at my mailbox and see that this email (originally sent Oct. 4) was in a draft form. Anyway:

Following up on key words/search terms.

I think we will need to expand the scope of the list. Here is our proposal:

Kenneth Scott Builders
Kenneth Scott
Mar River 1223
Kenneth Tosky
Ken Tosky
Kenneth S Tosky
Ken S Tosky
Cypress Ridge
Jacob AU Trucking
Ramos Trucking
2016181
P.O. Box 1590
515429014
515329050
7B
Haul off
Haul in
Supervision
Top soil
Dump truck
Dump trucks
Wooden wheel lane
Boat & RV
Boat and RV
Phase 7
Hampton Lake
Accident
Crash

Wreck
Grade
Grading
Broke*
Haul*
May River Road
Alfredo
Uriostegui
Mill Creek
Fill
Dirt

As for discovery responses, I am attaching the Rule 11 letter we previously sent. Further, I don't think we have received the actual bid by Kenneth Scott Builders for any of the work involved at Cypress Ridge, other bids and proposals by Kenneth Scott Builders to DR Horton, or bids by other contractors for the work performed by Kenneth Scott Builders before they "won" the bid.

Emails and communications are very thin or outright missing. While your answers and responses were supplemented, no new material was provided and it is clear that DR Horton has not produced a full set of records relating to Cypress Ridge and/or Kenneth Scott Builders.

I am happy to have a conference and prepare a more detailed follow-up deficiency letter. Please circle back with your responses to the search terms, which may go a long way toward resolving outstanding discovery issues once they are run.

Apologies for the delay—it was on me this time due to the email error.

Ben

From: Benjamin Shelton

Sent: Tuesday, September 13, 2022 2:59 PM

To: Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>

Cc: Harrison Williams <harrison@sheltonlawsc.com>; Kathryn Harden <harden@conlaw.com>; Amanda Hammond <Hammond@conlaw.com>; John Crawford <crawford@conlaw.com>; Ruparelia, Roopal <rruparelia@hsblawfirm.com>

Subject: RE: Mark McGilton v. DR Horton, Inc. | Civil Action No. 2021-CP-27-00069

Stephanie and Jason,

Any comment on this. I would like to file no later than Thursday. We are reviewing the search terms you suggested and will have input for you by the end of the week.



SHELTON LAW FIRM

Benjamin T. Shelton

ben@sheltonlawsc.com

office | 843-802-0087

mobile | 843-295-0915

fax | 843-459-7908

From: Benjamin Shelton

Sent: Friday, September 2, 2022 10:46 AM

To: 'Stephanie Simpson' <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>

Cc: Harrison Williams <harrison@sheltonlawsc.com>; Kathryn Harden <harden@conlaw.com>; Amanda Hammond <Hammond@conlaw.com>; John Crawford <crawford@conlaw.com>; Ruparelia, Roopal <rruparelia@hsblawfirm.com>

Subject: RE: Mark McGilton v. DR Horton, Inc. | Civil Action No. 2021-CP-27-00069

Stephanie,

See attached draft of a proposed Order resolving our motions, attached. Please confirm you approve, and we can submit it for filing. Also, we assumed that a Form 4 order dismissing 1223 May River Road would be fine. I plan to inform Judge Price of the same by email when we file this order.

I cc'd Roopal, above.

Ben



SHELTON LAW FIRM

Benjamin T. Shelton

ben@sheltonlawsc.com

office | 843-802-0087

mobile | 843-295-0915

fax | 843-459-7908

From: Stephanie Simpson <simpson@conlaw.com>

Sent: Wednesday, August 31, 2022 1:58 PM

To: Benjamin Shelton <ben@sheltonlawsc.com>; Jason Imhoff <jimhoff@conlaw.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>

Cc: Harrison Williams <harrison@sheltonlawsc.com>; Kathryn Harden <harden@conlaw.com>; Amanda Hammond <Hammond@conlaw.com>; John Crawford <crawford@conlaw.com>

Subject: RE: Mark McGilton v. DR Horton, Inc. | Civil Action No. 2021-CP-27-00069

Ben/Harrison,

No problem! We just want to keep it on our radar, so Kathryn and Amanda can get you responses.

I appreciate your time!

With kind regards,



Stephanie Shell Simpson

KENISON, DUDLEY & CRAWFORD, LLC
704 East McBee Avenue
Greenville, SC 29601

Email: simpson@conlaw.com
Main: (864) 242-4899
Website: www.conlaw.com

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From: Benjamin Shelton <ben@sheltonlawsc.com>

Sent: Wednesday, August 31, 2022 1:33 PM

To: Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>

Cc: Harrison Williams <harrison@sheltonlawsc.com>; Kathryn Harden <harden@conlaw.com>; Amanda Hammond <Hammond@conlaw.com>; John Crawford <crawford@conlaw.com>

Subject: Re: Mark McGilton v. DR Horton, Inc. | Civil Action No. 2021-CP-27-00069

Hi Stephanie, we have a draft ready that I need to review. I'll have it to you tomorrow.

Sent from a mobile device

From: Stephanie Simpson <simpson@conlaw.com>

Sent: Wednesday, August 31, 2022 1:17:11 PM

To: Benjamin Shelton <ben@sheltonlawsc.com>; Jason Imhoff <jimhoff@conlaw.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>

Cc: Harrison Williams <harrison@sheltonlawsc.com>; Kathryn Harden <harden@conlaw.com>; Amanda Hammond <Hammond@conlaw.com>; John Crawford <crawford@conlaw.com>

Subject: RE: Mark McGilton v. DR Horton, Inc. | Civil Action No. 2021-CP-27-00069

Ben,

We just filed the proposed Order granting D.R. Horton's Motion to Amend per Judge Price.

I am following up on the previous emails below regarding a list of proposed search terms for the ESI search and proposed Orders. We want to make sure this doesn't fall off our radar.

Please let us know if you need anything further from us at this time.

With kind regards,



Stephanie Shell Simpson

KENISON, DUDLEY & CRAWFORD, LLC
704 East McBee Avenue
Greenville, SC 29601
Email: simpson@conlaw.com
Main: (864) 242-4899
Website: www.conlaw.com

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From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Monday, August 22, 2022 6:23 PM
To: Jason Imhoff <jimhoff@conlaw.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Cc: Harrison Williams <harrison@sheltonlawsc.com>; Stephanie Simpson <simpson@conlaw.com>; Kathryn Harden <harden@conlaw.com>; Amanda Hammond <Hammond@conlaw.com>; John Crawford <crawford@conlaw.com>
Subject: RE: Mark McGilton v. DR Horton, Inc. | Civil Action No. 2021-CP-27-00069

Hi Jason,

Thanks. Likewise. Yes; we will work on the orders and try to get them to you by Wednesday.

I think more search terms would be appropriate. I will aim to get a proposed list to you by the end of the week.

Ben



SHELTON LAW FIRM

Benjamin T. Shelton
ben@sheltonlawsc.com
office | 843-802-0087
mobile | 843-295-0915
fax | 843-459-7908

From: Jason Imhoff <jimhoff@conlaw.com>
Sent: Monday, August 22, 2022 1:51 PM
To: Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Cc: Benjamin Shelton <ben@sheltonlawsc.com>; Harrison Williams <harrison@sheltonlawsc.com>; Stephanie Simpson <simpson@conlaw.com>; Kathryn Harden <harden@conlaw.com>; Amanda Hammond <Hammond@conlaw.com>; John Crawford <crawford@conlaw.com>
Subject: Mark McGilton v. DR Horton, Inc. | Civil Action No. 2021-CP-27-00069

Ben,

I'm glad we could get those motions worked out last week. Are you preparing any Orders?

Also, you indicated you thought you were missing e-mails and correspondence. At this point all emails would be archived and we'd need to do an ESI search through corporate. Did you have a list of terms you'd like us to search?

I was thinking:
Kenneth Scott Builders
Mar River 1223
Kenneth Tosky
Cypress Ridge

Can you think of any other terms?

Also, will you please check to see if we owe you anything else?

Kathryn and Amanda, copied, will help get those responses to you.



Jason Imhoff
Of Counsel
KENISON, DUDLEY & CRAWFORD, LLC
704 East McBee Avenue
Greenville, SC 29601
Email: jimhoff@conlaw.com
Direct: (864) 501-3208
Website: www.conlaw.com

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From: Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Sent: Friday, May 27, 2022 12:09 PM
To: Jason Imhoff <jimhoff@conlaw.com>
Cc: Benjamin Shelton <ben@sheltonlawsc.com>; Harrison Williams <harrison@sheltonlawsc.com>; Stephanie Simpson <simpson@conlaw.com>
Subject: Mark McGilton v. DR Horton, Inc. | Civil Action No. 2021-CP-27-00069 | Discovery Requests

Dear Mr. Imhoff, Esq.,

I hope this e-mail finds you well. Attached for service upon you by e-mail is a copy of Plaintiff's First Requests for Admission regarding the above-referenced matter. A hard copy is being placed in the mail today.

Please let us know if you have any questions or concerns.

With kindest regards,



SHELTON LAW FIRM

Paralegal

phone | 843-802-0087
fax | 843-459-7908
email | brooklyn@sheltonlawsc.com
web | www.sheltonlawsc.com

PROSPECTIVE CLIENTS: NO ATTORNEY-CLIENT ENGAGEMENT IS CREATED

EXHIBIT B

John Crawford

From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Wednesday, November 9, 2022 7:36 AM
To: Jason Imhoff; Stephanie Simpson; Brooklyn Valentine
Cc: Harrison Williams; Kathryn Harden; Amanda Hammond; John Crawford
Subject: Re: Mark McGilton v. DR Horton, Inc. | Civil Action No. 2021-CP-27-00069

Hi Jason, I am jammed up today and tomorrow but could speak Friday morning.

Sent from a mobile device

From: Jason Imhoff <jimhoff@conlaw.com>
Sent: Tuesday, November 8, 2022 5:55:35 PM
To: Benjamin Shelton <ben@sheltonlawsc.com>; Stephanie Simpson <simpson@conlaw.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Cc: Harrison Williams <harrison@sheltonlawsc.com>; Kathryn Harden <harden@conlaw.com>; Amanda Hammond <Hammond@conlaw.com>; John Crawford <crawford@conlaw.com>
Subject: RE: Mark McGilton v. DR Horton, Inc. | Civil Action No. 2021-CP-27-00069

Ben,

I think we need to have a conference call with John about the ESI. Those terms have to be restricted by the project name i.e. cypress ridge or you'll get 1 billion hits for "haul off" "supervision" etc.. I don't think that list is practical BUT John is the expert and you two could probably work through it.

I looked through your Rule 11 letter and I don't believe we owe you anything but 1 name; Jared O'Saka. He was the land development guy who worked that development.

I will check with Jared again on the "bid" and other non winning "bids" but from my prior experience D.R. Horton doesn't work in the formal, written bid process you're probably envisioning. Its all computer based with vendor-partners from my previous experience. However, that may be something that gets snagged in the ESI search.

I'll follow up with DRH about other records, but again, from my experience there isn't going to be much as this stage of a development.

Can you talk Wednesday – Friday this week?



Jason Imhoff
Of Counsel
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Greenville, SC 29601
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EXHIBIT C

John Crawford

From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Tuesday, April 4, 2023 10:13 AM
To: John Crawford; Jason Imhoff
Cc: Stephanie Simpson; Kelly Nix; Cara Smith
Subject: Re: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Thanks, I'll call when I get back into the office.

Sent from a mobile device

From: John Crawford <crawford@conlaw.com>
Sent: Tuesday, April 4, 2023 9:56:00 AM
To: Benjamin Shelton <ben@sheltonlawsc.com>; Jason Imhoff <jimhoff@conlaw.com>
Cc: Stephanie Simpson <simpson@conlaw.com>; Kelly Nix <nix@conlaw.com>; Cara Smith <smith@conlaw.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Hey Ben, that'll be fine. I'm free until 11 and then free again anytime after 1:30.

From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Tuesday, April 4, 2023 9:55 AM
To: John Crawford <crawford@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>
Cc: Stephanie Simpson <simpson@conlaw.com>; Kelly Nix <nix@conlaw.com>; Cara Smith <smith@conlaw.com>
Subject: Re: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Hi John, I am just getting out of a doctor's appointment and might be a bit late. I'll call your cell when I'm out if that's okay.

Sent from a mobile device

From: John Crawford <crawford@conlaw.com>
Sent: Saturday, April 1, 2023 1:48:57 PM
To: Benjamin Shelton <ben@sheltonlawsc.com>; Jason Imhoff <jimhoff@conlaw.com>
Cc: Stephanie Simpson <simpson@conlaw.com>; Kelly Nix <nix@conlaw.com>; Cara Smith <smith@conlaw.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Ben,

Jason is in depositions next week, but I'll call you on Tuesday at 10 a.m.

Thanks,
John



John T. Crawford, Jr.
Managing Member
KENISON, DUDLEY & CRAWFORD, LLC
704 East McBee Avenue
Greenville, SC 29601
Email: crawford@conlaw.com
Main: (864) 242-4899
Website: www.conlaw.com

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From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Saturday, April 1, 2023 1:47 PM
To: Jason Imhoff <jimhoff@conlaw.com>; John Crawford <crawford@conlaw.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.
Importance: High

Jason and John,

I am in the office on Monday and available from 8am to 10am and 10:30am to 1:30pm, and 3pm to 5:30pm. I am available Tuesday after 10am. Please let me know of a time that works for you.

Ben



Benjamin T. Shelton
ben@sheltonlawsc.com
office | 843-802-0087
mobile | 843-295-0915
fax | 843-459-7908

From: Benjamin Shelton
Sent: Friday, March 24, 2023 4:28 PM
To: Jason Imhoff <jimhoff@conlaw.com>; John Crawford <crawford@conlaw.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Hi John,

I just tried you back. Your mailbox is full too.

I'm stepping out of the office for the rest of the day—please feel free to call my cell again and if we don't catch each other, let's touch base on Monday.

Ben



SHELTON LAW FIRM

Benjamin T. Shelton

ben@sheltonlawsc.com

office | 843-802-0087

mobile | 843-295-0915

fax | 843-459-7908

From: Jason Imhoff <jimhoff@conlaw.com>

Sent: Friday, March 24, 2023 2:06 PM

To: Benjamin Shelton <ben@sheltonlawsc.com>; John Crawford <crawford@conlaw.com>

Subject: FW: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Call his cell 864-230-3943



Jason Imhoff

Of Counsel

KENISON, DUDLEY & CRAWFORD, LLC

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Greenville, SC 29601

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From: Jason Imhoff

Sent: Friday, March 24, 2023 2:04 PM

To: Benjamin Shelton <ben@sheltonlawsc.com>; Stephanie Simpson <simpson@conlaw.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>; John Crawford <crawford@conlaw.com>

Cc: Harrison Williams <harrison@sheltonlawsc.com>; wpj@johnsonslawoffice.com; Griffith, Jr., Stephen <sgriffith@ycrlaw.com>; Brown, Stephen L. <sbrown@ycrlaw.com>

Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Ben,

John Crawford tried to call and said your voicemail is full. Can you give him a call back please?

EXHIBIT D

John Crawford

From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Monday, July 17, 2023 3:12 PM
To: John Crawford; Brooklyn Valentine
Cc: Harrison Williams; wpj@johnsonslawoffice.com; Griffith, Jr., Stephen; Brown, Stephen L.; Stephanie Simpson; Jason Imhoff
Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Importance: High

John—

I hope that you are doing well. I am following up with our discussion we had after Mr. Osaka's deposition concerning supplementing discovery responses by DR Horton. We had agreed that you would look into providing Plaintiff with a file "tree" of the filing system discussed by Mr. Osaka, and also providing the entire project files for projects involving Kenneth Scott Builders (and not just files that are specifically named or reference Kenneth Scott Builders or Ken Tosky, etc.). It has been well over a month.

Please let me know where we stand on these issues. I need this material to review to determine what other material may be available and missing, and well before DR Horton's 30(b)(6) deposition.

Best regards,

Ben



SHELTON LAW FIRM

Benjamin T. Shelton
ben@sheltonlawsc.com
office | 843-802-0087
mobile | 843-295-0915
fax | 843-459-7908

From: John Crawford <crawford@conlaw.com>
Sent: Wednesday, April 5, 2023 6:07 PM
To: Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Cc: Harrison Williams <harrison@sheltonlawsc.com>; wpj@johnsonslawoffice.com; Griffith, Jr., Stephen <sgriffith@yclaw.com>; Brown, Stephen L. <sbrown@yclaw.com>; Benjamin Shelton <ben@sheltonlawsc.com>; Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Thanks, Brooklyn. I'll check with Jason and Jared on availability for those dates.

John



John T. Crawford, Jr.
Managing Member
KENISON, DUDLEY & CRAWFORD, LLC
704 East McBee Avenue
Greenville, SC 29601
Email: crawford@conlaw.com
Main: (864) 242-4899
Website: www.conlaw.com

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From: Brooklyn Valentine <brooklyn@sheltonlawsc.com>

Sent: Wednesday, April 5, 2023 2:21 PM

To: John Crawford <crawford@conlaw.com>

Cc: Harrison Williams <harrison@sheltonlawsc.com>; wpj@johnsonslawoffice.com; Griffith, Jr., Stephen <sgriffith@ycrlaw.com>; Brown, Stephen L. <sbrown@ycrlaw.com>; Benjamin Shelton <ben@sheltonlawsc.com>; Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>

Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Dear Mr. Crawford,

Ben is available June 12, 13, 14, 15, 26, 27, 28, and 29, and July 10, 11, 12, 13, and 14.

Please let us know if any of those dates work for you.

With kind regards,



SHELTON LAW FIRM

BROOKLYN VALENTINE WEST

Paralegal

Shelton Law Firm, LLC
10 Hospital Center Commons, Suite 400
(Mailing: P.O. Box 21069)
Hilton Head Island, SC 29926 (29925)

phone | 843-802-0087
fax | 843-459-7908
email | brooklyn@sheltonlawsc.com
web | www.sheltonlawsc.com

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EXHIBIT E

John Crawford

From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Thursday, August 3, 2023 10:22 AM
To: John Crawford; Brooklyn Valentine
Cc: Harrison Williams; wpj@johnsonslawoffice.com; Griffith, Jr., Stephen; Brown, Stephen L.; Stephanie Simpson; Jason Imhoff; Kelly Nix; Cara Smith
Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

John,

Yes—thank you, that is reasonable. I look forward to receiving the “map” of folders by the end of the week please.

Ben



SHELTON LAW FIRM

Benjamin T. Shelton

ben@sheltonlawsc.com

office | 843-802-0087

mobile | 843-295-0915

fax | 843-459-7908

From: John Crawford <crawford@conlaw.com>
Sent: Thursday, August 3, 2023 10:19 AM
To: Benjamin Shelton <ben@sheltonlawsc.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Cc: Harrison Williams <harrison@sheltonlawsc.com>; wpj@johnsonslawoffice.com; Griffith, Jr., Stephen <sgriffith@yclaw.com>; Brown, Stephen L. <sbrown@yclaw.com>; Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>; Kelly Nix <nix@conlaw.com>; Cara Smith <smith@conlaw.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Ben, just wanted to give you an update on this. We have the land development file, but it contains 400+ items including folders with additional sub folders. Additionally, these docs go back to 2012.

Based on the issues raised, it would seem more efficient to get you over mapping for Phase 7 and then start from there. Is that agreeable?

Thanks,
John



John T. Crawford, Jr.
Managing Member
KENISON, DUDLEY & CRAWFORD, LLC
704 East McBee Avenue
Greenville, SC 29601
Email: crawford@conlaw.com
Main: (864) 242-4899
Website: www.conlaw.com

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From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Friday, July 21, 2023 10:31 AM
To: John Crawford <crawford@conlaw.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Cc: Harrison Williams <harrison@sheltonlawsc.com>; wpj@johnsonslawoffice.com; Griffith, Jr., Stephen <sgriffith@ycrlaw.com>; Brown, Stephen L. <sbrown@ycrlaw.com>; Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>; Kelly Nix <nix@conlaw.com>; Cara Smith <smith@conlaw.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Sounds good. It was a nice, whirlwind trip. Will have to go back again for a bit longer. Thank you!

Ben



SHELTON LAW FIRM

Benjamin T. Shelton
ben@sheltonlawsc.com
office | 843-802-0087
mobile | 843-295-0915
fax | 843-459-7908

From: John Crawford <crawford@conlaw.com>
Sent: Friday, July 21, 2023 10:28 AM
To: Benjamin Shelton <ben@sheltonlawsc.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Cc: Harrison Williams <harrison@sheltonlawsc.com>; wpj@johnsonslawoffice.com; Griffith, Jr., Stephen <sgriffith@ycrlaw.com>; Brown, Stephen L. <sbrown@ycrlaw.com>; Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>; Kelly Nix <nix@conlaw.com>; Cara Smith <smith@conlaw.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Hey Ben,

Thanks for the follow up and hope your trip went well!

I'll follow up with Jared and will get the info over to you by next week.

Thanks,
John

From: Benjamin Shelton <ben@sheltonlawsc.com>

Sent: Friday, July 21, 2023 10:24 AM

To: John Crawford <crawford@conlaw.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>

Cc: Harrison Williams <harrison@sheltonlawsc.com>; wpj@johnsonslawoffice.com; Griffith, Jr., Stephen <sgriffith@ycrlaw.com>; Brown, Stephen L. <sbrown@ycrlaw.com>; Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>

Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Hi John,

Following up on this. Hope all is well—

Ben



SHELTON LAW FIRM

Benjamin T. Shelton

ben@sheltonlawsc.com

office | 843-802-0087

mobile | 843-295-0915

fax | 843-459-7908

From: Benjamin Shelton

Sent: Monday, July 17, 2023 3:12 PM

To: John Crawford <crawford@conlaw.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>

Cc: Harrison Williams <harrison@sheltonlawsc.com>; wpj@johnsonslawoffice.com; Griffith, Jr., Stephen <sgriffith@ycrlaw.com>; Brown, Stephen L. <sbrown@ycrlaw.com>; Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>

Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Importance: High

John—

I hope that you are doing well. I am following up with our discussion we had after Mr. Osaka's deposition concerning supplementing discovery responses by DR Horton. We had agreed that you would look into providing Plaintiff with a file "tree" of the filing system discussed by Mr. Osaka, and also providing the entire project files for projects involving Kenneth Scott Builders (and not just files that are specifically named or reference Kenneth Scott Builders or Ken Tosky, etc.). It has been well over a month.

Please let me know where we stand on these issues. I need this material to review to determine what other material may be available and missing, and well before DR Horton's 30(b)(6) deposition.

EXHIBIT F

John Crawford

From: John Crawford
Sent: Friday, August 11, 2023 3:59 PM
To: Benjamin Shelton; Brooklyn Valentine
Cc: Harrison Williams; wpj@johnsonslawoffice.com; Griffith, Jr., Stephen; Brown, Stephen L.; Stephanie Simpson; Jason Imhoff; Kelly Nix; Cara Smith
Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.
Attachments: Phase 7 Map.pdf

Ben,

The Phase 7 folder did not have any subfolders, however attached is a screen shot of the files contained in that folder. Let me know what you would like to review.

Thanks,
John



John T. Crawford, Jr.
Managing Member
KENISON, DUDLEY & CRAWFORD, LLC
704 East McBee Avenue
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Main: (864) 242-4899
Website: www.conlaw.com

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From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Thursday, August 3, 2023 10:22 AM
To: John Crawford <crawford@conlaw.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Cc: Harrison Williams <harrison@sheltonlawsc.com>; wpj@johnsonslawoffice.com; Griffith, Jr., Stephen <sgriffith@yrcrlaw.com>; Brown, Stephen L. <sbrown@yrcrlaw.com>; Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>; Kelly Nix <nix@conlaw.com>; Cara Smith <smith@conlaw.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

John,

Yes—thank you, that is reasonable. I look forward to receiving the “map” of folders by the end of the week please.

Ben



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Benjamin T. Shelton

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From: John Crawford <crawford@conlaw.com>

Sent: Thursday, August 3, 2023 10:19 AM

To: Benjamin Shelton <ben@sheltonlawsc.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>

Cc: Harrison Williams <harrison@sheltonlawsc.com>; wpj@johnsonslawoffice.com; Griffith, Jr., Stephen <sgriffith@ycrlaw.com>; Brown, Stephen L. <sbrown@ycrlaw.com>; Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>; Kelly Nix <nix@conlaw.com>; Cara Smith <smith@conlaw.com>

Subject: RE: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 | 30(b)(6) Deposition of D.R. Horton, Inc.

Ben, just wanted to give you an update on this. We have the land development file, but it contains 400+ items including folders with additional sub folders. Additionally, these docs go back to 2012.

Based on the issues raised, it would seem more efficient to get you over mapping for Phase 7 and then start from there. Is that agreeable?

Thanks,
John



John T. Crawford, Jr.

Managing Member

KENISON, DUDLEY & CRAWFORD, LLC

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From: Benjamin Shelton <ben@sheltonlawsc.com>

Sent: Friday, July 21, 2023 10:31 AM

To: John Crawford <crawford@conlaw.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>

Cc: Harrison Williams <harrison@sheltonlawsc.com>; wpj@johnsonslawoffice.com; Griffith, Jr., Stephen <sgriffith@ycrlaw.com>; Brown, Stephen L. <sbrown@ycrlaw.com>; Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>; Kelly Nix <nix@conlaw.com>; Cara Smith <smith@conlaw.com>

NAME		UPDATED ↓	SIZE	
	Plans MC Phase 7 17008.12 6-30-15....	Aug 3, 2023 by Cara Smith	11.7 MB	
	Plans Phase 7 17008.12 8-10-15.pdf	Aug 3, 2023 by Cara Smith	12 MB	
	Cypress Ridge Phase 7 Site Plan.pdf	Aug 3, 2023 by Cara Smith	22.7 MB	
	Temporary CofC Cypress Ridge Phase...	Aug 3, 2023 by Cara Smith	105 KB	
	Spending Approval 6 and 7.msg	Aug 3, 2023 by Cara Smith	93.5 KB	
	Proposal 2-26-13 Cypress Ridge Phas...	Aug 3, 2023 by Cara Smith	88.9 KB	
	PO Request - MC Common Area - LA...	Aug 3, 2023 by Cara Smith	28.5 KB	

	Pages from Cypress Ridge Phase 7 Sit...	Aug 3, 2023 by Cara Smith	1.5 MB
	PO Request - MC 7A - LATHER.xlsx	Aug 3, 2023 by Cara Smith	28.5 KB
	Mill Creek Phase 7 Work Proposal.xls	Aug 3, 2023 by Cara Smith	37 KB
	Lather Phase 7A 7B Bid to DRH Break...	Aug 3, 2023 by Cara Smith	22.7 KB
	Cypress Ridge Phase 7 Version 8 1 LA...	Aug 3, 2023 by Cara Smith	2.4 MB
	Gross_Profit_by_Lot backlog PH7 06-...	Aug 3, 2023 by Cara Smith	13.3 KB
	Hiers Construction 03 31 15 Proposal...	Aug 3, 2023 by Cara Smith	68.9 KB

	Lather Phase 7 Bid to DRH off origina...	Aug 3, 2023 by Cara Smith	17.5 KB
	Dustcom Cypress Ridge Ph 7 Proposa...	Aug 3, 2023 by Cara Smith	16 KB
	FW (HH) Cypress Ridge Mill Creek Ph...	Aug 3, 2023 by Cara Smith	67 KB
	Dustcom - Cypress Ridge Ph 7 Propos...	Aug 3, 2023 by Cara Smith	15.8 KB
	Cypress Ridge Phase 7 Version 8 1 LA...	Aug 3, 2023 by Cara Smith	2.4 MB
	Deepwater billing for 7B Common.pdf	Aug 3, 2023 by Cara Smith	413 KB
			

	Deepwater work completed at 7B Co...	Aug 3, 2023 by Cara Smith	166.3 KB
	Cypress Ridge Phase 7 Version 8 1 LA...	Aug 3, 2023 by Cara Smith	2.4 MB
	Cypress Ridge Phase 7 Version 8 1 LA...	Aug 3, 2023 by Cara Smith	2.4 MB
	Cypress Ridge Phase 7 Version 8 1 LA...	Aug 3, 2023 by Cara Smith	2.3 MB
	Cypress Ridge Ph 7B Spend LAP.xlsm	Aug 3, 2023 by Cara Smith	2.3 MB
	Cypress Ridge Ph 7B Spend LAP 5-19...	Aug 3, 2023 by Cara Smith	2.3 MB
	Cypress Ridge Ph 7B Spend LAP 6-01...	Aug 3, 2023 by Cara Smith	2.3 MB

	Cypress Ridge Phase 7 Budget Increa...	Aug 3, 2023 by Cara Smith	369.2 KB
	Cypress Ridge 7B, Common Bids.pdf	Aug 3, 2023 by Cara Smith	992.7 KB
	Copy of Budget Mill Creek Phase 7B ...	Aug 3, 2023 by Cara Smith	64.1 KB
	Budget Mill Creek Phase 7B 5-2-17.xl...	Aug 3, 2023 by Cara Smith	64 KB
	Budget Mill Creek PH7 - 8-5-15.xlsx	Aug 3, 2023 by Cara Smith	62.6 KB
	Budget Increase Worksheet Cypress ...	Aug 3, 2023 by Cara Smith	82.9 KB

	BJWSA Phase 7B Utility Warranty Bo...	Aug 3, 2023 by Cara Smith	41.5 KB			
	BJWSA Phase 7A Utility Warranty Bo...	Aug 3, 2023 by Cara	...			
	5 unit town home.pdf	Aug 3, 2023 by Cara Smith	1.9 MB			
	BJWSA Capacity commitment.pdf	Aug 3, 2023 by Cara Smith	222.7 KB			
	Atlas Surveying - DRH-MILL CREEK 7...	Aug 3, 2023 by Cara Smith	74.5 KB			
	4 unit town home.pdf	Aug 3, 2023 by Cara Smith	1.9 MB			
	3 unit town home.pdf	Aug 3, 2023 by Cara Smith	2.4 MB			



7A Performance Bond Request - Redu...

Aug 3, 2023 by Cara Smith

41 KB



17008.1200 - PGD Construction Plan...

Aug 3, 2023 by Cara



EXHIBIT G

John Crawford

From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Wednesday, December 6, 2023 11:53 AM
To: John Crawford; Cara Smith; Harrison Williams
Cc: Kelly Nix; Stephanie Simpson; Jason Imhoff
Subject: RE: Mark W. McGilton v. D.R. Horton, Inc.

Hi John,

Unfortunately, I don't think so. This is a pattern for your client (this is not about you), where I am forced to file motions to compel to get any response. We agreed to a confidentiality order months ago, and we get a form proposed order a week before the hearing, weeks after the motion is filed. Also, the material sought is from initial discovery requests and relates to a previous order that we resolved by consent where your client agreed to provide outstanding responsive discovery.

Best regards,

Ben



SHELTON LAW FIRM

Benjamin T. Shelton
ben@sheltonlawsc.com
office | 843-802-0087
mobile | 843-295-0915
fax | 843-459-7908

From: John Crawford <crawford@conlaw.com>
Sent: Wednesday, December 6, 2023 11:13 AM
To: Benjamin Shelton <ben@sheltonlawsc.com>; Cara Smith <smith@conlaw.com>; Harrison Williams <harrison@sheltonlawsc.com>
Cc: Kelly Nix <nix@conlaw.com>; Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>
Subject: RE: Mark W. McGilton v. D.R. Horton, Inc.

Ben, can we enter into a consent order to avoid the hearing, now that we have the confidentiality agreement? Thanks.

From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Wednesday, December 6, 2023 9:39 AM
To: Cara Smith <smith@conlaw.com>; Harrison Williams <harrison@sheltonlawsc.com>
Cc: John Crawford <crawford@conlaw.com>; Kelly Nix <nix@conlaw.com>; Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>
Subject: RE: Mark W. McGilton v. D.R. Horton, Inc.

Good morning, Cara. The Confidentiality Order is approved here—please feel free to add my e-signature and submit. There are a few typos missing a space between words that show on the PDF that you might want to correct (perhaps they don't exist in Word?).

We still intend to move forward with tomorrow's hearing, however. Please let me know if you have any questions.

Best regards,

Ben



SHELTON LAW FIRM

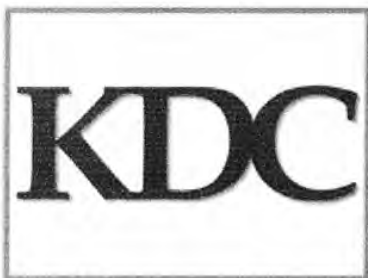
Benjamin T. Shelton
ben@sheltonlawsc.com
office | 843-802-0087
mobile | 843-295-0915
fax | 843-459-7908

From: Cara Smith <smith@conlaw.com>
Sent: Friday, December 1, 2023 5:15 PM
To: Benjamin Shelton <ben@sheltonlawsc.com>; Harrison Williams <harrison@sheltonlawsc.com>
Cc: John Crawford <crawford@conlaw.com>; Kelly Nix <nix@conlaw.com>; Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>
Subject: Mark W. McGilton v. D.R. Horton, Inc.

Good evening,

Our firm has finished reviewing D.R. Horton, Inc.'s document production in the above-referenced matter, and has marked all applicable documents as confidential. As such, please let us know if we have your consent to e-file this Proposed Consent Confidentiality Order and sign on your behalf. We greatly appreciate your time and assistance.

With kindest regards,



Cara Smith
Paralegal
KENISON, DUDLEY & CRAWFORD, LLC
704 East McBee Avenue
Greenville, SC 29601
Email: smith@conlaw.com
Direct Dial: (864) 501-3154
Main: (864) 242-4899
Website: www.conlaw.com

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EXHIBIT H

June 24, 2024

Via email only

KENSON, DUDLEY, & CRAWFORD, LLC

Jason Imhoff, Esq.

jimhoff@conlatv.com

John Crawford, Esq.

crawford@conlatv.com

Kim Wooten, Esq.

wooten@conlaw.com

***Re: Mark McGilton v. DR Horton, Inc., et al. | Civil Action No. 2021-CP-27-00069 |
Rule 11 Letter re Supplemental Discovery and General Discovery Obligations***

Dear Jason, John and Kim –

I am writing to address D.R. Horton's (hereinafter, "D.R. Horton" or "DRH") failure to organize, identify, or explain the tranche of documents that was produced on December 6, 2023, to Plaintiff, Mark W. McGilton (hereinafter, "Plaintiff" or "McGilton"), for failure to supplement answers to Plaintiff's interrogatories, failure to provide dates for 30(b)(6) witnesses, failure to respond to inquiries regarding authority to accept service of its identified experts, and for its failure to provide a detailed outline of D.R. Horton's experts' testimony as required by the Court's recent Order.

On October 17, 2023, Plaintiff's counsel filed a Motion to Compel against D.R. Horton requiring that they respond to outstanding supplemental discovery requests.

On December 6, 2023, D.R. Horton provided Plaintiff with a tranche of material that lacked a Table of Contents, identification, or an explanation as to what was being produced. Further, D.R. Horton failed to supplement their answers to interrogatories at that time or any time thereafter relative to the December 6, 2023 production.

On December 7, 2023, the court heard McGilton's renewed Motion to Compel, for Sanctions, and Rule to Show Cause as to D.R. Horton's failure to answer discovery responses, failure to timely supplement discovery responses, and failure to abide by the court's September 22, 2022 Consent Order requiring D.R. Horton to "comply with Plaintiff's outstanding discovery requests, comply with continuing discovery obligations,

BENJAMIN T. SHELTON
SHELTON LAW FIRM, LLC, a South Carolina limited liability company
PO BOX 21069
HILTON HEAD ISLAND, SC 29925

ben@sheltonlawsc.com
(843) 802-0087

ELECTRONICALLY FILED - 2024 Oct 15 10:02 AM - JASPER - COMMON PLEAS - CASE#2021CP2700069
ELECTRONICALLY FILED - 2025 Jan 27 4:34 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069

RULE 11 LETTER TO DR HORTON – June 24, 2024

and work in good faith with Plaintiff to resolve any further discovery disputes.” The Court granted Plaintiff’s Motion to Compel, and found D.R. Horton in contempt of court regarding their failure to abide by the previous order, and sanctioned D.R. Horton for their discovery abuses.

On June 10, 2024, the court heard D.R. Horton’s Motion to Amend Scheduling Order and held a status conference on June 11, 2024 as to D.R. Horton’s Motion to Amend Scheduling Order. In its Order dated June 16, 2024, the court found that the “Defendants failed to comply with the scheduling order and has not shown good cause for such violation. The court ruled that the Defendant is allowed to use their experts and must disclose them to the Plaintiff by Friday, June 14. The Defendant will provide a CV and a detailed outline of the experts’ testimony.”

Requests Pursuant to Rule 11, SCRCF

We request that your client immediately supplement their answers to the interrogatories, and explain by way of a Table of Contents, or some other method, the nature of the material that was produced on December 6, 2023. Please provide this firm with supplemental discovery responses immediately. We reserve the right to file a motion to compel same.

Next, we have produced a list of expected questions and topics for D.R. Horton’s 30(b)(6) witnesses. After consultation, we sent an email further identifying general topics and asked that D.R. Horton provide dates for 30(b)(6) depositions. To date, we have not received any proposed dates or the identity of 30(b)(6) witnesses from D.R. Horton. Please provide dates for your client’s 30(b)(6) witnesses availability immediately.

Also, after receiving the identity of D.R. Horton’s expert witnesses on Friday, June 14, 2024, we reached out to your office on no less than three occasions to determine whether your office would accept service of subpoenas for the experts D.R. Horton identified. To date, we have not received a response from your office. We will serve the subpoenas directly upon the identified experts.

Finally, we have reviewed D.R. Horton’s supplemental discovery responses dated June 14, 2024 where they identified experts that they intend to use at the trial of the matter. However, D.R. Horton failed to provide a “detailed outline of the experts’ testimony” as required by the Court’s June 13, 2024 Order. Please provide a detailed

SHELTON LAW FIRM, LLC
June 24, 2024

RULE 11 LETTER TO DR HORTON – June 24, 2024

outline of the expert testimony for each expert that your client intends to use at trial, immediately.

This letter is our Rule 11, SCRCF, consultation relating to the above requests. Please know that this letter does not identify all deficiencies related to DRH's discovery responses and production. My client does not waive any argument to identify and demand answers and more thorough responses to other deficiencies in the future. Please let us know if you have any questions.

With kind regards, I am

Most Sincerely Yours,

SHELTON LAW FIRM, LLC

s/Benjamin T. Shelton

Attorney at Law

SC Bar No. 77207

cc: All counsel of record



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

Jason M. Imhoff
Of Counsel
Licensed in SC
325 West McBee Avenue, Ste.
301
Greenville, SC 29601
864.242.4899
imhoff@conlaw.com

June 27, 2024

VIA ELECTRONIC MAIL – ben@sheltonlawsc.com

Benjamin T. Shelton, Esquire
Shelton Law Firm, LLC
P.O. Box 21069
Hilton Head Island, SC 29925

***Re: Mark W. McGilton v. D.R. Horton, Inc., et al,
Jasper County Court of Common Pleas, CA No. 2021-CP-27-00069***

Dear Ben:

As an initial matter, we were disappointed to receive your Rule 11 letter dated June 24, 2024, as we had been able to work together before May of this year. It appears your letter has one purpose: to posture in an attempt to win the case through motions to compel and sanctions. We disagree with both the tactic and the opinions in your letter.

We do not believe your letter complies with Rule 11 for the following reasons and we are unsure what supplemental discovery you are requesting.

Discovery

This is a car wreck case that may, if your legal analysis is correct, require some discovery into the hiring practices and history of D.R. Horton related to hiring KSB for this project. All of that information has been provided and more. In fact, after the most recent discovery production in December of last year you wrote:

“We are still reviewing the material that was provided on December 6, 2023 and will reach out with any issues, concerns or questions regarding it separately.”

We did not hear from you until this letter dated June 24, 2024. In yesterday’s letter you even reiterate that “this letter does not identify all deficiencies related to DRH’s discovery responses and production.” In fact, your letter does not ask for any further documents or substantive information at all.

June 27, 2024
Page | 2

Additionally, you represented to the Court during at least two motions for sanctions in 2024 that all discovery materials have been provided.

Based on the above, it appears that you had no complaint with the substance of our discovery production. Instead, it appears you are asking us to identify and explain the documents that you have been reviewing since December - after multiple hearings, depositions, and mediation.

Frankly, we are not sure what you want if you do not know the documents you have had for almost 8 months. We ask that you supplement your request with specific requests or required documents.

Experts

We are in the process of providing dates. Your letter arrived essentially one week after the order. In the meantime, my paralegal Stephanie has both resigned and become ill. (Please copy Cara above in the future) If you would prefer, please give us dates and we will get with the experts to schedule.

As regarding the authority to accept service (please see paralegal issues above) – we are unaware of any rule requiring us to voluntarily accept service for experts such that it would be the basis for a discovery violation or motion to compel. However, as a practical matter, we almost always accept service for depositions if we schedule them. We do not typically accept service of subpoenas for expert records for two reasons (1) we do not represent the expert related to subpoenas; and (2) I personally believe it is improper for an attorney to intervene between a party and a witness.

Once we have agreed on dates, we will accept the deposition subpoena (excluding duces tecum) and provide you with the experts' files through discovery. If you want to subpoena the experts directly, we cannot help with that.

Finally, we have complied with the Court's June order. We produced the names of our experts, their CV, and a summary of their opinions – which are more informative than Plaintiff's. Despite that, frankly, our experts have some opinions based on "guessing" – but without more information from you – especially related to Mr. Rowland's expected testimony – they are admittedly, to some degree, rebuttal experts. If you will provide a comprehensive outline of your experts' opinions, I will provide them to our experts to determine if they agree or have contrary opinions.

DRH 30(b)(6)

We have identified 3 designees in response to your draft 30(b)(6) notice and attached topics list. I understand that scheduling those depositions is now in process. Please let me know if you have further issues on this front.

June 27, 2024
Page | 3

Ben, as an aside, we worked together well for several years; however, we cannot ignore that you set us up, admitted it was intentional, and then attempted to get an order that this firm committed malpractice. Although we suspected you were trying to hide your experts' opinions so that we would be unprepared to rebut them, our suspicions were confirmed when you admitted the expert summaries were intentionally ambiguous to myself and John Crawford at mediation. If you would like to have a professional and cooperative relationship with us or this firm, you may need to consider addressing that.

This letter seems to be the same type of tactic.

If you want to work together then let's get through this. If you want to litigate this wreck case through threats, accusations, and sleight of hand, we can deal with that too.

Sincerely,

KENISON, DUDLEY & CRAWFORD, LLC

Jason M. Imhoff

Jason M. Imhoff

EXHIBIT I

John Crawford

From: Jason Imhoff
Sent: Tuesday, July 9, 2024 3:24 PM
To: Benjamin Shelton; John Crawford
Cc: Cara Smith; Stephanie Simpson
Subject: RE: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC

Ben –

I hope the depositions and mediation have been scheduled while I was gone. If there are still issues scheduling please let me know.

Cara/Stehanie are trying to label the document production in a way that is helpful. I think you'll have that this week.

I can set meetings with my experts and ask them to further explain their opinions, but again, the vast majority of their opinions will be based upon you experts' opinions and the summary language mirrors those opinions. If you want me to do that I will attempt it.



Jason Imhoff
Of Counsel
KENISON, DUDLEY & CRAWFORD, LLC
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This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Kenison, Dudley & Crawford, LLC by replying to this email and delete the original and reply emails. Thank you.

From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Tuesday, July 2, 2024 9:21 AM
To: John Crawford <crawford@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>
Cc: Cara Smith <smith@conlaw.com>; Harrison Williams <harrison@sheltonlawsc.com>; Kim Wooten <wooten@conlaw.com>; wpj@johnsonslawoffice.com; kmims@lmlawllp.com; William C. McNair (<cmcnair@lmlawllp.com> <cmcnair@lmlawllp.com>; hgrooms@lmlawllp.com; rconner@lmlawllp.com; Andrea S Tata <atata@lmlawllp.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC

Thanks, John.

Ben

From: John Crawford <crawford@conlaw.com>
Sent: Tuesday, July 2, 2024 7:30 AM
To: Benjamin Shelton <ben@sheltonlawsc.com>; Jason Imhoff <jimhoff@conlaw.com>
Cc: Cara Smith <smith@conlaw.com>; Harrison Williams <harrison@sheltonlawsc.com>; Kim Wooten <wooten@conlaw.com>; wpj@johnsonslawoffice.com; kmims@lmlawllp.com; William C. McNair <cmcnair@lmlawllp.com> <cmcnair@lmlawllp.com>; hgrooms@lmlawllp.com; rconner@lmlawllp.com; Andrea S Tata <atata@lmlawllp.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC

Ben,

Jason has been on vacation since last Friday and will return on Monday. We'll have you a response on the 8th.

Thanks,
John



John T. Crawford, Jr.
Managing Member
KENISON, DUDLEY & CRAWFORD, LLC
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PLEASE NOTE THAT, AS OF FEBRUARY 16, 2024, OUR GREENVILLE OFFICE IS NOW LOCATED AT 325 W. MCBEE AVENUE, SUITE 301, GREENVILLE, SC 29601.

This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Kenison, Dudley & Crawford, LLC by replying to this email and delete the original and reply emails. Thank you.

From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Saturday, June 29, 2024 4:01 PM
To: Jason Imhoff <jimhoff@conlaw.com>
Cc: John Crawford <crawford@conlaw.com>; Cara Smith <smith@conlaw.com>; Benjamin Shelton <ben@sheltonlawsc.com>; Harrison Williams <harrison@sheltonlawsc.com>; Kim Wooten <wooten@conlaw.com>; wpj@johnsonslawoffice.com; kmims@lmlawllp.com; William C. McNair <cmcnair@lmlawllp.com> <cmcnair@lmlawllp.com>; hgrooms@lmlawllp.com; rconner@lmlawllp.com; Andrea S Tata <atata@lmlawllp.com>
Subject: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC

Jason,

Please see attached.

Please feel free to give me a call to discuss.

Best regards,

Ben



SHELTON LAW FIRM

Benjamin T. Shelton

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fax | 843-459-7908

WE ARE MOVING! Come see us at the Village at Wexford after July 1, 2024--

Shelton Law Firm, LLC

1000 William Hilton Parkway

Suite E-6

Hilton Head Island, SC 29928

ELECTRONICALLY FILED - 2024 Oct 15 10:02 AM - JASPER - COMMON PLEAS - CASE#2021CP2700069
ELECTRONICALLY FILED - 2025 Jan 27 4:34 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069

EXHIBIT P

Jacob Henerey

Subject: FW: McGilton v. D.R. Horton, et al. -- Affidavit of Attorney's Fees, attached

Importance: High

From: Benjamin Shelton <ben@sheltonlawsc.com>

Sent: Wednesday, January 3, 2024 5:38 PM

To: Kim Wooten <wooten@conlaw.com>

Cc: John Crawford <crawford@conlaw.com>; Brooklyn Valentine <brooklyn@sheltonlawsc.com>; Jason Imhoff <jimhoff@conlaw.com>

Subject: McGilton v. D.R. Horton, et al. -- Affidavit of Attorney's Fees, attached

Importance: High

Hi Kim,

I hope that you are having a nice holiday season and New Year. Attached is the Affidavit of Attorney's Fees requested by Judge Goodstein. I will let her law clerk know that I have provided it to you today and that we may need a bit longer than 30 days to submit the Order and Affidavit, as she instructed me to give 10 days to review the Affidavit. I have been a bit tied up with the Holidays and it took a bit longer to get this to you than initially planned.

We are still reviewing the material that was provided on December 6, 2023 and will reach out with any issues, concerns or questions regarding it separately.

Please let me know if you have any questions.

Best regards,

Ben



SHELTON LAW FIRM

Benjamin T. Shelton

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mobile | 843-295-0915

fax | 843-459-7908

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

MARK W. MCGILTON,

Plaintiff,

vs.

1223 MAY RIVER ROAD, LLC, D.R.
HORTON, INC., AND LOTTY TRUCKING,
LLC F/K/A RAMOS TRUCKING, LLC,

Defendants.

1223 MAY RIVER ROAD, LLC, and D.R.
HORTON, INC.,

Third-Party Plaintiffs,

vs.

KENNETH SCOTT BUILDERS, INC.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-27-00069

PLAINTIFF'S RETURN TO DEFENDANT
D.R. HORTON, INC.'S MOTION FOR
RECONSIDERATION

Plaintiff Mark W. McGilton files the following Return to the Motion to Reconsider, Alter or Amend by Defendant D.R. Horton, Inc. (herein, "Defendant" or "D.R. Horton") filed pursuant to Rule 59(e), SCRCF, regarding the Court's order granting Plaintiff's Rule to Show Cause and Declaring D.R. Horton in Default. The Court should deny the motion.

Defendant does not assert the Court overlooked or misapprehended any of its arguments briefed prior to the hearing or made at the hearing on the Plaintiff's Rule to Show Cause. Rather, Defendant seeks reconsideration as permitted by *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004) (Supreme Court adopted the federal construction of Rule 59 that permits a party to request reconsideration of any order and to seek an order altering or amending the prior

order). Further, Defendant raises several arguments for the first time in its Rule 59(e) motion, which may not be considered by the Court. Plaintiff therefore restates and incorporates herein the arguments he previously made in all of his filings in this matter, and orally before the Court in the Motion for a Rule to Show Cause on October 17, 2024. Plaintiff does, however, address a few points below.

I. This is the fourth time a judge has ruled upon D.R. Horton's discovery abuse in this case, and the Defendant fails to acknowledge it was already in contempt of court for its previous discovery violations and subject to the terms of the Order of Contempt prior to the Plaintiff filing his Rule to Show Cause.

As the Court correctly observes (and D.R. Horton fails to acknowledge), this is the fourth time Defendant D.R. Horton has been before the Court in this matter regarding its discovery deficiencies. D.R. Horton ignored and did not answer the Plaintiff's initial discovery requests for 359 days after being duly served with the same. It only partially answered and responded to those requests after a hearing on the Plaintiff's first motion to compel was scheduled by the court. In order to avoid the prospect of having Rule 37, SCRCP, sanctions imposed for this first act of blatant discovery abuse, in September of 2022, D.R. Horton consented to an order where it agreed to "comply with Plaintiff's outstanding discovery requests, comply with continuing discovery obligations, and work in good faith with Plaintiff to resolve any further discovery disputes." Order of Judge Price (September 20, 2022).

D.R. Horton failed to comply with the September 20, 2022 Order. The Plaintiff was forced to file a second Motion to Compel and Rule to Show Cause on October 17, 2023 after D.R. Horton refused to respond and produce discovery that it acknowledged existed even after being served with additional Rule 11, SCRCP, letters regarding that production. Plaintiff's Motion to Compel, Oct. 17, 2022. Defendant then produced a tranche of documents on

December 6, 2023, on the eve of the date of oral argument on Plaintiff's Second Motion to Compel, two years and nearly five months after being served with initial discovery responses.

After hearing arguments on December 7, 2023, Judge Goodstein orally granted Plaintiff's Motion to Compel and for Sanctions *and held D.R. Horton in contempt of court*. Stopping short of striking D.R. Horton's answer at that time, Judge Goodstein gave a clear and explicit warning to the Defendant that any further findings of discovery violations may result in striking its Answer. Order of Judge Goodstein (March 5, 2024) (Granting Plaintiff's Motion to Compel, Sanctioning D.R. Horton, and Holding D.R. Horton in Contempt of Court). Judge Goodstein's March 5, 2024 Order mandated that D.R. Horton strictly abide by time deadlines, among other things.

Thereafter, as the Court's Order Granting Plaintiff's Rule to Show Cause observes, D.R. Horton failed to abide by the terms of a consent scheduling order, failing to identify experts within the timeline upon which it had agreed. In an Order dated June 13, 2024, the court found that D.R. Horton "failed to comply with the scheduling order and has not shown good cause for such violation." Order of Judge Bonds (June 13, 2024).

D.R. Horton's Rule 59(e) motion does not address the existence of these Orders and the fact that it was already in contempt of court due to its willful discovery misconduct and its repeated pattern of discovery misconduct in this litigation. This pattern continues, as set forth below.

II. D.R. Horton repeats arguments which have already been made to the Court and rejected by the Court multiple times.

A. D.R. Horton, Inc. argues, inaccurately, that the wrongfully withheld permit showing that it was the general contractor for its regional headquarters is irrelevant.

D.R. Horton continues to maintain that it has no obligation to disclose to the Plaintiff (or to the Court) that it was the General Contractor for its own regional headquarters within the commercial phase of Cypress Ridge development contemporaneously with and on the same plat where the Dump Truck Operator performed work on a daily basis. It claims that such “vertical work” is wholly separate and unrelated to the “horizontal work” of development. Therefore, D.R. Horton maintains they were not required to disclose the material. This contention is nonsensical. The withheld material was directly responsive to pending discovery requests that are reasonably calculated to lead to the discovery of admissible evidence. *See, e.g., E.G. v. South Carolina Dept. of Soc. Services*, 443 S.C. 379, 385. 905 S.E.2d 124, 127 (2022) (“Rule 26(b) allows a party to discover all non-privileged information that ‘appears reasonably calculated to lead to the discovery of admissible evidence.’ Rule 26(b)(1), SCRCPP; *see also In re Mt. Hawley Ins. Co.*, 427 S.C. 159, 166, 829 S.E.2d 707, 712 (2019) (citations omitted) (“The scope of discovery in South Carolina is generally broad.”); *In re Mt. Hawley*, at 712, 829 S.E.2d at 166-167 (“Since dockets must be kept current largely by settlements, litigants and attorneys should be allowed liberal discovery. Such would, of course, increase the likelihood of fair trial.”)).

The appropriate way to challenge a discovery request is to object, or file a motion for a protective order, and obtain a ruling on whether the discovery is permitted, not to unilaterally decide not to respond or produce the material. D.R. Horton chose the latter course of action. Further, D.R. Horton ignores the fact the Plaintiff’s Rule to Show Cause was based on additional grounds, including the failure to disclose additional relevant material, such as correspondence and emails directly between it and regulatory agencies (specifically, the Town of Bluffton)

concerning the development, plans, and regulatory citations it received directly by D.R. Horton during the course of the project that relate to phases of development upon which the Dump Truck Operator was operating. These documents, collectively, tend to show that D.R. Horton was the general contractor of record for the very phase of work which was being completed by the Dump Truck Operator. The material, viewed together, is evidence that D.R. Horton was acting as the General Contractor over the Dump Truck Operator at the time of the collision at issue in this litigation. D.R. Horton contends its word should govern over the facts and inferences established by the material it withheld. The Court should reject this approach.

As previously argued in his Letter in response to D.R. Horton's letter objecting to Plaintiff's Motion for Rule to Show Cause, D.R. Horton is attempting to make a false legal distinction between horizontal construction and vertical construction.

B. D.R. Horton, Inc. again argues that it does not possess a license allowing it to perform or oversee the work at issue when the builder's license used to pull the permit at issue was an unlimited commercial builder's license

D.R. Horton, Inc. argues that it does not hold a license that would allow it to perform the horizontal development work necessary to build its regional headquarters. However, the license that D.R. Horton, Inc. used to pull the permit to build its regional headquarters on the site in question is an unlimited commercial builder's license numbered 114610, classified as Building-BD5 (**Exhibit 1**) (publicly available record from the South Carolina License Labor and Regulation showing the license held by D.R. Horton that it used for the permit in question). This is the same classification of license held by the alleged subcontractor in this matter which D.R. Horton allegedly hired to perform "horizontal construction" on the parcel (**Exhibit 2**) (license held by Kenneth Scott Builders, Inc.). Thus, the argument presented by D.R. Horton that it did

not hold a license allowing it to perform the false distinction of “horizontal construction” is categorically false. If true, then D.R. Horton, Inc. by its own admission, had hired a contractor to perform horizontal development work without a license to complete such work.

D.R. Horton submitted the application as a Building Permit Application Commercial Master Application utilizing its commercial contractor’s license number G114610. The Parcel ID for the application is R614 028 000 0916 0000, which is the same parcel within which the Dump Truck Operator utilized an uninsured and unmaintained dump truck to haul dirt from for over 18 months. A D.R. Horton employee is the job site contact for the application. Under construction details, the permit identifies the “total parcel area” as 22,145 square feet with 10,694 square feet as pervious, and 11,451 square feet as impervious. At his deposition, the dump truck operator testified that he helped prepare the building pad of D.R. Horton’s commercial headquarters in question, which he called the “clubhouse.” Uriostegui Dep. 201-202; 228-233. (**Exhibit 3**)¹ Indeed, when asked, “Did you help build the pad for the actual clubhouse?” Mr. Uriostegui, the dump truck operator testified, “I did.” *Id.* 233:19-21. D.R. Horton was the general contractor for what Mr. Uriostegui referred to as “the clubhouse.”

D.R. Horton, Inc. failed to produce or disclose this material to the Plaintiff, and now argues it is irrelevant. “Relevant evidence,” however, is a defined term and means “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. *See, also, Whitfield v. Schimpf*, Op. No. 28250 (S.C Sup. Ct. filed Jan. 8, 2025) (Howard Adv. Sh. No. 2 at 23, 29) (“The central premise of the law of evidence is,

¹ D.R. Horton, Inc. also argues, without citing to any authority, that the Court should not consider references to deposition transcripts which have not been fully entered into the court’s record. D.R. Horton, Inc. does not dispute the content or substance of transcript references. Plaintiff files Mr. Uriostegui’s complete deposition transcript herewith to avoid any obfuscation of issues.

‘All relevant evidence is admissible’”); *Samples v. Mitchell*, 329 S.C. 105, 109, 495 S.E.2d 213, 215 (Ct. App 1997) (“In South Carolina the scope of discovery is very broad and ‘an objection on relevance grounds is likely to limit only the most excessive discovery request.’”), citing J. Flanagan, *South Carolina Civil Procedure* 216 (2d ed. 1996). *See, also*, J. Flanagan, *et al.*, *South Carolina Civil Procedure* 315 (4th ed. 2021) (same). The material was responsive to outstanding proper discovery requests, and whether the material is “relevant” was a matter for a court to rule upon under a proper objection or motion, and not something for D.R. Horton to unilaterally decide and therefore withhold.

The Court rightfully rejected D.R. Horton’s argument that the permit that it failed to disclose and produce was irrelevant before, and it should reject it again.

C. D.R. Horton, Inc. again fails to address the thousands of pages of emails it failed to produce, showing that it controlled operations with regulatory agencies.

In addition to the plans and permits D.R. Horton failed to identify and produce, D.R. Horton wrongfully withheld and failed to identify and produce thousands of pages of emails between its employees and the Town of Bluffton concerning the construction, management of the work, and that contained surface water violations at the specific phases at issue in this litigation. The Plaintiff alleged that D.R. Horton operated as the general contractor for the site at issue and controlled the Dump Truck Operator’s (as defined in the Complaint) work. The emails tend to show that D.R. Horton and its employees exerted control over the project and operations and was the entity considered by the regulatory authority to be the general contractor over all operations. D.R. Horton still has not produced tens of thousands of emails of potential relevance in this case.

D. D.R. Horton, Inc. again argues, inaccurately, that it had no duty to produce relevant material because of an alleged agreement between counsel as to the scope of discovery when two Orders mandated that it produce all relevant material.

In its Memorandum in Opposition to Plaintiff's Motion for a Rule to Show Cause, in its "Letter" Objecting to a proposed Order sent to the Court, and in its Rule 59(e) Motion to Reconsider the Order Granting Plaintiff's Rule to Show Cause, D.R. Horton attempts to relitigate arguments it made concerning its conduct prior to Judge Goodstein's March 5, 2024 Order holding it in Contempt of Court. D.R. Horton again attempts to reargue the Matters which were before the Court at the December 7, 2023 Sanctions Motion, and attempts to modify the prior decision Judge Goodstein rendered in the Order Granting Plaintiff's Motion to Compel, for Sanctions and Holding D.R. Horton in Contempt dated March 5, 2024. The Court should reject these arguments.

Ironically, D.R. Horton's failure to fulfill its agreements with the Plaintiff concerning discovery production led to D.R. Horton being sanctioned and held in contempt on March 5, 2024. See Pl.'s Mot. to Compel (Oct. 17, 2023), 2-3 (filed because, *inter alia*, D.R. Horton failed to produce agreed upon documents which were previously undisclosed but discovered during a deposition, despite being served with Rule 11, SCRCp, letters concerning the agreed upon discovery and despite having a Motion to Compel filed against it to Compel the production of documents which it had agreed to produce).

In its March 5, 2024 Order holding D.R. Horton in Contempt, the Court thoroughly sets forth the facts concerning Plaintiff's attempts to coordinate with the Defendant over search-terms, discovery depositions, and then D.R. Horton's agreement to produce relevant material,

and its failure to do the same. Order Granting Pl.’s Mot. to Compel, for Sanctions and Holding D.R. Horton in Contempt (March 5, 2024) (pp. 3-4, 6-7). D.R. Horton did not file a Motion to Reconsider the March 5, 2024 Order, and did not appeal the March 5, 2024 Sanctions Order holding it in Contempt. *See, e.g., Ex parte Cannon*, 385 S.C. 643, 660, 685 S.E.2d 814, 823 (Ct. App. 2009) (“the finding of contempt is immediately appealable”).

In the March 5, 2024 Order, the Court held that D.R. Horton shall “fully and timely answer and respond to discovery requests. It shall cooperate fully with Plaintiff in scheduling and producing witnesses for depositions. It shall otherwise strictly comply with this court’s September 22, 2022 Order and with this Order.” *Id.* p. 7, ¶ 3. Further, the Court ruled that D.R. Horton may purge its contempt by “1. Fulfilling all of its discovery obligations from this point forward, and by avoiding any actions that warrant further Motions to Compel or Rule to Show Cause being filed by the Plaintiff; 2. By strict compliance with all discovery deadlines and answering any existing or supplemental discovery requests.” *Id.* p. 8.

D.R. Horton advances an argument that it has no duty to disclose responsive material in litigation until and unless an adverse party catches it hiding material and then specifically requests it. This is not what is required by the rules and the court correctly rejected this approach.

Under D.R. Horton’s theory of discovery, the Plaintiff should somehow have advanced knowledge of what D.R. Horton holds in its possession, and that D.R. Horton only has a duty to disclose material relevant to the matter after Plaintiff somehow discovers the material through ancillary efforts. This is absurd. D.R. Horton’s contention is that a previous alleged agreement concerning production of material relating to a phase of the development that the Dump Truck Operator was involved in, the plans of which were previously disclosed to the Plaintiff by D.R.

Horton, somehow obviated D.R. Horton's responsibility to disclose the existence of and produce plans, permits, correspondence and other responsive material involving a different phase of development involving the same Dump Truck Operator which were never disclosed, produced or identified. D.R. Horton happened to hold a permit as the general contractor over the commercial construction that was being built at the parcel which it failed to identify and produce. This is not a coincidence.

As the March 5, 2024 Order Sanctioning D.R. Horton, Inc. and holding it in contempt states: "It is clear that but for the filing of the motions to compel, the motions for sanctions, and but for the motions to compel hearings being scheduled, that D.R. Horton would have produced no discovery in this case." Order of Judge Goodstein Granting Pl's. Mot. to Compel, for Sanctions and Holding D.R. Horton in Contempt, p. 6, ¶ 2 (March 5, 2024).

E. D.R. Horton, Inc. again argues, inaccurately, that the Plaintiff has suffered no prejudice due to its discovery abuse.

a. D.R. Horton's consistent, repeated and prolonged discovery abuse has obstructed Plaintiff's efforts to advance this case for nearly four years.

The Court should not take seriously any argument that the Plaintiff and the court system have not been prejudiced by D.R. Horton's deleterious and willful conduct. Judge Goodstein warned D.R. Horton, and its blatant disregard of the Court, and that warning, obviates any consideration of prejudice. Notwithstanding the fact that prejudice need not be considered in this instance where D.R. Horton already was in contempt of court for its discovery violations, it is clear that D.R. Horton's ongoing discovery violations have caused the Plaintiff to suffer tremendous prejudice in this matter.

b. 2,523 pages of the documents that D.R. Horton cites as being produced only were produced on November 4, 2024, approximately two weeks after the Plaintiff's Rule to Show Cause was argued.

D.R. Horton, Inc. attempts to explain away its discovery abuse by stating that it has produced 4,600 pages of documents to date and claims that the Plaintiff has not been prejudiced by its repeated and delayed production. While Plaintiff only has a record of 3,729 pages of documents produced by D.R. Horton in this case, what D.R. Horton, Inc. fails to disclose to the Court is that 2,523 pages of the documents that it cites as being produced only were produced approximately two weeks *after the Plaintiff's Rule to Show Cause was filed and argued*, on November 4, 2024. D.R. Horton was in possession of these very documents at the time it argued against the Plaintiff's Rule to Show Cause.

D.R. Horton only produced these 2,523 pages three years and nearly four months after being served with discovery requests, eight months after it was held in contempt by the court for failing to comply with its discovery obligations, and eight months after it was ordered to produce all relevant material. The newly produced 2,523 pages of documents were in D.R. Horton's possession at the time it was served with discovery requests in July of 2021 and have been in D.R. Horton's possession since the outset of the case. They contain the plans for the commercial phase of the Cypress Ridge development—the material that Plaintiff discovered had not been produced through his FOIA efforts in August 2024, merely two months before this case was previously set for a date certain trial. See Order of Judge Bonds (June 13, 2024).

This is a continuation of a pattern by D.R. Horton. This Defendant only produces documents when absolutely forced to do so by the Court, even after being held in contempt. Further, and perhaps even more astonishingly, D.R. Horton fails to inform the Court that it has identified over 46,000 emails of potential additional material which it *still has not produced*, which counsel for D.R. Horton disclosed to Plaintiff on December 23, 2024. (**Exhibit 4**,

December 23, 2024 Letter disclosing existence of approximately 46,000 emails identified by D.R. Horton).

It is clear to any reasonable observer that the Plaintiff cannot prepare for or proceed with adverse expert depositions, depositions of Rule 30(b)(6) designees, or prepare his own case for trial when he does not have tens of thousands of pages of relevant material from D.R. Horton, three and one-half years after serving D.R. Horton with discovery requests. Under D.R. Horton's view, a party is not entitled to relevant, responsive material, and should only receive discovery if and when it files a Motion to Compel. Then, the Plaintiff is obliged to know what D.R. Horton has not identified or produced but which is in D.R. Horton's possession, and then must specifically request it before it has an obligation to produce the same. The Court rightfully considered and rejected this approach in Judge Goodstein's March 5, 2024 Order holding D.R. Horton in contempt, and in its January 15, 2025 Order granting Plaintiff's Rule to Show Cause. To state that the Plaintiff is not prejudiced by such willful and dilatory conduct defies logic and reason. Here, the record is full of multiple discovery abuses that have blocked the Plaintiff's attempts to conduct meaningful discovery. *See Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198-199, 511 S.E.2d 716, 718-719 (Ct. App. 1999) (affirming a circuit court order striking a pleading as a sanction for repeated discovery abuse "that blocked the opposing party's attempts to conduct meaningful discovery").

F. D.R. Horton, Inc. argues, inaccurately, that the court did not consider relevant case law.

In its Motion to Reconsider, D.R. Horton states that the court fails to consider relevant case law and failed to apply the same to its misconduct. However, the Court rightfully considered and cited *Griffin Grading and Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C.

193, 511 S.E. 2d 716 (Ct. App. 1999) and *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997). The Court considered the multiple discovery violations and willful conduct by D.R. Horton, the posture of the case, considered the nature of the discovery, and considered the severity of and necessity of its sanction. Indeed, the Court considered that “severe sanctions, such as the dismissal of an action, should only be imposed in cases involving bad faith, willful disobedience, or gross indifference to the opposing party’s rights.” Order of Judge Murphy Granting Plaintiff’s Rule to Show Cause, Striking Answer, and Declaring D.R. Horton in Default p. 3, ¶ 1 (January 15, 2025) (Citing *McNair v. Fairfield Cnty*, 379 S.C. 462, 466, 665 S.E. 2d 830 (Ct. App. 2008)) (Judge Murphy’s January 15, 2025 Order, hereinafter referenced as, “Order Granting RTSC”).

G. D.R. Horton, Inc. again argues, inaccurately, that the Court placed too much emphasis on the wrongfully withheld and non-disclosed material

While D.R. Horton, Inc. brazenly argues that the material it failed to produce set forth above has no materiality to the underlying case, the Court correctly observed that D.R. Horton based its defense in this case on the premise that it is merely an owner of the development and did not have a hand in its construction and was not the general contractor. Order Granting RTSC p. 5, ¶ 2. On page six through seven of the Order Granting Plaintiff’s Rule to Show Cause, the Court correctly notes that the documents that D.R. Horton, Inc. failed to produce “tend to show that D.R. Horton was the general contractor of record for the very phase of work which was being completed by the Dump Truck Operator . . . when the Dump Truck Operator collided with the Plaintiff on his way back to D.R. Horton, Inc.’s development to perform more work for D.R. Horton, Inc.” *Id.* p. 7. Further, the Order Granting the Plaintiff’s Rule to Show Cause states that the documents D.R. Horton withheld after being held in contempt and after it was ordered to

fully respond to all discovery “*support Plaintiff’s contention* that D.R. Horton was the General Contractor over the phase of development from which the Dump Truck Operator mined dirt and regularly hauled loads of dirt off site. That is, these documents *are evidence* that Defendant D.R. Horton was acting as the General Contractor over the Dump Truck Operator, having power, control and responsibility over him.” *Id.* p.7, ¶ 2. (emphasis added). The Order does not state that D.R. Horton *was* the General Contractor, but that the material *tends to show* that D.R. Horton was acting as the General Contractor and serves as evidence of the same. These are documents which should have been produced over three years ago, but despite multiple orders finding D.R. Horton violated discovery rules, it failed to identify them and failed to produce them. D.R. Horton, Inc. attempts to litigate the case on the merits of its view of the facts in a light most favorable to it, and misstates the findings reached by the Court in the Order Granting Plaintiff’s Rule to Show Cause. The Court correctly found that this material should have been produced and rejected this approach in its Order Granting the Plaintiff’s Rule to Show Cause.

H. D.R. Horton, Inc. again argues, without precedent or support, that the court should not consider deposition references.

The Plaintiff included pinpoint citations to Alfredo Uriostegui’s deposition testimony within his Memorandum in Support of his Rule to Show Cause, preserving the same for the record. Pl’s Memo. in Supp. p. 24 (Oct. 14, 2024). The Memorandum in Support included partial deposition excerpts relating to the same as Exhibits for identification purposes (See Ex. 11 to Pl.’s Memo. in Supp.). The substance of the content of the deposition excerpts was not disputed by D.R. Horton.

D.R. Horton's contention that Plaintiff had to support excerpts from Mr. Uriostegui's sworn deposition testimony with an affidavit or filed deposition excerpts is preposterous. D.R. Horton does not contest the accuracy of the excerpted testimony, nor does it cite to any authority supporting its contention. The Court should reject this specious argument.

I. D.R. Horton, Inc. again argues, inaccurately, that striking the Defendant's pleadings does not result in default.

a. The Result of Striking the D.R. Horton's Pleadings is a Default Judgment.

When a party fails to obey an order relating to discovery, the trial court may strike that party's pleadings and enter a default judgment. *Griffin*, 334 S.C. at 198, 511 S.E.2d at 718 (citing Rule 37(b)(2)(c), SCRCP); *See, also Karppi v. Greenville Tarrazzo Co., Inc.*, 327 S.C. 538, 542, 489 S.E.2d 679, 682 (Ct. App. 1997) (explaining that Rule 37, SCRCP, expressly grants trial court power to order judgment by default for either the violation of a court order or, upon motion, for party's failure to respond to certain discovery requests; Court observed "when the court orders default or dismissal, *or the sanction itself results in default or dismissal*, the end result is nevertheless harsh medicine that should not be administered lightly") (emphasis added).

In its Motion for a Rule to Show Cause, the Plaintiff moved for D.R. Horton to explain why its pleading should not be stricken, and for any and all other relief the Court deems reasonable and appropriate. Pursuant to Rules 37 and 55(a), SCRCP, the striking of D.R. Horton's answer results in default, leaving only the determination of damages for the Court to enter a judgment thereby. *Cf. Stark Truss Co. v. Superior Const. Corp.*, 360 S.C. 503, 509, 602 S.E.2d 99, 102 (Ct. App. 2004) (affirming entry of default for failing to timely file an answer because "[e]ntry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party."). The Court should reject D.R. Horton's argument that the entry of default was improper.

III. D.R. Horton Raises New Arguments for the First Time on its Motion for Reconsideration which Cannot be Considered, but Nonetheless Lack Merit.

a. D.R. Horton argues, for the first time, that Plaintiff's Discovery requests did not apply to the material withheld.

D.R. Horton contends that the permit that was withheld showing D.R. Horton as the general contractor of its commercial office building was not responsive to the Plaintiff's discovery requests because the Order Granting Plaintiff's Rule to Show Cause cites only one specific request for permits associated with 210 Hulston Landing Rd., Bluffton, SC 29909, that the permit that was withheld relates to construction of a building at 30 Silver Lake Rd. Even if the court considers this misplaced contention, it should reject it.

First, Defendant makes this argument for the first time in his Motion for Reconsideration, which is improper. "A party cannot use Rule 59(e)[, SCRCP,] to present to the court an issue the party could have raised prior to judgment but did not." *Stevens & Wilkinson of SC v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014), citing *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). See, also, *Poch v. Bayshore Concrete Prods./S.C., Inc.*, 386 S.C. 13, 31, 686 S.E.2d 689, 699 (Ct. App. 2009), *aff'd as modified*, 405 S.C. 359, 747 S.E.2d 757 (2013) ("A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not."). "Issues which could have been presented to the court for consideration previously, but which were not, are not the proper subject of Rule 59(e) relief; the issues are waived." *Hickman*, 301 S.C. at 456, 392 S.E.2d at 482 (quoting *Smith v. Stoner*, 594 F. Supp. 1091, 1118 (N.D. Ind. 1984)).

Nonetheless, even if this argument were properly before the Court, this contention by D.R. Horton is without merit. Plaintiff's full initial discovery requests are incorporated within

the record. Pl.'s Mot. to Compel, Exh. 1 (November 4, 2021). As the Order states, "The Plaintiff also requested '[c]opies of all documents identified, referred to, or used in your answers to Plaintiff's First Set of Interrogatories.'" In his First Set of Interrogatories, the Plaintiff asked the D.R. Horton to "Identify all Documents . . . existing between D.R. Horton, Inc., and on one hand, and Kenneth Scott Builders, Inc., on the other, in any way relating to the community and development known as Cypress Ridge, which is *generally located* at 210 Hulston Landing Rd., Bluffton South Carolina 29909 (hereinafter, "Cypress Ridge")." Pl.'s Rogg No. 2. Plaintiff asked D.R. Horton, Inc. to "Identify all Documents in Your possession or control of which You may have knowledge relating to this lawsuit . . ." Pl.'s Rogg. No. 4. Plaintiff asked D.R. Horton to set forth a list of Individuals and/or entities that performed work relating to the horizontal land development of Cypress Ridge between the dates of March 3, 2015 through June 20, 2019." Pl.'s Rogg No. 7. Plaintiff defined "Horizontal Land Development" broadly in its preamble to his Interrogatories, including "the design and planning related to the construction of infrastructure and the vertical development." Defendant D.R. Horton understands and understood Plaintiff's interrogatories and requests related to the development known as Cypress Ridge, and understood it to relate to permitting and plans relating to work performed by Kenneth Scott Builders, Inc.

The permit for the building at issue identified on a parcel that was being worked on, prepared by and developed by Kenneth Scott Builders, Inc. for D.R. Horton was within the Cypress Ridge development. These plans were not produced. The permit at issue was not produced. Further, D.R. Horton's argument relating to the scope of discovery requests ignores the fact that D.R. Horton also failed to produce thousands of emails responsive to the Plaintiff's discovery requests.

Thus, even if the Court entertains this new assertion, the Court should not use this argument as a basis to reconsider or alter its order, as it was information available before the Court heard the Motion for a Rule to Show Cause and Strike D.R. Horton's Answer, and prior to the ruling on the Motion. It was not raised. The Court should therefore decline to address Defendant's new contention.

If the Court is inclined to address this contention, it should reject the argument that the fact that D.R. Horton was the general contractor of record on a permit for the construction of its regional headquarters was not responsive to the Plaintiff's discovery requests when the Dump Truck Operator was engaged to build the pad for that very building and prepare its parking lots and drainage. D.R. Horton's contention that the existence of the permit showing it as the general contractor was not relevant or responsive to the Plaintiff's requests strains credulity.

b. D.R. Horton, for the first time in its Rule 59(e), SCRCF, motion, presents a recitation of facts including evidence of previous settlements entered into by the Plaintiff and other arguments which are irrelevant, waived, and not preserved.

D.R. Horton appears to contend, for the first time in its Rule 59(e) motion, in its recitation of "factual background" that the Plaintiff should somehow be barred from seeking relief because it has previously entered settlements against other Defendants in a related case and implies that Plaintiff brought this action inappropriately. D.R. Horton fails to inform the Court that it previously *consented* to jurisdiction and venue in this case against it, in Jasper County, South Carolina. Order of Judge Price, September 20, 2022 (wherein D.R. Horton "agreed to withdraw its Motion to Transfer Venue with prejudice and Defendant D.R. Horton, Inc. agreed that venue is proper in Jasper County and this case will continue to be pending and tried in Jasper County Circuit Court."). The Court should not take seriously such arguments or attempts to color or contort the facts in a manner that paints D.R. Horton as a victim.

D.R. Horton allowed an uninsured and unmaintained dump truck with six brakes out of service to operate on the site where its regional headquarters was being constructed for over one year. It allowed the dump truck to be stored on site. D.R. Horton allowed it to leave the site with dirt mined from the site repeatedly and on an ongoing basis. The dump truck at issue removed a load of dirt from the parcel where D.R. Horton was the general contractor of record on the day of the accident and was returning to the D.R. Horton site to perform more work for D.R. Horton at the site when the brakes failed, and the driver caused the tragic accident in question. But for D.R. Horton's negligence as set forth in the Plaintiff's Complaint, Mr. McGilton would not have suffered life-altering injuries of such incredible magnitude.

According to his physician, Mr. McGilton will never work again. He incurred nearly \$3,000,000.00 in medical expenses. He has suffered tremendously by the delays and obfuscation caused by D.R. Horton's willful discovery violations. The court should reject D.R. Horton's desperate attempts to color itself as a victim in this matter, which are raised the first time in its Rule 59(e) motion and cannot be considered, and otherwise are irrelevant to the underlying Rule to Show Cause.

CONCLUSION

As the Supreme Court advised the Bar nearly 25 years ago:

“The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed.” *In re Alford Chevrolet–Geo*, 997 S.W.2d 173, 180 (Tex. 1999). The entire thrust of our discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party. *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct.App.1997). In this respect, the discovery process is designed to “make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.

In re Anonymous Member, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001).

For the reasons stated, the Court should deny Defendant's Motion for Reconsideration of the Order Granting Plaintiff's Rule to Show Cause, Striking D.R. Horton's Answer, and Entering the Defendant in Default. The Court should order the matter to proceed to a hearing to determine Plaintiff's damages as set forth in Rule 55, SCRCP.

Respectfully submitted,

/s/ Benjamin T. Shelton

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Attorneys for Plaintiff Mark W. McGilton

February 24, 2025

[Print this page](#)**Board: Commercial Contractors****D R HORTON INC**

4049 BELLE TERRE BLVD
MYRTLE BEACH, SC 29579
(843) 357-8400

License number: 114610**License type:** GENERAL CONTRACTOR**Status:** ACTIVE**Expiration:** 10/31/2026**First Issuance Date:** 11/03/2008**Classification:**

Building-BD5

Qualified By: Financial Statement**President / Owner:** BRADFORD CHARLES BRUNDAGE[Click here for Classification definitions and licensee's contract dollar limit](#)**Supervised By****BRUNDAGE BRADFORD (CQG)****GERALD LEE (CQG)**[File a Complaint against this licensee](#)**Board Public Action History:**[View Orders](#)[View Other License for this Person](#)

	Order Date	Name	License Type	License Number
View	12/29/2020	D R HORTON INC	CLG	114610

Print this page

Board: Commercial Contractors

KENNETH SCOTT BUILDERS INC
254 RED CEDAR ST STE 12
BLUFFTON, SC 29910-8967
843-548-3069

License number: 115797
License type: GENERAL CONTRACTOR
Status: ACTIVE
Expiration: 10/31/2026
First Issuance Date: 08/13/2010
Classification:
Building-BD5

Qualified By: Surety Bond
President / Owner: KENNETH S TOSKY

[Click here for Classification definitions and licensee's contract dollar limit](#)

Supervised By
TOSKY KENNETH (CQG)

[File a Complaint against this licensee](#)

Board Public Action History:

View Orders

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No Orders Found

EXHIBIT 3

MARK W. McGILTON vs 1223 May River Road, LLC
2021-CP-27-00069 - ALFREDO URIOSTEGUI

1 IN THE COURT OF COMMON PLEAS
2 FOURTEENTH JUDICIAL CIRCUIT
3 STATE OF SOUTH CAROLINA
4 COUNTY OF JASPER
5 MARK W. McGILTON,
6 Plaintiff,
7 vs. CIVIL ACTION NUMBER
8 2021-CP-27-00069
9 1223 MAY RIVER ROAD, LLC, D.R. HORTON, INC., and
10 LOTTY TRUCKING, LLC f/k/a RAMOS TRUCKING, LLC,
11 Defendants.

12 -----
13 1223 MAY RIVER ROAD, LLC,
14 Third-Party Plaintiff,
15 vs.

16 KENNETH SCOTT BUILDERS, LLC,
17 Third-Party Defendant.
18 -----/

19 The videotaped deposition of ALFREDO
20 URIOSTEGUI, a witness in the above-entitled
21 cause, taken pursuant to Notice and agreement,
22 before Ceil Weser, Certified Court Reporter and
23 Notary Public, before Charles "Chuck" T.
24 Nussbaum Jr., Videographer, at the Offices of
25 Shelton Law Firm, LLC, 1000 William Hilton
 Parkway, Suite E-6, Hilton Head Island, South
 Carolina, on the 18th day of July, 2024,
 commencing at or about the hour of 10:48 a.m.

CERTIFIED COPY



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ELECTRONICALLY FILED - 2025 Feb 24 3:58 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069

MARK W. McGILTON vs 1223 May River Road, LLC
2021-CP-27-00069 - ALFREDO URIOSTEGUI

2

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25 ALSO PRESENT:

26 Mark W. McGilton
27 Brooklyn West

- - -



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8	PX-18	Engineering Experts, Inc, Dump Truck Inspection, dated March 29, 2018 (7 pages)	8
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5 PX-27 Jacob AU Trucking LLC Inspection Reports 8
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7 PX-28 2017 1099, Vendor Quick Report, 8
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10 20180379 361
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12 PX-29 Plan Overview of Cypress 8
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2

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7 PX-38	Trucking Breakdown from February 1, 2018 to April 1, 2018, Bates: 20180379 362 (1 page)	8

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*** REPORTER'S NOTE ***

11

12 ALL EXHIBITS WERE PROVIDED AND PUBLISHED IN
13 DIGITAL FORMAT AND ARE CONTAINED IN A FLASH DRIVE
14 WITHIN THE SEALED ORIGINAL TRANSCRIPT.

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1 (Whereupon, Plaintiff's Exhibits
2 Numbers 1 through 38 were
3 pre-marked for identification.)

4 ALFREDO URIOSTEGUI,
5 having been produced and first duly sworn as a
6 witness, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SHELTON:

9 Q Will you please state your full name
10 and spell your last name for the record.

11 A It is Alfredo Uriostegui.

12 Q How do you spell your last name?

13 A U-r-i-o-s-t-e-g-u-i.

14 Q I found some documents where there is
15 a -- is it Reyes?

16 A That is my mother's maiden name,
17 Reynoso R-e-y-n-o-s-o. For some reason they put
18 it in there, I don't know.

19 Q And your full name is Alfredo?

20 A Uriostegui Reynoso. That is like I
21 said my mother's maiden name.

22 Q Have you ever had your deposition taken
23 before?

24 A I have.

25 Back when the accident happened.



1 And yeah, I did.

2 Q You did?

3 Do you know who took your deposition?

4 A I forgot the first lawyers. They were
5 hired by Mr. Mark.

6 Q Do you know if they took your
7 deposition or whether they just interviewed you?

8 A It wasn't like this, but it was just --
9 yeah, they write it down and everything and I
10 signed a paper.

11 Q Well, I will go over the rules with you
12 so you understand.

13 A Yes, sir.

14 Q I represent Mark McGilton. My name is
15 Ben Shelton with the Shelton Law Firm. We have
16 other attorneys in the office in this office who
17 represent other entities involved in this
18 litigation.

19 And my understanding is that you are
20 not represented by Counsel, is that correct?

21 A No.

22 Q It is correct then that you are not
23 represented by Counsel?

24 A No, no, I am not represented.

25 Q So the general rules I have to go over



1 with you are that first you don't have a lawyer,
2 so there was no concern over you speaking with
3 Counsel. If you do for some reason call a
4 lawyer during the deposition, I am able to ask
5 about that conversation, okay?

6 A Okay.

7 Q Secondly, if you have a question please
8 direct it to me.

9 A Okay.

10 Q Or to anyone who is asking questions,
11 it might be later in the deposition.

12 The court reporter here is taking down
13 everything that we are saying, so it is
14 important for us to speak up and to speak
15 clearly, and to try not to speak over each
16 other.

17 A Okay.

18 Q It is also important for you to do
19 exactly what you are doing now and give actual
20 answers verbally and not say uh-huh or uh-uh or
21 not to shrug your shoulders or raise your hands
22 like I am doing right now.

23 A Okay.

24 Q You can do that, but you need to speak
25 at the same time so she can write down what we



1 are saying.

2 A All right.

3 Q Try to allow me to finish a question
4 before you answer, and I will try to allow you
5 to finish your answer before I ask a question.

6 A All right.

7 Q If you don't understand a question,
8 please let me know.

9 I am not trying to trick you. I may
10 not ask the best questions sometimes.

11 A Uh-huh.

12 Q Yes?

13 A Yes, sir.

14 Q That was an uh-huh.

15 A My bad.

16 Q If I correct you like that I am not
17 trying to be rude. I am just trying to make
18 sure we have a clean record.

19 A Yes, yes. Everything is clear, okay.

20 Q If you need to take a break at any
21 time, if you want some coffee, we have coffee.
22 If you want water, we have water. We have
23 snacks. This is not intended to be a marathon.
24 This may take sometime today. We have a lot of
25 things to go over.



1 But if you need a break just let me
2 know.

3 A Okay.

4 Q And it is also not intended to be a
5 sprint. I am not intending to rush through this
6 or not allow you to answer questions fully?

7 A Okay.

8 Q Do you have any questions for me now?

9 A No, sir.

10 MR. SHELTON: Anybody have
11 anything else they want to add?

12 BY MR. SHELTON:

13 Q When were you born?

14 A I was born in Mexico.

15 Q I said when were you born?

16 A February 2, 1986.

17 Q Where in Mexico?

18 A In Guerrero.

19 Q How do you spell that?

20 A G-u-e-r-r-e-r-o.

21 Q And where is that?

22 A That is in the south. Like way in the
23 south.

24 Q Close to?

25 A Like close to Acapulco. That is the



1 state of Pedro where that is located.

2 Q The only time I have been anywhere near
3 there is Picoslat (phonetic)? Do you know where
4 that is?

5 A Yeah.

6 Q North of where that is, but not far
7 from Acapulco.

8 A Okay.

9 Q When did you move to the United States?

10 A Oh man, that is --

11 Q Just so you know this is merely for
12 back ground information --

13 A I do not have like the exact, but you
14 know, I was still in school when I move here.
15 My parents moved out here, and I was probably
16 like around say 13 years old, something like
17 that.

18 Q And you are speaking English perfectly
19 right now.

20 You are a native Spanish speaker,
21 correct?

22 A Correct.

23 Q Do you have any problem understanding
24 me or carrying on a conversation with me?

25 A Not at the moment.



1 Q If that happens, let me know.

2 A Yes, sir.

3 Q And I ask this of everyone, are you
4 under the influence of any alcohol or drugs
5 today?

6 A No, sir.

7 Q Are you under any prescribed
8 medications that may cloud your judgment or not
9 allow you to answer questions clearly?

10 A No, sir.

11 MR. SHELTON: Off the record.

12 (Whereupon, an off-the-record
13 discussion was held.)

14 BY MR. SHELTON:

15 Q Do you have a driver's license?

16 A Correct.

17 Q Do you have a driver's license with you
18 today?

19 A Yes, sir.

20 Q May I see a copy of it?

21 A (Handing).

22 Q Thank you.

23 MR. SHELTON: For the record, I
24 will take a picture of it and Email it
25 to everyone. I won't make it an



1 exhibit.

2 BY MR. SHELTON:

3 Q Do you have any restrictions on your
4 license today?

5 A Not that I know of.

6 Q And do you have any -- have you ever
7 had any restrictions on your driver's license?

8 A What do you mean by that?

9 Q Have you ever had your driver's license
10 suspended?

11 A I have.

12 Q When?

13 A Back in 2000 -- I wouldn't know -- '18.

14 Q Do you know what that was about?

15 A I can't remember.

16 Q When did you get your driver's license
17 back?

18 A Probably like I would say three to four
19 months later or six months later.

20 Q Was that suspension related to this
21 accident or was it about something else?

22 A I believe so.

23 Q And when I say this accident, I am
24 talking about March 13, 2018 just to be clear.

25 Is that what you understand that I am



1 referencing?

2 A Yes.

3 Q Tell me about your education.

4 You said you moved here while you were
5 still in school.

6 Where did you go to school?

7 A Here I went to Hilton Head High School.

8 Q And did you graduate?

9 A I did not.

10 Q What grade did you finish?

11 A I think if I am not mistaken 11 or 10,
12 but I did get my GED afterwards.

13 Q When did you get your GED?

14 A I cannot recall that.

15 Q And do you know what year it was, the
16 last year you attended school? Do you know what
17 year that was?

18 A I do not recall that one. Back I will
19 say 2003 or '4.

20 Q How old are you?

21 A 38 now.

22 Q Did you have any education after
23 obtaining your GED?

24 A No, sir.

25 Q Have you ever had any driver's



1 education?

2 A Driver's education?

3 Q Yes.

4 A No.

5 Q How did you get a driver's license?

6 A Oh, like when I apply for a CDL? Yes,
7 I did have.

8 Like you just go take a course with the
9 DMV, yes.

10 Q Do you know what year that was?

11 A I can't recall that one.

12 Q After you graduated -- after you got
13 your GED or before?

14 A No. After, way after.

15 Q Do you know who you got your GED from?
16 What entity?

17 A I believe it was in Savannah Technical
18 College, Savannah, Georgia.

19 Q And was that a while after you left
20 high school or shortly after you left high
21 school?

22 A After, way after.

23 Q Do you have any brothers or sisters?

24 A I do.

25 Q Where do they live?



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1 A Some of them live here. Some of them
2 live in Mexico.

3 Q What are their names that live here.
4 And this is so -- this case may be going to a
5 jury trial, and so you know the reason is so I
6 know who is related to you; so I don't
7 necessarily put your brother or sister on my
8 jury.

9 A Yeah, yeah. They are, one of them is
10 Giovanni.

11 Q What is his last name?

12 A The same as mine, Uriostegui.

13 Q Where does he live?

14 A He lives in Bluffton there. But I
15 wouldn't know the exact address.

16 Q Sisters that live in this area?

17 A No.

18 Q Any other brothers that live in this
19 area?

20 A No. All the other one's that live in
21 Mexico.

22 Q Any other family members that live in
23 Beaufort or Jasper County?

24 A I have got a lot of people related, but
25 I wouldn't say they are close so.



1 Q Go ahead and list them to the best of
2 your ability.

3 A Name them -- a lot of names, like
4 their names?

5 Q Yes, please.

6 A Oh man, more than anything they are
7 family friends, like related as family. Like
8 friends I will say.

9 But I will say Daniel Lopez, but he
10 lives in Morganville. He don't live here.

11 Q Anyone else that is very close to you
12 that lives in the area?

13 A My wife, my kids.

14 Q There we go.
15 Who is your wife?

16 A Gitlly Dominguez.

17 Q How do you spell that?

18 A G-i-t-l-l-y D-o-m-i-g-u-e-z.

19 Q And what is her home address?

20 A The same as mine.

21 Q I didn't ask you you yours yet.

22 A Oh, okay.

23 It is 133 Pinecrest Circle.

24 Q In Bluffton?

25 A Yes, sir.



- 1 Q Is that also your home address?
- 2 A Yes.
- 3 Q Do you own that house?
- 4 A No.
- 5 Q Do you rent?
- 6 A Yes.
- 7 Q I will ask you later today about some
- 8 other addresses that I think you may have some
- 9 knowledge of.
- 10 A Yeah.
- 11 Q How long have you lived there at 133
- 12 Pinecrest Circle?
- 13 A For the past two-and-a-half years.
- 14 Q How old are your children?
- 15 A 12, 6 and 3.
- 16 Q So no adult children?
- 17 A No adult children, no.
- 18 Q Do you have any former other wives or
- 19 former girlfriends that you were close to in the
- 20 past?
- 21 A No, no former. I only got one.
- 22 Q Any girlfriends that you have in the
- 23 area that you are close with before you met your
- 24 wife?
- 25 A No.



1 Q Do you have any other family or close
2 acquaintances, close friends in Jasper or
3 Beaufort County that you haven't named off so
4 far?

5 A No, not really.

6 Q We spoke briefly on Driver's Ed.
7 So you took the course that is required
8 through the DMV to get a CDL.

9 Do you know what year that was again?

10 A To be honest I do not remember.
11 I can give you some close dates.

12 Q Yes, it doesn't have to be exact.

13 A 2015, or '14 maybe. Yes.

14 Q Did you have any experience driving
15 commercial vehicles before 2015 or 2014?

16 A No, sir.

17 Q And did you take any other courses
18 other than the driving Ed course that is
19 required to get your CDL before you started
20 driving commercial vehicles?

21 A It is a whole process. I don't know if
22 you ever look into it, but you just don't go up
23 there and they give you your CDL. They actually
24 make you have tests for it and this and that.
25 There is a lot of different tests for it.



1 Q And you went through that process and
2 obtained your license?

3 A I did.

4 Q Do you have any training in vehicle
5 maintenance?

6 A I do not.

7 Q Have you ever worked in any maintenance
8 shop or vehicle shop?

9 A No.

10 Q When you first obtained your CDL who
11 were you working for?

12 A I was working for as a driver, I
13 started as a driver I was working under Ramos
14 Trucking at the moment.

15 Q Is that Miguel Ramos?

16 A Yes, sir.

17 Q How long have you known Miguel Ramos?

18 A Oh, I know him for a long time. Yeah.

19 Q When did you first meet Miguel Ramos?

20 A I don't have the dates exactly, but I
21 would say about seven years, six years, maybe.
22 I don't know. Or more.

23 Q Did you know him before you started
24 driving commercial vehicles?

25 A That is correct.



1 Q Is he the reason you started driving
2 commercial vehicles?

3 A Not a reason. But I will say -- no,
4 not a reason, because I just started because it
5 was something that I wanted to do.

6 Q You first started working for him or
7 for Ramos Trucking, is that correct?

8 A Yes.

9 Q And you were driving their vehicles at
10 that time?

11 A When I started driving as a driver,
12 yes, yes.

13 Q And do you know how long you worked for
14 Ramos Trucking driving their vehicles?

15 A I can't remember that.

16 Q One year, two years?

17 A I wouldn't -- I mean it has been a long
18 time.

19 I will probably say, yeah, about a year
20 maybe.

21 Q Okay.

22 A Yes.

23 Q And that would have been shortly after
24 you received your CDL?

25 A What is that?



1 Q After you received your CDL?

2 A After I received my CDL, yes, sir.

3 Q And that was the first job you had?

4 A Yes.

5 Q Did you receive your CDL because you
6 knew you were going to get a job with Ramos
7 Trucking?

8 A No.

9 Q What was your reason for obtaining a
10 CDL?

11 A Better job opportunities probably.

12 Q Did you know Mr. Ramos before you
13 obtained your CDL?

14 A I did.

15 Q So after you stopped working for Ramos
16 Trucking -- I don't want to say stop, but did
17 you stop working for Ramos Trucking at some
18 point?

19 A Yes.

20 Q And what did you do after Ramos
21 Trucking?

22 A What I did?

23 That is when I actually purchased a
24 truck that it got in the wreck, and I started
25 working with Kenneth Scott Builders.



1 Q For the truck that you purchased did
2 you purchase that truck specifically to work for
3 Kenneth Scott Builders?

4 A No.

5 Q Why did you purchase the truck?

6 A It was an opportunity, I got it.

7 But yes, then I started working with
8 Mr. Kenneth Scott Builders and that is when we
9 were working, yeah.

10 Q You say it was an opportunity.

11 How did the opportunity come, present
12 itself to you to buy that truck?

13 A Somebody offered it and then it was --
14 yeah, it was there to buy it. So they gave me
15 the chance to buy it and not like cash or
16 anything. They made me do payments on it, yeah.

17 Q Who did you buy it from?

18 A I can't recall this guy.

19 He was somebody that couldn't do it
20 anymore.

21 Q And how did you find out about this
22 guy? Did you already know him?

23 A When you are I guess a driver you get
24 to know people around; and yeah, they just let
25 you know. Like oh, this is -- it is like



1 anywhere you go I guess, it is like a store,
2 from mouth to mouth you go I guess.

3 Q And do you remember how much you paid
4 for the truck?

5 A I do not remember. I think if I am not
6 mistaken it was probably like 18 or \$16,000.
7 Something like that.

8 Q And you said you made payments on it?

9 A Yes, sir.

10 Q How long did you make payments on the
11 truck?

12 A It was for years. At least two years.

13 Q Did you pay it off before the wreck?

14 A I did, yeah.

15 Q Did you continue -- before we start
16 talking about Kenneth Scott Builders, did you
17 continue to work with Ramos Trucking after you
18 bought your truck at all?

19 A No. That is when that job was there --
20 what was it called? It is off 170. It is
21 called Mill Creek.

22 Q Mill Creek? Cypress Ridge?

23 A Cypress Ridge, yes, it was an on-site
24 job. So the truck was there. It was parked
25 there and you work there.



1 Q So the guy you bought it from, the
2 truck already was existing?

3 A No, that guy was out of the picture.
4 Yeah, but at that time he was already out of the
5 picture.

6 And yeah, that is when I got the truck
7 I did work a little bit with Ramos, but then
8 after that it was that job site, on-site right
9 there on Cypress Ridge. That is where we pretty
10 much worked.

11 Q So tell me a little bit about how you
12 met Kenneth Scott Builders.

13 A I met him --

14 Q How did you meet Ken Tosky should be
15 the question?

16 A Ken Tosky? I never called him like
17 that way but --

18 He was like I guess on a different job.
19 I think it was -- what was it called? Oh
20 Buckwalter they had a little job, and one day I
21 was close by at the gas station; and I saw the
22 construction and I walked in and talked to them,
23 yes.

24 Q And what did you say to him?

25 A I can't remember the exact words, but I



1 said I was looking for a job.

2 Q And what did Ken say to you?

3 A I guess we will talk for -- I don't
4 know.

5 I can't remember exactly the same words
6 that we talked.

7 Q And at that time do you know whether he
8 was already working at Cypress Ridge or --

9 A I didn't know that.

10 Q And how did you first become -- at that
11 time you had already purchased your truck, is
12 that right? Do I understand that?

13 A Yes.

14 Q When did you first start working at
15 Cypress Ridge?

16 A Date?

17 Q Just in general? Was it right when you
18 met Ken Tosky or just a little bit after you
19 talked with Ken Tosky?

20 A Just a little bit. That is the first
21 job that we actually started. That is when --
22 yeah.

23 The thing is all I remember is saying
24 that we were supposed to work on-site, right
25 there on that job. You know, that job site was



1 moving dirt from point A to point B, the same
2 spot, right there.

3 Q Did you keep your truck there overnight
4 when you worked on that job site?

5 A Yes, it stayed there pretty much the
6 whole job that we work on. That is why I used
7 to drive my pickup there and started driving
8 there.

9 Q So you would drive your pickup to the
10 job site and leave the truck at the job site?

11 A Yeah, and we just go from back in --
12 yeah.

13 Q We will talk about that timeline. I
14 have some things that may help.

15 What I want to do is now I want to talk
16 to you about the different areas I want to ask
17 you questions about, so you understand where I
18 am going.

19 A Yes, sir.

20 Q And again if you need to take a break,
21 I will suggest times to take a break, but let me
22 know. But that is helpful what you just said, I
23 want to get some background on you, okay?

24 A Okay.

25 Q And the next thing that I want to do is



1 kind of talk about like what you were doing
2 before you started working for Ken Tosky. We
3 have done that.

4 And then I want to talk about like
5 generally your work with Ken Tosky.

6 And then I want to talk about obviously
7 the wreck, okay?

8 A Yes, sir.

9 Q And then after we talk about the wreck,
10 I want to kind of go through kind of the years
11 before the wreck, okay? All right?

12 A Okay.

13 Q So you understand where I am headed.

14 So first I want to bring up a document.
15 I am going to put it up on the screen if that is
16 okay with you.

17 Can you read that?

18 A Yes, sir.

19 Q I will zoom out a little bit so it is
20 easier to see, is that better?

21 A Yes.

22 Q I will scroll through it and ask you if
23 you recognize it. This will be Exhibit Number
24 1.

25 Do you recognize that document? I am



1 sorry, take your time.

2 A Which -- that part right there is sworn
3 to me before this 10 of April 2017.

4 Q Yes, is that date correct? Should that
5 be 2018?

6 A Yeah, I believe so.

7 Q Is that your signature?

8 A That is correct.

9 Q Do you remember reviewing this document
10 before you signed it?

11 A Yes. And I believe at some point
12 something was changed on it -- what was the
13 lawyer's name?

14 Q Mr. Vaux?

15 A Yes. Yes, and I didn't agree to some
16 things and that is why I stopped answering to
17 him because he -- I didn't -- some things were
18 there that I didn't say.

19 Q Okay.

20 A And that is why.

21 But this one is I think is pretty much
22 on point.

23 Q So there were some things in the
24 document that you didn't like and they changed
25 it?



1 A Yes.

2 Q To make sure it was accurate before you
3 signed it, is that correct?

4 A Yes, that is correct.

5 Q That is correct?

6 A But the date on this one is not right.

7 Q It should be 2018?

8 A I believe so.

9 Q Because that would have been before the
10 wreck?

11 A Of course.

12 Q 2017 would have been before the wreck?

13 A Correct.

14 Q So that is a typo you believe?

15 A 2017 doesn't make sense to me.

16 Q So I am just going to read this out: I
17 am over 18 years of age and otherwise competent
18 to make this statement. I have had the
19 opportunity to review this Affidavit and make
20 changes to the facts stated herein.

21 Is that true?

22 A Yes, sir.

23 Q You know the facts stated in this
24 Affidavit are true or believe the facts to be
25 true based upon information known to me after a



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1 reasonable inquiry?

2 A Yes, sir.

3 Q I was involved in a collision on
4 March 13, 2018 on May River Road in Bluffton
5 while driving a dump truck, is that true?

6 A Yes, sir.

7 Q The dump truck was owned by Jacob AU
8 Trucking, LLC of which I am the owner, is that
9 true?

10 A Yes, sir.

11 Q At the time I was working for Kenneth
12 Scott Builders hauling fill dirt from Cypress
13 Ridge to 1223 May River Road in Bluffton?

14 A Yes, sir.

15 Q I do not haul for any other person,
16 company, or entity other than Kenneth Scott
17 Builders?

18 A That is correct.

19 Q And that was true at the time?

20 A Yes.

21 Q Ken Tosky of Kenneth Scott Builders was
22 my supervisor?

23 A Yes, sir.

24 Q All of my individual income and that of
25 my company came from working for Kenneth Scott



1 Builders?

2 A Yes, sir.

3 Q Kenneth Scott Builders informed me what
4 time to start work in the mornings?

5 A Yes, sir.

6 Q Kenneth Scott Builders informed me what
7 I was to haul, where to pick up the load --
8 excuse me, where to pick the load up and where
9 to take the load?

10 A Yes, sir.

11 Q I cannot remember the name of the
12 company that loaded my truck with fill dirt,
13 although I believe it was arranged by Kenneth
14 Scott Builders.

15 Is that true?

16 A Yes. I mean it is -- like I said we
17 were working on-site at the property and that is
18 their equipment. I don't remember that
19 question, but I believe it was their own
20 equipment.

21 Q Their own being Kenneth Scott Builders'
22 own equipment?

23 A Yes, I mean we were working on -- the
24 only job we had and I was doing was me working
25 on Cypress Ridge.



1 Q And so when the dirt that you were
2 hauling that day, that dirt was loaded from
3 Cypress Ridge?

4 A That is correct.

5 Q Do you remember where in Cypress Ridge
6 it was loaded?

7 A Oh, my God.

8 Q I can show you some maps later that
9 might help.

10 A Yeah.

11 Q Do you remember that off the top of
12 your head right now?

13 A Okay, there is when you go into Cypress
14 Ridge -- as soon as you go in to Cypress Ridge
15 off of Mill Creek if you come off of 170, there
16 is a building like at the moment there is a big
17 old club building, I believe so, that is one
18 site; and then across the road it was another
19 area that they were working on, and I believe
20 that is in the area on this site, on the
21 right-hand side.

22 Q So we will look at a map and kind of
23 try to dial that in a little bit.

24 A Okay.

25 Q Okay.



- 1 A All right.
- 2 Q So you believe that Kenneth Scott
- 3 Builders Company loaded the truck with dirt?
- 4 A Yes.
- 5 Q And did they tell you where to bring
- 6 it?
- 7 A Yes.
- 8 Q Where did you bring it to?
- 9 A The date of the accident?
- 10 Q Correct, the date of the accident?
- 11 A The date of the accident, okay, it
- 12 was -- if that is the address which is right
- 13 there where the old Piggly Wiggly was.
- 14 Q On May River Road?
- 15 A On May River Road.
- 16 Q May River Road is off of Highway 46?
- 17 A Yes, Highway 46.
- 18 Yeah, but I go by where the old Piggly
- 19 Wiggly was.
- 20 Q Right.
- 21 A Right on the corner.
- 22 Q But there is a Dollar General?
- 23 A There is a Dollar General, right.
- 24 Q And there is a Downtown Deli there now?
- 25 You don't know?



1 A No.

2 Q But there is a Dollar General there
3 now?

4 A Sounds right.

5 Q Something like that.

6 A Yeah, there is a bunch of stores there.
7 Yes, sir.

8 Q Do you remember who with Kenneth Scott
9 Builders told you to bring it there?

10 A Who he talked to?

11 Q Who told you to bring it there
12 specifically? Was it his daughter? Was it him?

13 A It was a crew, so I cannot recall; but
14 more likely it was Mr. Ken Tosky.

15 Q Is he the one that usually told you
16 where to go?

17 A Yes, sir.

18 Q And then what did you do? And then you
19 loaded the dirt?

20 A Yeah, they loaded the dirt, you know;
21 and then I drove it over to that location.

22 Q And then what did you do? Did you drop
23 it?

24 A Yes, I dropped it at the location that
25 they told me to.



1 And then they told me to come back
2 after that.

3 Q To try to come back to where?

4 A Back to the job site.

5 Q Did you have more work to do that day?

6 A Yes, sir.

7 Q What was your plan for the rest of the
8 day?

9 A Oh man, obviously not to hurt somebody
10 or be in a crash. That is most definitely
11 something that I have been living with.

12 Q Right.

13 A Yes.

14 Q Was your plan to haul more loads that
15 day?

16 A Probably work more. Probably work
17 more. I can't recall exactly what we were
18 supposed to do that day. It has been so long,
19 but more than likely work whatever they tell me
20 to do, you know, I probably would have done it.

21 Q We will get into more details about
22 what you did at Cypress Ridge, but you were
23 definitely going to back to Cypress Ridge to do
24 more work?

25 A Yeah.



1 Q And that was at the time of the
2 accident?

3 A Yes, sir.

4 Q I think we stopped at number 12:
5 Kenneth Scott Builders paid me by the hour, not
6 by the job.

7 Is that accurate?

8 A That is correct.

9 Q There is no written contract between me
10 and/or Jacob AU Trucking, LLC and Kenneth Scott
11 Builders?

12 A No, sir.

13 Q I believe Kenneth Scott Builders had
14 the right to exercise control over the material
15 I hauled, is that correct?

16 A That is correct.

17 Q The location where my truck was loaded,
18 is that correct?

19 A That is correct.

20 Q The location where I took the
21 materials, is that correct?

22 A Yes, sir.

23 Q The hours I worked, is that correct?

24 A Yes.

25 Q And the days that I worked?



1 A That is correct.

2 Q Kenneth Scott Builders had the absolute
3 right to fire me and terminate our relationship
4 without liability, is that correct?

5 A Yes.

6 Q And everything you just read, you just
7 reiterated, all that is true?

8 A Yeah, I mean that is what I did before;
9 and now reading it back again I don't know if
10 somebody sent an investigator, I believe so. I
11 don't know if it was you guys.

12 Q It might have been.

13 A Yeah okay, so he brought the same type
14 of paperwork and I review it, and I told him it
15 was true. And then I explain to him the dates I
16 run. I don't know if he switched them or not.

17 Q You said that day you are taking
18 dirt -- they loaded dirt into your truck and
19 took it off-site.

20 Is that the only time you took dirt
21 off-site from Cypress Ridge?

22 A Man, I think it was two loads that I
23 took there, if I am not mistaken.

24 Q To May River Road?

25 A Yes.



1 But besides that I can't recall
2 somewhere else.

3 Q I might have some documents that might
4 help you recall later, okay?

5 A Okay.

6 Q And so were you finished dumping dirt
7 at May River Road at the time you got into the
8 accident? Did you have any more loads to bring
9 to May River Road that day, do you know?

10 A At the moment I can't recall that to be
11 honest.

12 Q But you were certainly going back to
13 Cypress Ridge at the time?

14 A Yes, sir.

15 Q I will close that out.

16 Now, we will talk a little bit about
17 the accident and if you need -- some of these
18 pictures might be tough to look at.

19 A Oh man, yes.

20 Q So if you need a break, you let me
21 know.

22 Do you recognize this picture?

23 A Oh, yes. Yes.

24 Q What does that show?

25 A What do you mean?



1 Q This is Exhibit 2.

2 What do you see?

3 A Fatality. I see it was bad. It was
4 real bad.

5 Q Is that your truck?

6 A Yes.

7 Q Is that the only truck you owned?

8 A Yeah.

9 Q Was that the truck that you used at
10 Cypress Ridge whenever you worked there?

11 A Yes, sir.

12 Q What is that emblem on the front of the
13 truck? What is that?

14 A On man, somebody put it there. It was
15 like a Punisher, somebody likes the images. Oh,
16 it looks cool right there, and they put it on
17 there.

18 Q How long was it on the truck?

19 A I wouldn't remember.

20 Q Most of the time you owned it or
21 towards the end of when you owned it?

22 A Towards the end, yeah, yeah. It just
23 recently happened when they put that on. And it
24 was like with -- they just put it there and put
25 some bolts in the back and --



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1 Q Who did that? Who put it on for you?

2 A Oh God, actually I did. But somebody
3 gave it to me and they were like oh, it looks
4 good. I did. I put it there.

5 Q Do you know who gave it to you?

6 A No.

7 Q What does that mean?

8 A Oh, that emblem?

9 Q (Nods).

10 A That is from the Punisher, the
11 character.

12 Q From the comic books?

13 A The comic books, yes. That is what it
14 kind of looked like to me. So I was like okay.

15 Q And why did you put it on your truck?

16 A I don't know. I just thought it looked
17 cool.

18 Q Is that your truck after the accident
19 on March 13, 2018?

20 A Yes.

21 Q There is another view of it, this is
22 Exhibit Number 3.

23 Is that your truck?

24 A Yes, sir.

25 Q I notice that the hood is a different



1 color from the cab.

2 Why is that?

3 A It was like that. It has always been
4 like that.

5 Q When you bought it, it was like that?

6 A Yeah.

7 I never had to change to -- or money to
8 paint it.

9 Q I understand.

10 I will close these out.

11 Exhibit Number 4, do you recognize this
12 picture?

13 A Yes.

14 Q And is that another Punisher emblem
15 there in the middle of the back of the truck?

16 A Yeah, yeah, yeah.

17 Q Who put that there?

18 A I did.

19 Q About the same time?

20 A Yeah, yeah.

21 Q But you don't know when you put it on
22 there?

23 A No. To be honest, no.

24 Obviously before the wreck, but I am
25 not sure when.



1 Q It looks like it is pretty dirty.

2 I mean do you think it had been there
3 for some time?

4 A Everything in there when the truck, it
5 is like that everything gets dirty like that.
6 It doesn't matter if you put it one day
7 probably -- or I don't know. The way they load
8 them sometimes, and they drop it in and rocks or
9 whatever I believe; and that is when you see all
10 those chips on the other -- stay back a hundred
11 feet or whatever.

12 Q Yeah.

13 A They just get dirty.

14 Q That is from them dropping loads into
15 the truck?

16 A They are, yeah.

17 Q You say they, are you talking about
18 Kenneth Scott Builders crew?

19 A Any truck that you look into it, that
20 is what it looks like I believe.

21 Q When you are working at Cypress Ridge
22 was it only Kenneth Scott Builders that would
23 dump loads into your truck, or would you be
24 working with any other crews?

25 A No, that was the only, only their



1 crews.

2 Q Just a question I had looking at that.
3 Exhibit Number 5, is that the side of
4 your truck?

5 A Yes, sir.

6 Q And all these pictures I am showing
7 you, are they fair and accurate depictions of
8 what you are seeing -- what --

9 A Yes.

10 Q Exhibit Number 6, do you recognize this
11 picture?

12 A Well, I mean it can be it can be any --
13 every other truck if you are looking just at a
14 tire.

15 Q Do you remember them spray painting
16 around your truck, the Highway Patrol or
17 investigators spray painting your truck?

18 A I was at that moment over there I was
19 bleeding too, and I was hurt.

20 I didn't stay on that site. They took
21 me in the ambulance.

22 Q Okay, I will ask you about that in a
23 bit.

24 The same thing with this picture?

25 A The same thing, I can't like I say it



1 could be, I don't know.

2 I don't recall that.

3 Q Do you know when the last time you
4 changed the tires on the truck was?

5 A At the moment I didn't.

6 Q Did you ever change the tires on the
7 truck from the time you owned it?

8 A Probably did. Everything that I did it
9 was -- I can change my own tires, I did it
10 on-site at Cypress Ridge.

11 Q So you did the work on your truck at
12 Cypress Ridge --

13 A Yes.

14 Q -- on-site?

15 Yes?

16 A Yes, sir.

17 Q The same here, can you recognize this
18 picture?

19 A Yes, but the colors, yes, sir.

20 That is on the scene of the crash?

21 Q Correct.

22 Does that appear to be your truck?

23 A Yes.

24 Q Does that appear to be your front tire?

25 A Yes, sir.



1 Q That was Exhibit Number 8.

2 This is Exhibit Number 9. This is
3 Exhibit Number 9 here?

4 Do you recognize this picture?

5 A The first time I see it, yes.

6 Q Is it your truck?

7 A Yes.

8 Q What is this 701 there?

9 A 701? It is just a number I guess of
10 the trucks that they put in, or you put in. So
11 when they load you or whatever they know truck's
12 numbers. It is a truck number.

13 Q Is that a way to identify your truck?

14 A Yeah, anybody can change it. I think
15 when I got that truck that number was already
16 there so.

17 I mean it doesn't have nothing to do
18 with anything.

19 Q When you bought the truck, where did
20 you buy it from? I know you can't remember the
21 name of the guy.

22 A Yeah.

23 Q Was he local or from somewhere else?

24 A No, he was not local.

25 But he was like two hours away.



1 Q Okay.

2 A But he was in South Carolina.

3 Q It is another picture. This is your
4 truck. This is number 701.

5 You can't see the 7, is that correct?

6 A Yes, sir.

7 Q So let us talk about the accident a
8 little bit.

9 I want you to go back in your mind's
10 eye, and I know it can be tough to relive. I
11 know it is tough for Mark. I want you to tell
12 me about leaving May River Road.

13 Do you like soccer, football? What is
14 your favorite sport?

15 A I do not watch soccer or anything.

16 Q You don't watch football? You don't
17 watch anything?

18 A No.

19 Q You know what slow motion replay is?

20 A Oh, of course, yeah.

21 Q I want you to go back in your mind's
22 eye, like it is slow motion replay. I want you
23 to be there.

24 A Okay.

25 Q You dump the load at May River Road.



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1 What do you do? What do you see?

2 A I did dump the load on May River Road.
3 I head back on 46 towards Cypress
4 Ridge.

5 Q What are you doing?

6 A Oh, I am just driving. Driving.
7 And I don't know, like I said just
8 driving. I didn't have no problems or anything.
9 Just driving. And I don't know, believe it or
10 not there is things that happen in the world,
11 you know, that make things happen, like this
12 where maybe you choose another path or whatever.

13 But all I remember is I was driving and
14 the main reason the accident happened is because
15 the cars in front of me they stopped suddenly,
16 they completely stop and I see a line.

17 So I tried to stop the truck.

18 Q What did you do? What do you do?

19 A I hit the brakes. I slow down, kind of
20 gear down a little bit, but the truck -- and it
21 was even empty. I don't believe I was speeding
22 because that is like a 35, 45 road. And the
23 truck a little bit there did like this, like it
24 tailed out. Like the tail went a little bit on
25 the side. (indicating).



1 And I remember going towards my
2 right-hand side, which it was the grass and
3 there is -- I don't know if you guys ever drove
4 to that road, but there is some humongous trees
5 like oak trees I believe they are and they are
6 like right on the side of the road. Like the
7 road is right here and the tree is almost on top
8 of it, there is several there, right there. And
9 I don't know if it was something to save me I
10 guess, because if I would have hit the tree I
11 would be dead, you know, but that was right in
12 front of me. And I remember hitting the truck
13 that way, but for some reason we went the other
14 way and that is when I struck on the side
15 Mr. Mark.

16 Q So did you hit your brakes?

17 A I did hard.

18 Q Did it stop the truck?

19 A The truck kind of -- like you can tell
20 the tire marks I believe, because after several
21 weeks that passed I passed by and I stopped by
22 trying to recall exactly what happened, I saw
23 the tire marks on that.

24 Q For the record you were kind of moving
25 your hands back and forth --



1 A No, I was not moving my hands.

2 Q No, I was talking about when you were
3 describing it just now.

4 A Yes.

5 Q I didn't mean to interrupt you.

6 When you were describing it you were
7 kind of moving your hands back and forth like
8 this.

9 Were you describing what the truck was
10 doing?

11 A No, no, no, the truck was doing that?

12 Q Yes.

13 A Okay, yes, the truck on the back, the
14 tires were doing that a little bit. I remember
15 they were doing that.

16 So my thinking was me going on the
17 right-hand side, which is two lanes. One you go
18 on your right hand is going that way, your left
19 hand is going this way. There is two lanes so.

20 Q So I want to go back, I believe you
21 said that then you were steering toward the
22 right?

23 A Towards the right. So it was --

24 Q And you hit your brakes and the truck
25 went to the other direction?



1 A I can't say that, but that is what I am
2 thinking that I did. You know, I wanted to go
3 because the first thing even when I am driving a
4 small car, my small pickup or whatever, cars
5 stop in front of you, your first thing is get
6 out of it that way. If you are not stopping
7 like if, you know, so anything happens so fast
8 you are trying to tilt to your right-hand side,
9 towards the safer side.

10 Q Were you surprised the truck went the
11 opposite way?

12 A Oh, I was extremely surprised at the
13 end of everything, yes, of course.

14 Q What do you remember next?

15 A After that I remember I was in the
16 hospital and then the next day and the next day,
17 yes.

18 You see the window? I don't know if
19 you can see it. My head was smashed into the
20 window. I broke the stick shift with my ribs.

21 When I woke up in the truck I was on
22 the passenger side, on the bottom of the seat.

23 Q Were you wearing your seatbelt?

24 A I was not.

25 And yeah, I don't remember much after



1 that.

2 MR. SHELTON: And for the record
3 we are looking at Exhibit 10 right now.
4 I am going to go to Exhibit Number 11.

5 BY MR. SHELTON:

6 Q Do you recognize this picture?

7 A I never saw it before.

8 Q Were you able to look at the vehicle
9 that your truck collided with after the
10 accident?

11 A Believe it or not, I remember when I
12 got out of the truck I remember I was trying to
13 help Mr. Mark at one point. I got out of the
14 truck. I didn't know who he was to be honest.
15 I didn't even know who he was in there.

16 I got out and tried to open the doors
17 and I couldn't, but I don't know how long it
18 took in that process, but somebody grabbed me
19 and they are like oh, no, sit down. You are not
20 good. You are not this, and that is when they
21 like start taking care I guess of me I guess or
22 whatever.

23 But I remember seeing somebody like
24 from the front seat, probably it was him and
25 trying to help him out, get him out of there;



1 but after that I can't recall much of that.

2 Q Was he in bad shape?

3 A I can't -- like I say, my thinking was
4 trying to get somebody out of there. Trying to
5 get somebody. Trying to open the door at least
6 or something, I couldn't; and I am trying to
7 smash a window or something, but I couldn't.
8 And that is when somebody -- I don't remember
9 who it was.

10 I don't know if at that time it was the
11 Fire Department or anybody. They are like oh,
12 no, no, sit down. I am like no, I am trying to
13 help whoever is in there. I felt -- no, you are
14 not fine. You got to sit down and we will put
15 you on the stretcher or whatever. I ws like no,
16 I feel good. I guess it was the adrenaline
17 rush.

18 Q This is Exhibit Number 11.

19 A Yeah, I never saw this picture before
20 ever.

21 Q You don't dispute that is the truck
22 that Mark was in?

23 A Like I said I don't remember. The
24 first thing I ever see this. And after that
25 like I say I never -- but that looks like the



1 tree. I went back to the tree. There was a
2 small tree. There was no scratch on that tree.

3 Q That was Exhibit Number 11.

4 This is Exhibit Number 12.

5 A Man.

6 Q Does that look like the part of the
7 roadway where the accident happened?

8 A Yes, that is. There is the fence.
9 Yes. Those are the trees that we talked.

10 Q Were you surprised Mark survived that
11 crash?

12 A Oh man, no looking at it now. I am. I
13 am.

14 He is blessed.

15 Q What did you do after they told you to
16 go away.

17 Did you make any phone calls? Did you
18 call anybody? What did you do?

19 A I can't recall that much. I was
20 completely -- probably in shock, bleeding.

21 Q Do you remember, did you call your
22 wife?

23 A I didn't have my wife at the moment. I
24 was not married. I was not married at the
25 moment.



1 Q Did you have a girlfriend?

2 A I had two children prior to my new wife
3 now, which I got only one kid.

4 Q Okay.

5 A Yeah, I had two, my 12 year old and six
6 year old, yes.

7 Q And what is the name of the mother of
8 those children?

9 A Oh man, I don't even want to say it.
10 That is her name is Yannina.

11 Q What is her last name?

12 A Alias A-l-i-a-s.

13 Q Do you remember whether you called
14 Kenneth Scot Tosky?

15 A I probably did. But I can't recall
16 exactly if I did at the moment, afterwards or
17 maybe, you know --

18 Q Why would you have called him?

19 A Because if -- at that moment in time
20 because probably I was in the wreck working with
21 him, you know, yeah.

22 Q Explain that a little bit more if you
23 don't mind.

24 Why would you have called him?

25 A Why would I call him? I guess it is



1 part of the job calling somebody that you
2 working for.

3 Q So he would know where you are,
4 correct?

5 A Oh, yes, yes.

6 Q So he may be calling you, why aren't
7 you back on the job site or something along
8 those lines?

9 A Probably, yes.

10 Q Did he keep a pretty tight fist over
11 you or --

12 A What do you mean by that?

13 Q What was your relationship with Ken
14 like?

15 A My relationship work-wise?

16 Q Yes.

17 A Yes, yes. He just tells me -- like I
18 say I once we started we have been working on
19 that job for a little bit longer before the
20 accident happen.

21 And yeah, he will tell me this is what
22 you got to do today. You have to be here at
23 this time. And then we moving this, we moving
24 that, yes.

25 Q Did he ever ask you for your insurance?



1 A No.

2 Q Did he ever ask you to see a copy of
3 your driver's license?

4 A No.

5 Q Did he ever ask you for your
6 registration of your truck?

7 A I do not believe so.

8 Q Did he ever ask you for your
9 maintenance records?

10 A No, sir.

11 The thing there is like we said we were
12 only working at that site, on the job site only.

13 Q At Cypress Ridge?

14 A At Cypress Ridge, yes. We never
15 actually moved from there. It was just in that
16 job site I was there for a while.

17 Q You probably wouldn't recognize this
18 picture.

19 A Oh, I never seen that before.

20 Q The same for this?

21 A No, sir.

22 Q You said that your stick shift was
23 bent?

24 A I broke it with my rib cage, it was
25 gone.



- 1 Q Do you see the steering wheel here?
- 2 A Yes. I hit it with my chest.
- 3 Q And do you see where this emergency
- 4 brake pedal is?
- 5 A Okay.
- 6 Q Is that the seat that -- that was
- 7 Exhibit Number 12 and before that Exhibit Number
- 8 11.
- 9 Here is Exhibit Number 13.
- 10 A Can we stop for a minute.
- 11 Q Yes, absolutely?
- 12 MR. SHELTON: Off the record.
- 13 (Whereupon, an off-the-record
- 14 discussion was held.)
- 15 BY MR. SHELTON:
- 16 Q Back on, just for the record, I am
- 17 going to call you Mr. Alfredo. I don't want to
- 18 butcher your last name.
- 19 Is that okay with you?
- 20 A That is fine.
- 21 Q You just asked that you would like to
- 22 speak to Mark just person to person and
- 23 apologize?
- 24 A Yeah, that is correct.
- 25 Q I just want to go through these



1 pictures and identify the pictures, so that we
2 can keep moving along. This is Exhibit Number
3 14.

4 This is Exhibit Number -- it is not
5 moving. Wait one second.

6 Number 15.

7 So do you see this picture? Do you
8 recognize that as your truck in the center of
9 the picture on Exhibit Number 15?

10 A Yes, sir.

11 Q And now you can see the blue truck next
12 to your truck, do you see that off in the
13 distance?

14 A Yes, sir.

15 Q And do you see this tire mark here?

16 A Yes, sir.

17 Q Is that the tire mark that you are
18 talking about you could go back later and see?

19 A Yes, sir.

20 Q We will go to Exhibit Number 16.

21 Can you see your truck there?

22 A Yes, sir.

23 Q In the background where my cursor is?

24 A Uh-huh.

25 Q And you see this tire mark here?



1 A Okay.

2 Q Do you see the tire mark over here?

3 A Yes, sir.

4 Q Is this the tire mark?

5 A Yes, sir.

6 Q Are those the tire marks you recall
7 seeing when you went back to the scene?

8 A I believe so.

9 MR. SHELTON: Okay. Let us take a
10 break, thank you.

11 (Whereupon, a break was
12 taken from 11:42 a.m.
13 to 11:59 a.m.)

14 BY MR. SHELTON:

15 Q We will go to Exhibit Number 17.
16 For Exhibit Number 17, this is 244
17 pages of pictures.

18 A Ooh.

19 Q I will submit to you that these were
20 taken by some experts that were sent to inspect
21 your vehicle?

22 A Okay.

23 Q So I just want to go through these. I
24 will not go through every single one. I will
25 scroll through it fairly slowly. Yeah.



1 And just make sure that it appears to
2 be your vehicle, okay?

3 A Okay.

4 Q So that is what I want to stop at.

5 You said that your head hit the glass?

6 A Something, yes.

7 Q This is a page 81 of Exhibit Number 17.
8 It is Bates Stamped 20180379107872, this is a
9 Subpoena response from engineering experts that
10 was sent to Kenneth Scott Builders in the other
11 litigation.

12 So do you think your head caused that?

13 A Something. I mean it was bleeding from
14 the top right here. So I don't know if it did
15 hit that or the side, but something. At first I
16 thought it was that, because all I seen was
17 smashed in.

18 Q Does that appear to be the grate on the
19 front of your vehicle?

20 A Yes.

21 Q Did you have a chance to look at those
22 picture as I scrolled through them just now?

23 A Yes.

24 Q Do those appear to be generally of your
25 vehicle?



1 A That is what it looks like, sir.

2 Q Do you have any reason to suspect these
3 are not pictures of your vehicle, of your truck
4 that you were driving on March 13, 2018?

5 A Not at the moment.

6 MR. SHELTON: I printed this out
7 for everybody this next exhibit, which
8 will be Exhibit Number 18.

9 BY MR. SHELTON:

10 Q You may have never seen this before.
11 You testified earlier that you did
12 replace some of the tires I believe at Cypress
13 Ridge on your truck at some point?

14 A Yes.

15 Q Did you do any other work on your truck
16 personally?

17 A Yes, one day we had a broken drive
18 shaft in there and I replaced it right there on
19 the job too.

20 Q You replaced your drive shaft while you
21 were working at Cypress Ridge?

22 A Yes.

23 Q And you replaced it on the job site?

24 A Yes.

25 Q Did you ever bring your truck anywhere



1 to have it worked on?

2 A No, it was there. If I am not
3 mistaken, the job, it was already almost that
4 whole year that it was sitting there on that job
5 site.

6 Q We will continue to talk about that.

7 I want to show you this report, and
8 then I am going to ask you about each of these
9 issues.

10 I submit there is an inspection done on
11 your vehicle after the accident, okay?

12 A Okay.

13 Q And these are different issues that the
14 experts state -- or I am not an expert, I am
15 just saying this is what they identified as
16 potential issues with your vehicle.

17 A Okay.

18 Q So passenger side axle #3 shows a very
19 loose air chamber, kinked air hose and oil
20 covering the brake pad. The oil is coming from
21 a broken seal. There is oil on the back side of
22 the brake drum. That is the indicator of a
23 broken seal.

24 Did you ever have your brakes inspected
25 while you had the vehicle?



1 A No, not that I recall. No.

2 Q Did you ever perform any maintenance on
3 your brakes while you owned the vehicle?

4 A I probably did while I was there. Like
5 I say it was working. It was just more like an
6 off-road construction site and you really
7 didn't -- at the moment I recall saying we are
8 going to do this or we are going to do that, but
9 it was -- that is the main reason.

10 Q Both the driver's side and passenger
11 side air hoses are attached by hose clamps. The
12 proper connection should be a hose with a
13 compression fitting.

14 Do you recall, did you put those hose
15 clamps on the air hoses?

16 A I can't -- I don't know even what they
17 are talking about to be honest. Maybe by the
18 pictures or maybe whatever, but to be honest I
19 do not.

20 If they just wrote it there, I guess
21 they saw it, but I can't recall that that is how
22 it was by the pictures or whatever.

23 Q I will show you Exhibit Number 19,
24 which is actually a video, and let me pause it
25 one second.



1 And I will bring it over here to you.

2 So if you look at that in front of you
3 that I handed you?

4 A The first page?

5 Q Yes, the first page.

6 And look at what they identify and then
7 watch this video if you don't mind.

8 MR. IMHOFF: Let me put an
9 objection on the record, foundation
10 stuff. It is just a deposition.

11 MR. SHELTON: It is just a
12 deposition, and obviously if we get
13 into trial I will have to authenticate
14 it. No problem. Thanks.

15 MR. IMHOFF: Okay.

16 (Whereupon, video playing.)

17 BY MR. SHELTON:

18 Q I will pause right there now.

19 Now, do you see what I am talking about
20 with the hose clamps?

21 A Yeah, I see what you are saying, hose
22 clamps, sir?

23 Q Did you install those hose clamps?

24 A No, I don't remember that.

25 Q Did you ever install any hose clamps on



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1 your vehicle?

2 A I don't think so, yeah.

3 Q Did you bring your vehicles to
4 maintenance anywhere else? Did you have anybody
5 else work on your vehicle --

6 A No, sir.

7 Q Let me just finish the question up.
8 Did you bring your vehicle to anyone
9 else to have it worked on other than yourself?

10 A No, sir.

11 Q So you are the only one who ever worked
12 on this truck?

13 A Probably yes, sir, more likely, yeah.
14 But I never ever recall that.

15 Q And you don't have any training in any
16 type of maintenance or vehicle maintenance?

17 A No, sir.

18 (Whereupon, video is playing.)

19 BY MR. SHELTON:

20 Q Did you install those bolts that you
21 see there?

22 A That is something new, I don't remember
23 it. It looks like they were barely installed.
24 Yes, they look brand new.

25 Q Would you recall installing those



1 bolts?

2 A I do not recall that.

3 Q Do you recall, did you ever bring your
4 vehicle to Ramos Trucking to work on?

5 A No, sir.

6 Q Did you ever have Ramos Trucking work
7 on your vehicle?

8 A No, no. That truck like I say stayed
9 on the site of the job.

10 Now that you are showing me, those look
11 brand new. If you go back it looked like they
12 just put them in. There's like no grease or
13 anything on there, no dirt.

14 Q Right.

15 You replaced the drive shaft on the
16 vehicle, correct?

17 A Yes, the drive shaft is in the middle,
18 like that is what connects the axles together.
19 But that is about it, because it popped right
20 there loading dirt, when they were loading dirt,
21 but that is about it.

22 Q So if you look at this now it says:
23 Driver's side axle number 3 shows a very loose
24 air chamber, kinked air hose and oil covering
25 the brake pad. I am not going to read through



1 all of this.

2 Number 2, both of the driver's side and
3 passenger side air hoses are attached by hose
4 clamps.

5 The driver's side push rod is at an
6 upward angle. The push rod should be coming
7 straight out.

8 Some other issues. The passenger side
9 slack adjuster is attached using the wrong hole.

10 And there are 3 new bolts on driver's
11 side spring mount. Two of the bolts are not
12 tightened.

13 So you are stating that you don't know
14 who put those bolts in?

15 A To be honest, I don't recall that and I
16 don't remember that. I just see it right now.

17 Q Watching the video, do those
18 violations -- you understand those violations
19 better now?

20 A I mean yeah, that is what it looks like
21 I guess.

22 Q Video number 2 says: Passenger side
23 drop axle the pushrods are not securely attached
24 to the slack adjuster. The slack adjuster and
25 all components are very loose. The driver's



1 side slack adjuster and components are very
2 loose.

3 I will show you Exhibit Number 20.
4 That former video was Exhibit Number
5 19?

6 (Whereupon, video is playing.)

7 BY MR. SHELTON:

8 Q That is Exhibit Number 20.

9 Do you know what a slack adjuster does?

10 A A slack adjuster does -- I don't know
11 how to explain it, but I kind of figure what it
12 does. It pushes the -- what is it called --
13 the -- man, what is the name of the -- I forgot.
14 It makes the truck brake. That is what it is
15 called, a slack adjuster.

16 Q It relates to the brakes?

17 A Yes, it is related to the brakes. Yes,
18 sir.

19 Q Is it important to have the slack
20 adjusters well maintained?

21 A Okay.

22 Q Is it?

23 A I guess so, yes, sir.

24 Q Did you ever have those slack adjusters
25 inspected or maintained?



1 A Like I say, we never put the truck out
2 of nowhere else. It was just there from point B
3 to point A, and I honestly never really paid
4 attention.

5 Q Video number 3 shows passenger side
6 axle number 3. This shows the brake chamber and
7 slack adjuster are very loose. Another view of
8 the oil covered brake pad and kinked air hose.
9 So these videos are shorter than the first one.
10 I will show this to you.

11 This is video number 21.

12 (Whereupon, video is playing.)

13 MR. IMHOFF: The same objection,
14 Ben.

15 MR. SHELTON: Yes, I understand.

16 MR. IMHOFF: Well, maybe not the
17 same objection, Ben; but with an
18 additional objection with that.

19 BY MR. SHELTON:

20 Q Reading from Exhibit Number 18:
21 Passenger side axle number 3. This shows the
22 brake chamber and slack adjuster are very loose.
23 Another view of the oil covered brake pad and
24 kinked air hose.

25 Did you see that in that video?



1 A That you just showed me, I did.

2 Q That was Number 21, the video.

3 Did you ever have that axle, that wheel
4 maintenanced on the vehicle?

5 A I can't recall that, sir.

6 Q It is another situation where you are
7 just not really paying attention?

8 A Well, not that I don't pay attention.
9 I can't recall it. It has been so many years to
10 be honest. And now I am just seeing that,
11 whatever you show me that is what I am seeing.

12 Q Did you ever maintain any records of
13 the maintenance you did on the vehicle?

14 A No, I never maintained no records.

15 Q Video number 4 shows: A side passenger
16 drop axle -- again, I am reading from Exhibit
17 Number 18. The slack adjuster and all
18 components are very loose.

19 MR. SHELTON: Jason, you want the
20 same objection?

21 MR. IMHOFF: Yes, unless you want
22 to give me a continuing objection?

23 MR. SHELTON: That is fine.

24 (Whereupon, video is playing.)

25 BY MR. SHELTON:



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1 Q Did you ever have that area inspected
2 of the vehicle?

3 A I can't recall that, sir. I don't
4 know.

5 Q The passenger side drop axle?

6 A The passenger side drop axle, no.

7 Q Video number 5 is: Driver's side drop
8 axle slack adjuster and all components are very
9 loose.

10 This is Exhibit Number 23, the video.
11 (Whereupon, video is playing.)

12 BY MR. SHELTON:

13 Q Did you ever have the driver's side
14 drop axle inspected?

15 A I can't recall that.

16 Q Did you ever maintain or do any
17 maintenance to the driver's side drop axle?

18 A I can't recall that, sir.

19 Q In video Number 6 it shows: Both rear
20 slack adjusters being loose.

21 This is Exhibit number 24, that is the
22 video.

23 (Whereupon, video is playing.)

24 BY MR. SHELTON:

25 Q I am assuming the same answer?



1 A Yes.

2 Q You don't have any records saying that
3 you ever had the rear slack adjusters inspected
4 or maintained?

5 A No, sir, I can not remember or have any
6 records of that.

7 Q Do you think you ever maintained or did
8 any maintenance to the rear slack adjusters?

9 A I don't remember. I can't recall that.

10 Q You earlier testified that you were the
11 only one that did work on the truck?

12 A Yeah, yeah, yeah. I am the only one,
13 yeah. I am the only one. And like I say I go
14 and do this and do that.

15 But since we never left the site, you
16 know, to be honest I can't recall. It has
17 been -- man, it has been about six years. It
18 has been a hustle, but I can't recall it.

19 Q And we will go over some invoices that
20 might help you recall the work you did while you
21 were working at Cypress Ridge in a minute.

22 A Yes, sir.

23 MR. SHELTON: Off the record for
24 one second.

25 (Whereupon, an off-the-record



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1 discussion was held.)

2 BY MR. SHELTON:

3 Q Exhibit Number 26, this is a document
4 that has been prepared by experts retained by
5 Mr. McGilton. This is I will submit to you it
6 refers to your Freightliner dump truck, and
7 these are different out of service violations
8 that they found in their inspection.

9 I want to ask you the question, though,
10 do you know what an out of service violation is?

11 A No, sir.

12 MR. IMHOFF: Let me just put that
13 objection on the record for this
14 document, okay? Objection.

15 MR. SHELTON: Okay.

16 BY MR. SHELTON:

17 Q Have you ever heard the term out of
18 service violation before?

19 A Never.

20 Q You see the bottom of this document
21 says out of service rule, 20 percent rule and
22 they have located 6 out of the 8 brakes out of
23 service violations.

24 Do you see that?

25 A I see it.



1 Q Does that surprise you that six out of
2 your eight brakes were found to be out of
3 service?

4 A Yes, I can't -- I don't know. This is
5 the first time I see this.

6 Q And Exhibit Number 27 is a document
7 that was put on-line some time ago. It relates
8 to an inspection record performed on your
9 vehicle I believe and I just want to submit that
10 to you for background.

11 Jacob AU Trucking, LLC, is that your
12 company?

13 A That was, yes. It has been closed
14 since.

15 Q 44 Brendan Lane, Bluffton, South
16 Carolina 29910.

17 Does that address have any significance
18 to you?

19 A That was my previous address, yes.

20 Q Is that where you live?

21 A No, that is not where I lived.

22 Q What was that address?

23 A Oh, that is where I used to live. I
24 was renting there too, yes.

25 Q Here it shows that there is an



1 inspection, and again I am just asking for my
2 own information, okay, do you recall ever having
3 the vehicle inspected by the Department of
4 Transportation or any other type of entity?

5 A No, sir, I don't recall that.

6 Q Do you recall whether when you
7 purchased the vehicle in order to get tags, did
8 you have to have the vehicle inspected?

9 A No, sir.

10 Q Do you see vehicle violations here
11 being 4?

12 A That is what you are showing me?

13 Q Yes.

14 A Yes.

15 Q But you don't recall having the vehicle
16 inspection on January 7th?

17 A I don't think any --

18 Q Again let me finish the question. I
19 don't mean to be rude.

20 On January 7, 2015 do you recall having
21 an inspection done on the vehicle?

22 A In 2015?

23 Q Yes.

24 A No, I do not.

25 Q And you don't recall ever having the



1 vehicle inspected at all?

2 A Not that I remember.

3 It has been so long that I can't really
4 recall that.

5 Q Okay.

6 And this is Exhibit Number 27.

7 MR. SHELTON: Let us take a break.

8 (Whereupon, a break was

9 taken from 12:24 p.m.

10 to 1:03 p.m.)

11 BY MR. SHELTON:

12 Q Let me remind you, you are still under
13 oath?

14 A I am sorry?

15 Q I am reminding you, you are still under
16 oath, okay?

17 A Okay, yes, sir.

18 Q I am going to bring up Exhibit Number
19 28, but before I do that do you recall just in
20 generality of when you first started working
21 with Ken Tosky?

22 A The --

23 Q That was a bad question.

24 Do you recall the general time frame of
25 when you first started working with Ken Tosky?



1 A The general time frame? I would just
2 say in 2017. Starting with 2017.

3 Q That is your recollection?

4 A Yes, that is pretty much --

5 Q Around that time?

6 A Yeah, or '16. I can't really --

7 Q And how would you get paid by Ken
8 Tosky?

9 A I get paid hourly.

10 Q And how often would you get paid?

11 A Weekly.

12 Q And how would you get paid? By cash or
13 by check?

14 A No, check. He would pay me by check.

15 Q Would you deposit that check into your
16 bank account?

17 A Yes, sometimes I did. Yes.

18 Q And what did you do when you didn't
19 deposit the check into your bank account?

20 A I do like -- there are a bunch of cash
21 places where they charge you and cash you the
22 check.

23 Q There was one of those in Hardeeville?

24 A There is a bunch of them everywhere.

25 There is one in Bluffton, Hardeeville. There is



1 Levy.

2 Q And would you use those places to cash
3 your checks?

4 A Yes, yes. Sometimes I did.

5 Q Would you go to the some place or
6 different places?

7 A All different places.

8 Q And when you received a check from
9 Kenneth Scott Builders or Ken Tosky, did he
10 personally hand it to you? Did you go to an
11 office?

12 How did you receive it?

13 A No, he would personally would handle
14 it.

15 Q Would you receive that check at Cypress
16 Ridge?

17 A That is correct.

18 Q I am going to -- how would he know what
19 to pay you?

20 A How? We pretty much said like he told
21 me how much he would pay me and just for being
22 there hourly. That is it.

23 And he will ask me how many hours do
24 you work, and I will say this much.

25 Q Did you use anything to keep track of



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1 your hours?

2 A At one point probably we did. But more
3 likely who was there, it was like his daughter.
4 His daughter is one of the head management I
5 will say, and he got people that he trust I
6 believe. So pretty much always tell him from
7 this time and this time I guess. Clocked in and
8 clocked out.

9 Q You say clocked in and clocked out?

10 A I guess, yes.

11 Q Do you remember providing him with any
12 type of invoice or any type of documents showing
13 what type of work you did on a regular basis?

14 A No.

15 Q I am going to show you some documents
16 and see if you recognize them.

17 First of all, this is a 1099 and I will
18 submit to you this is material that was produced
19 from Kenneth Scott Builders.

20 A Yes, sir.

21 Q As a production related to this case, a
22 predecessor case, and this was Exhibit Number
23 28, and for the record the Bates Stamp on this
24 is 2018039230, this is Kenneth Scott Builders
25 production. I will scroll down through this.



1 First of all, this 1099 is to Jacob AU
2 Trucking, LLC, 42 Woods Bay Road?

3 A Woods Bay Road?

4 Q Do you know what that is? Where that
5 is?

6 A Oh, yes, I was living there too. I was
7 living there too. But the problem with that, it
8 is just that I don't know why they did it to
9 that; and I don't even remember seeing this one
10 until now, but probably I did.

11 But that 42 Woods Bay, like I said I
12 had two children. But I was back and forth. I
13 was not living with them at the moment -- well,
14 I only had one at the moment and I was
15 separated.

16 Q Okay.

17 A So from time to time I did probably I
18 used one of those locations. So if I rent a
19 room or something, I was living there with
20 somebody that was renting.

21 Q So this is a different address for you?

22 A Yes, probably, yes.

23 I do remember that 42 Woods Bay Road.

24 Q And you see this is a 2017 1099 form
25 that shows --



1 A Yeah.

2 Q -- nonemployee compensation of \$84,015?
3 Does that seem like the amount of money you
4 made?

5 A I can't recall that.

6 That is something that I am seeing now.

7 Q Do you remember receiving a 1099 form
8 like this from Ken Tosky?

9 A I can't remember, sir, to be honest.

10 Q You do not or do?

11 A I do not remember.

12 Q And I am not stating that you know what
13 this is. I am just -- this is not your
14 document, I am submitting that to you so you
15 know.

16 But it shows Jacob AU Trucking, LLC.
17 That was the company you were affiliated with,
18 is that correct?

19 A That is correct.

20 Q And it shows different payments made, a
21 ledger of payments made to Jacob AU Trucking.

22 The first one it looks like that was
23 paid in October 21, 2016.

24 Do you see that?

25 A Yeah, the dates, yes, sir, I see that.



1 Probably. I do not remember that, those
2 payments or anything I do not.

3 Q And then the payments go through from
4 the first date of any bill check it is zero, but
5 it shows accounts payable is September 7, 2016;
6 and then it runs through 2017 and, then into
7 2018. And I am referencing Exhibit Number 28 of
8 this deposition.

9 When we get down to 2018 you will see
10 that it ends on March 15th of 2018 and this is a
11 vendor report to Jacob AU Trucking, LLC.

12 Did you do any work with Jacob AU
13 Trucking, LLC after the accident?

14 A No. No.

15 Q Now, I am going to show you this
16 document here.

17 Do you recognize --

18 A That is my handwriting.

19 Q That is your handwriting?

20 A Yes.

21 Q And do you recognize this invoice form?

22 A Yes, I did some of those, yes.

23 Q Would you do these for all the times
24 you worked or just sometimes?

25 A It was just sometimes whenever he --



1 when nobody was there I believe and -- or
2 anything, but that is --

3 Q Okay.

4 When you filled these out why did
5 you -- first of all, who provided the form, did
6 you provide the form or did he provide the form
7 to you -- let me finish the question, just for
8 the court reporter.

9 Did he provide the form to you or did
10 you have this form on file?

11 A I cannot recall that one.

12 Q And this is all your handwriting?

13 A Yeah, that is my handwriting. Yes.

14 Q Do you know what the squiggly line is
15 here? Whose initials?

16 A That is probably a signature, but no.

17 Q And what is C. rock?

18 A C. rock, maybe some material they want
19 me to haul, yeah.

20 Q And it says Kenneth Scott builders from
21 Ulmer Brothers to Bojangle's.

22 A Okay, that is the spot I told you that
23 is on 46.

24 Q Okay.

25 A I mean I am sorry, Buckwalter Road.



1 Bojangle's, something like that, there is one in
2 there.

3 Q So were you working on a project there
4 for Kenneth Scott Builders?

5 A Yes, that is probably when we started.
6 It says right there 2016.

7 Q Why did you fill this document out?

8 A Why? He told me just to -- so he knows
9 how many hours I work.

10 Q And would you provide this document to
11 him on a daily basis, or would you give it to
12 him at the end of the week?

13 How would that work?

14 A It is more likely there they keep
15 record of like your daily basis, your hourly
16 that you work with them.

17 Q And is this to the best of your
18 recollection a true and accurate copy of this
19 Invoice No. 355906?

20 A I can't -- those numbers I can't
21 recall. I just recognize my writing.

22 Q You do not dispute that is your
23 writing?

24 A No, I do not dispute that is my
25 writing. That is definitely my writing.



1 Q What is this number down here?
2 800-767-0607?

3 A I don't know.

4 Q You wrote start time and end time.
5 Why did you write start time and end
6 time?

7 A They always requested so they know.
8 Yeah, they tell you I mean -- or they tell you
9 start at this time and finish at this time, or
10 that is it, you know.

11 They tell you timing-wise what you do.

12 Q Is that for them to know how much to
13 pay you?

14 A For them -- yeah. Yeah, and for
15 them to -- yeah, pretty much tell you while you
16 are with them, it is like any other company I
17 believe so, right, like you go in there they
18 tell you be here at this time and from this time
19 to this time do this and do that and after that.

20 Q How much were you being paid by the
21 hour?

22 A At that moment I didn't know. I can't
23 recall that one, because he always puts the --
24 he was the one who tell you for this I will pay
25 you this, you know. This amount of time you are



1 going to do; so it was different.

2 Q This next invoice 355907, do you
3 recognize the handwriting on this?

4 A Yes, I do.

5 Q And again it says from Ulmer.
6 What does that Ulmer B mean?

7 A Ulmer Brothers?

8 Q Yes.

9 A That is a place where they had a --
10 they had a -- what is it called -- like a count
11 where they save rock and material.

12 Q Where is Ulmer Brothers?

13 A Ulmer Brothers is off of -- what is
14 this called? Burnt Church Road in Bluffton.

15 Q And Burnt Church Road in Bluffton, that
16 is near Old Town, that is between Old Town and
17 Hilton Head, is that fair to say?

18 A I mean I don't know exactly the
19 address. I know how to get there. But it is at
20 Burnt Church Road at the end of 46.

21 Q Is it off Ulmer Road?

22 A I guess so, yes. It is Ulmer Road,
23 yes.

24 Q So what were you doing on this day
25 based on this ticket?



1 A What it says. Based on this ticket it
2 says that I hauled that type of rock to that
3 location of Buckwalter.

4 Q From Ulmer Brothers to Buckwalter?

5 A Yeah.

6 Q And why would you keep the load numbers
7 here? Do you know why?

8 A Maybe I will say because he -- they
9 provided with the material and everything. They
10 pay for the rock and all of that, you know. So
11 you got to keep track, so they know how many
12 loads I guess they need or they go in or -- you
13 know.

14 Q Did you write that down because Mr.
15 Tosky told you to write it down or --

16 A Yes, you have to keep track. They ask
17 you to do it. They ask you to write your stuff
18 down, so they know; and I guess when they pay
19 the people for the rock they compare -- I don't
20 know some like little tickets I guess.

21 Q This is Invoice No. 355902, a similar
22 thing, Ulmer Brothers to Bojangle's. The date
23 is November 1, 2016.

24 A Uh-huh.

25 Q Does that appear to be your



1 handwriting?

2 A Yes, sir.

3 Q So from Ulmer Brothers to Bojangle's
4 means that you hauled it from Ulmer Brothers to
5 Bojangle's?

6 A Yes, sir.

7 Q Do you recognize this slip?

8 A Not really. That is probably the --
9 they say it is Ulmer Brothers right there on the
10 bottom.

11 That is not my handwriting.

12 Q Do you know what CNR means?

13 A No.

14 Q Crush and run?

15 A Maybe crush and run, yeah. C and --
16 yeah, crush and run.

17 20-ton.

18 Q And then the same here, it says: Ken
19 Scott, Bojangle's?

20 A Yes, I guess so.

21 That is not my handwriting.

22 Q That is not your handwriting?

23 A No.

24 Q Would you perhaps -- maybe this is a
25 slip from Ulmer that you gave to Ken Scott?



1 I am just trying to figure out?

2 A Probably. I don't know.

3 I can't recall that one.

4 Q But this is your handwriting, correct?

5 A That is my handwriting, right.

6 Q And it says dirt to Ulmer's.

7 What is Ulmer's?

8 A Ulmer Brothers.

9 Q Where would you bring in dirt from
10 bringing it to Ulmer's?

11 A I can't remember that one.

12 Q This would be November 15, 2016.

13 A Man, it is almost ten years. Wow.
14 I wouldn't know.

15 Q And then the next one is Invoice No.
16 355908, all of this is in Exhibit 28.

17 So here we have dirt, asphalt, concrete
18 and then you have different numbers. Here it
19 says asphalt to Ulmer's, asphalt to Ulmer
20 Brothers.

21 Do you remember hauling asphalt to
22 Ulmer Brothers?

23 A I don't.

24 Q If you were ever hauling asphalt, where
25 were you getting the asphalt from?



1 A If we were hauling to Ulmer Brothers
2 asphalt, that is probably a place where you can
3 dump. Not a place where you take for them to
4 do.

5 Do you know what I mean?

6 Q Right.

7 Do you know where the asphalt would
8 have been taken from?

9 A I wouldn't -- I can't recall that.

10 Q And it says: Dirt to Ulmer's, dirt to
11 Ulmer's, dirt to Ulmer's?

12 A If I do say something I might be lying
13 saying no -- so I don't want to.

14 Q Do you remember loading dirt into your
15 truck -- when you were purchasing dirt do you
16 ever remember loading dirt into your truck that
17 was not at the Cypress Ridge site?

18 A No, sir.

19 Q You only remember loading dirt into
20 your truck -- unless you were purchasing dirt,
21 you remember loading dirt into your truck --

22 A We never -- I never purchased dirt for
23 them or anything like that. They always had
24 everything arranged like for us to, you know, do
25 it. Like it says right there I am trying to



1 remember at the moment. And it says different
2 names and everything and then it says dirt to
3 Cypress Ridge. But I never purchased things
4 where -- it was more anything arranged from
5 them. It was like pick up this, take it here,
6 take it there, do that, do this.

7 Q Who is them?

8 A The company, Kenneth Scott Builders.

9 Q So that would have been bringing dirt
10 to Cypress Ridge?

11 A I believe so. That is what it says
12 right there.

13 I mean I can't go back like that.

14 Q Right.

15 I am just asking what you know about
16 it, because this is your handwriting, correct?

17 A Yes, sir.

18 Q And you created this document, correct?

19 A That is correct.

20 Q It says time in 8:15, time out 4:30?

21 A That is what it says.

22 Q When you put those times in were those
23 accurate on each of these invoices?

24 A I will say yes.

25 Q That looks like 11/14/2016 or is that



1 11/15/2016?

2 A I don't know.

3 It looks like 11/14.

4 Q We have Invoice No. 355907. And then
5 this is another crushed rock. This might be a
6 duplicate. It is 11/9/2016 and 2 loads of
7 asphalt, time in, time out. And your signature.

8 Does that appear accurate?

9 A That is not my signature.

10 Q This isn't?

11 A Oh, that one it is. I thought you were
12 talking about that one.

13 Q I am sorry, what is this?

14 A I don't know. It looks like a
15 signature.

16 Q Did you ever watch Ken Tosky sign?

17 A Yes, they did sign a bunch of bills.
18 They signed everything all the time. Either him
19 or people that is with him.

20 Q And when you say to Buckwalter, that is
21 the Bojangle's site to your best recollection?

22 A I would think so.

23 Q And then the same here, 11/8/2016 from
24 Ulmer Brothers to Bojangle's. It looks like you
25 only worked -- you got out 11:00 o'clock, that



1 is 2-1/2 hours that day?

2 A Probably.

3 Q And then it says from Hampton Lakes to
4 Cypress Ridge.

5 What is Hampton Lakes?

6 A Hampton Lakes at that moment was --
7 Hampton Lakes is a plantation now. Hampton
8 Lakes is off the Parkway.

9 Q Right.

10 A And it was a plantation and they used
11 to have -- I don't know if it was a dirt pad or
12 what it was; but I guess they arranged, they
13 have dirt and we brought it from there to there,
14 I guess.

15 Q And so you are going from Hampton Lakes
16 to Cypress Ridge bringing all these loads of
17 sand, is that correct?

18 A That is, yes, that is correct. That is
19 what it says on the ticket.

20 Q Time in is 7:30 and time out is
21 1:00 o'clock.

22 What is add to hours?

23 Do you have any idea why you wrote add
24 to hours?

25 A No, sir, I didn't write that one.



1 Q But that is your signature?

2 A That is my signature.

3 Q And then here we have some of these
4 invoice numbers get cut off.

5 But the top one is number 355913.

6 Do you see this and then it says
7 Cypress Ridge?

8 A Yes.

9 Q And then it has all these numbers and
10 dirt.

11 What does that mean to you?

12 A That is probably -- that is probably
13 when we were working on-site, I guess.

14 Q And you have hours here that you
15 worked?

16 A Yeah, because if I am not mistaken,
17 when we were working on-site they kind of wanted
18 to have track of everything we do. If you move
19 a little dirt here or there, because like I say
20 on Cypress Ridge there were two sites. They
21 were taking that on one site, the good stuff,
22 and the other site they were taking the bad
23 stuff out, filling the other one. If that makes
24 sense, filling whatever you took the good stuff
25 out with the bad and back and forth. Something



1 like that. They were doing it. I am not.

2 Q So you are hauling dirt from Cypress
3 Ridge?

4 A Yes, A, B. Probably. That is what it
5 kind of looks like, yeah.

6 Q And that would have been January 13,
7 2017, does that look correct?

8 A That is probably correct.

9 Q And then the next one is January 16,
10 2017.

11 Do you see that?

12 A Uh-huh.

13 Q And it says Cypress Ridge?

14 A Okay.

15 Q And that is similar. When you see
16 Cypress Ridge on it in stages, all these loads
17 of dirt, does that mean you are hauling dirt on
18 Cypress Ridge all day?

19 A More likely, sir.

20 Q It is cut off. We can't tell the hours
21 here.

22 But on a typical day were you normally
23 working 8 hours?

24 A Yes, on a typical day you were working
25 8 hours.



1 Q So if there is not a time indicated on
2 these time slips you were --

3 A If we weren't hauling anything I used
4 to help them with equipment. Like roll the
5 roller or do here, do that.

6 Q What would you do if you didn't have
7 anything to haul, what would you be doing?

8 A Just help them out with whatever they
9 had, that has to be there, I just worked there,
10 you know.

11 Q You said moving the rollers?

12 A Moving the rollers or like help with
13 the excavators or dig something or yeah.

14 Q What other type of work would you do at
15 Cypress Ridge?

16 A That is pretty much about it like with
17 dirt. Anything related with dirt or fence or
18 sometimes I do the silt fence, you know.

19 Q Would that be a normal thing for you to
20 do while you are there?

21 A Yeah. Kind of, yeah.

22 Q Did you ever have any interaction with
23 any employees of D.R. Horton?

24 A No, not that I remember.

25 Q And did you ever know of a guy named



1 Jared Osaka?

2 A Who?

3 Q Jared Osaka?

4 A Never heard of him.

5 Q What about a guy named Tim Stone?

6 A Never heard of him.

7 Q Did you ever see any D.R. Horton trucks
8 driving around the site?

9 A I probably have. I probably did, but I
10 can't say oh this truck was. If you show me a
11 picture this is the truck that was riding
12 around, but it probably did, yeah.

13 Q Did you ever see anyone on-site that
14 wasn't an employee of Kenneth Scott Builders?

15 A It was a pretty big site building, so
16 there is people running back and forth besides.
17 Then I will say yeah, there was a lot of people
18 on the site.

19 Q And with Kenneth Scott Builders, who
20 were the people that you regularly dealt with?

21 A Mr. Ken and his daughter Gabby, that is
22 her name; and he had another guy, a
23 superintendent, but I can't recall his name.

24 Q So you would only provide these slips
25 the days that you were working at Cypress



1 Ridge --

2 A No, that was just where to keep track
3 of the dirt.

4 Q I am sorry, let me finish my question,
5 I apologize.

6 A Yes.

7 Q You would only provide these slips on
8 the days you were working for Cypress Ridge when
9 you were hauling using your dump truck? Not
10 when you were working the excavator or working
11 the roller?

12 A I don't recall that.

13 Yeah, sometimes that is why they added
14 the hours sometimes. I don't know.

15 Q Here is another one, this is
16 January 17, 2017.

17 A Yes.

18 Q And this has 1 through 12, dirt?

19 A Yes.

20 Q And again it says Cypress Ridge?

21 A Yes.

22 Q That means you were working at Cypress
23 Ridge that day?

24 A Uh-huh.

25 Q Is that a yes?



1 A Yes, sir.

2 Q And it says broke down 1223 May River
3 Road to 3:00.

4 Do you recall, was that the time where
5 your axle broke or do you --

6 A Probably, yes. Probably fixing it and
7 then -- if things like that happen like say we
8 will compensate on working, on doing something
9 else just to finish a day.

10 Q And when you say broke down from 12:00
11 to 3:00, were you not getting paid for that
12 time?

13 A Yeah -- well, not -- I guess I got paid
14 because it says to end at 4:00 o'clock. I
15 cannot recall that one, but that is not my
16 writing.

17 Q Okay.

18 A That is not my writing. So I probably
19 got a different type of pay if I was -- because
20 he say start at 8:00 a.m. and finish at 4:00.
21 So if I was broke down, you know.

22 But I can't -- yeah, that is a long
23 time.

24 Q How many times did you break down
25 working at the Cypress Ridge site?



1 A I am sorry, I can't recall that.

2 Q More than once?

3 A Probably.

4 Q More than twice?

5 A Maybe yeah I think. Yeah, but I can't
6 really recall an exact amount of breakdown's.

7 Q Did Mr. Tosky ever ask you what you was
8 going on with your truck, or did you ever have
9 it inspected after you broke down?

10 A No. Like I say it was more like just
11 work and do -- I am a man that goes to work, and
12 if there is anything that has to be done, we do
13 it right then and they help out. They taught me
14 how to use the equipment, you know what I mean;
15 and I help out whenever they had things going on
16 and that is what I did, you know.

17 Q Right.

18 So you never worked that heavy
19 equipment before you worked with Ken Tosky?

20 A To be honest, no, that is where I
21 learned and that is how we actually kept my days
22 full, you know doing the extra.

23 Q Who taught you? Did Ken Tosky himself
24 teach you how to work the equipment?

25 A Their employees too, yeah like the --



1 Q But did Ken Tosky participate in
2 helping?

3 A Yes, and the daughter and the manager
4 too, yeah.

5 Q And then the same thing with
6 January 18, 2017. No invoice number, but this
7 would be Bates Stamped 20180379 244, working at
8 Cypress Ridge. This one looks like it is out of
9 sequence. It is December 22, 2016. It says
10 from Ulmer Brothers to Cypress Ridge and
11 Bojangle's, rock.

12 What does that mean to you?

13 A Rock. We probably brought rock to
14 Bojangle's, two loads of rock.

15 Q What about to Cypress Ridge?

16 A Oh, to Cypress Ridge, probably, yeah.
17 From Ulmer Brothers, that is what it says from
18 Ulmer Brothers to Cypress Ridge.

19 Q And then this one doesn't have a date.
20 It says Cypress Ridge, fill dirt. Or I don't
21 want to put words in your mouth, I apologize.

22 It says F dirt.

23 What does F dirt mean?

24 A F different means fill dirt.

25 Q And what is fill dirt?



1 A Fill dirt?

2 Q Yeah.

3 A They use to fill holes I guess.

4 Q What is the difference between fill
5 dirt and dirt? Some of these numbers are dirt
6 and fill dirt?

7 A Oh, it is just probably the writing.
8 Not anything is called fill dirt, but we call it
9 fill dirt I guess. I guess I missed that one in
10 saying fill dirt instead of dirt. I got to put
11 the F.

12 Q Did Ken Tosky ask you to specify it was
13 fill dirt in these invoices?

14 A Whenever at one point we were keeping
15 track, and I guess they keep track all the time.
16 Yeah, because like I say they were hauling --
17 there is fill dirt and there is top soil.

18 Q Okay.

19 A So top soil you put T soil and fill
20 dirt, F dirt. So yeah, because they want to
21 know how much you put in and how much you put
22 out. Yeah, they tell you. Keep doing this, do
23 it like that.

24 Q And another one has no date on it, the
25 invoice number is cut off. But this is Bates



1 Stamped ending in 246 of Exhibit Number 28.

2 It says 3 loads good dirt.

3 What is good dirt?

4 A It is the same thing as fill dirt, sir.

5 Q And if it doesn't specify a location as
6 to where you are working, where would you have
7 been working that day?

8 A Probably -- if I look, 2000 -- it
9 doesn't even tell you the date. I can't recall
10 that one.

11 Q Did you work regularly anywhere other
12 than Cypress Ridge?

13 A No, it was strictly for them. Like I
14 said I wasn't kind of familiar with the times.
15 But now that I am looking at the ticket, that is
16 what I say starting '17 or '16 maybe.

17 And we probably dedicated ourselves
18 more likely at the time I was working for them
19 then it was like Cypress Ridge most of the time.

20 Q Okay.

21 A Yeah, there is some Bojangle's which I
22 told you that is kind of where I met them.

23 But besides strictly we were on-site on
24 the location and maybe from here to there.

25 Q And from time to time would you load on



1 or off Cypress Ridge or bring dirt into Cypress
2 Ridge --

3 A Sometimes what it was -- what it was I
4 wouldn't leave the Cypress Ridge. But since he
5 don't have any more trucking companies, I kind
6 of knew people around and I called them and I
7 tell them and I fill those tickets for them and
8 bring. But they will pay them directly or stuff
9 like that. Sometimes I will just keep track of
10 whatever they bring.

11 Q Okay. We have got some things that
12 indicates that happens. I want to ask you some
13 questions about them. We have a lot of these
14 tickets. I want to go through them one by one,
15 but as quickly as possible, okay?

16 A Yeah.

17 Q So January 25, Cypress Ridge, 21 loads.
18 Does that mean you are loading 21 loads
19 of dirt that day?

20 A More likely.

21 Q And the same thing here, Cypress Ridge
22 1/24/2017 18. Start time 9:00 a.m. and end time
23 4.

24 What does that say? 4:30? What does
25 it say?



1 A What it says there I didn't write that.

2 Q You don't write the start and end time?

3 A I start the start time, but the end
4 time they always put it in.

5 Q Okay.

6 The same here, this is Invoice No.
7 355918, Cypress Ridge.

8 That means you are working at Cypress
9 Ridge?

10 A Yes.

11 Q And then February 8, 2017 Cypress
12 Ridge, and it says from 4:00 to 5:30 to Ulmer's?

13 A Yes. I believe so.

14 Q What would that mean?

15 A 4:00 to 5:30 to Ulmer's. That is a
16 hard one. Okay, it says from 4:00 to 5:30 to
17 Ulmer's from to Ulmer's. I can't recall that
18 one.

19 Q Would that mean that you hauled
20 something to Ulmer's?

21 A Something off probably from Cypress
22 Ridge maybe. Maybe, yeah.

23 Q So Ulmer's was a place you could pick
24 things up and also a place you could dump?

25 A Yes, if you look them up there is



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1 places and they do a lot of disposal like and
2 they sell stuff. I don't know what you call
3 it -- that more something like that, you bring
4 stuff in and they got a crusher and things like
5 that.

6 Q And then the same thing, Scott Kenneth
7 Builders, you mean Kenneth Scott Builders?

8 A Yes, Kenneth Scott Builders.

9 Q Cypress Ridge, dirt.

10 That means you are hauling dirt there
11 all day?

12 A More likely, yes, sir.

13 Q And then this is Bates Stamp ending in
14 249, Exhibit number 28 still, Rose Dhu, 9 loads
15 of select.

16 Do you recall ever loading at Rose Dhu?

17 A I do not.

18 Q Do you know what Rose Dhu is?

19 A Rose Dhu, yeah. Yeah, Rose Dhu is off
20 46, right?

21 Q Correct.

22 A Yes, I remember Rose Dhu. But I do not
23 remember if we brought in, we brought out, I
24 can't.

25 Q You don't recall whether you took stuff



1 from Cypress Ridge or from Rose Dhu or somewhere
2 else from Rose Dhu?

3 A No, sir.

4 Q And then the next one is February 7,
5 2017.

6 It says Cypress Ridge.

7 A I never saw those stamps either. They
8 probably stamped them later afterwards.

9 Q And you are referencing the stamp that
10 says received in the middle, and this is
11 February 10, 2017?

12 A It says February 1.

13 Q If you look at it carefully?

14 A Oh, February 10th. Oh, okay, cool,
15 yes. Yes.

16 Q So would you hold on to these slips and
17 deliver it to someone at the end of the week or
18 deliver it to them on a daily basis?

19 A They got signatures. So what it was is
20 like you keep track of whatever like I said I
21 don't know what was the reasons to keep track,
22 you know, on the site. That is something that I
23 don't know. That is what they told me, just
24 kind of they know how many go in in order for
25 them maybe they get paid by that. I don't know.



1 But it was like something they have to
2 have on hand to know if it was dirt or what type
3 of material was it or I guess so they keep track
4 or they bill. That is something I don't know.

5 But yes, it was handed to them every
6 day.

7 Q Okay.

8 A It is like, you know, if I have
9 somebody and I see that they are hauling or I
10 load somebody if they have an off road truck
11 sometimes, if I would have load it I have to
12 write it down too. That way they know if it is
13 good dirt or bad dirt or what they are doing. I
14 guess they get paid by that. I wouldn't know.

15 Q Okay.

16 And this one is February 2nd. It is
17 out of sequence, 2017, the invoice number is cut
18 off. This is Bates Stamped ending in 250. It
19 says fill dirt, fill dirt, and then it has dirt.

20 Again is there any distinction between
21 fill dirt and dirt?

22 A No, sir. I guess it is all the same.
23 I was just writing it and just missing
24 something.

25 Q And again working at Cypress Ridge, is



1 that correct?

2 A Yes, sir.

3 Q And then January 31, 2017, again it
4 says Cypress Ridge, is that correct?

5 A Yes, sir.

6 Q And there is no start and end time on
7 this one.

8 If you stopped working, would there be
9 a reason that you stopped working early one day?

10 A It could be many reasons. Many
11 reasons.

12 I can't -- maybe something else we had
13 to do or -- I don't know.

14 Q This is January 27, 2017. It states:
15 Hauling into the hole.

16 What is the hole?

17 A That is in Cypress Ridge. There was a
18 hole that had to be filled back in I guess, and
19 that is what I -- that is the only thing I can
20 recall, that I can call it a hole. They made a
21 pad into the hole, so you drive it into the
22 hole, it was so they filled it back in I am
23 thinking. That is what it was.

24 Q February 1, 2017, again states working
25 at Cypress Ridge.



1 Is that correct?

2 A Yes, sir.

3 Q And took off from 2:00 to 5:00 p.m. it
4 looks like.

5 Is that your handwriting?

6 A No, that is not my handwriting.

7 Q So would that be Gabby or Ken's
8 handwriting?

9 A I don't know, sir.

10 Q And February 14, 2017, again this
11 appears that you are working at Cypress Ridge
12 all day.

13 Is there anything incorrect about that
14 statement?

15 A No, sir.

16 Q And this is Bates Stamp 252.
17 Do you see this Invoice No. 355925?

18 A Uh-huh.

19 Q Again, it says hauling dirt into the
20 hole?

21 A Yes.

22 Q This is for January 30, 2017.
23 Do you see that?

24 A Yes, sir.

25 Q And that is at Cypress Ridge as well?



1 A Yes, sir.

2 Q February 13, 2017 at Cypress Ridge, is
3 that correct?

4 A Yes, sir.

5 Q And then February 10, 2017, working at
6 Cypress Ridge, is that correct?

7 A Yes, sir.

8 Q And all these are your handwriting?

9 A For the most part, yes.

10 Q The only thing that isn't your
11 handwriting are some of the start and end times?

12 A Yeah, some of them and some signatures
13 that you see alone.

14 Q By filling out the locations and
15 filling out the numbers of dirt, all of that is
16 your handwriting?

17 A Yes, that is my handwriting.

18 Q And the dates are your handwriting?

19 A Yes.

20 Q And moving to Bates Stamp No. 253,
21 again this is the February 10, 2017 invoice.
22 Again working at Cypress Ridge, that is correct?

23 A Yes, sir.

24 Q And this one does not have an invoice
25 number. The invoice number is cut off. The



1 Bates Stamp is 254. The date is February 16,
2 2017, is that correct?

3 A Yes, sir.

4 Q It says from 8:30 to 9:30, 65 per hour.
5 Rose Dhu.

6 Do you remember what you were doing at
7 Rose Dhu at all?

8 A Not really. Like I say from time to
9 time we used to get these trucks and, you know,
10 he kind of -- like I say besides that I mean
11 besides working, you know, you get to know
12 people and they treat you some type of way and
13 they give you, help out with this, help out with
14 that, you know.

15 I can't say we were the best friends
16 with people out there, but you know, if I am on
17 a job and I can help, probably get people that
18 works for them too, you know.

19 Q But this says from 8:30 to 9:30, 65 per
20 hour, Rose Dhu.

21 Does that mean that you are working at
22 Rose Dhu?

23 A Maybe. Maybe I did. Yeah.

24 Q And then loading dirt at Cypress Ridge
25 the rest of the day.



1 Does that appear to be correct?

2 A That kind of looks like it is.

3 Q And February 15, 2017, again Cypress
4 Ridge, 18 loads.

5 Do you see that?

6 A Yes, sir.

7 Q February 24, 2017, I says 5 loads?

8 A From Conrad to Rose Dhu.

9 Q What is Conrad?

10 A Conrad is a rock place too where they
11 sell rock, they sell you material.

12 Q Where is that?

13 A That is located in Hardeeville.

14 Q Would that be you moving that rock?

15 A Probably. I can't say it was me, but
16 that is my handwriting.

17 Q And that is Bates Stamp 255, Exhibit
18 Number 28 still.

19 Again, this is a similar one on
20 March 9, 2017, it says Cypress Ridge.

21 You are hauling dirt at Cypress Ridge
22 ridge all day.

23 Does that appear to be correct?

24 A Yes, sir.

25 Q And March 3, 2017, again similar



1 loading dirt at Cypress Ridge.

2 Does that appear to be correct?

3 A Yes, sir.

4 Q The same here March 6, 2017, Cypress
5 Ridge?

6 A Yes, sir.

7 Q Is that your handwriting?

8 A It looks like it.

9 Q March 7, 2017?

10 A Yes, sir.

11 Q That is your handwriting?

12 A Yes, sir.

13 Q At Cypress Ridge?

14 A Cypress Ridge.

15 Q March 8, 2017, it states it is Cypress
16 Ridge.

17 So this one it says sold to Kenneth
18 Scott Builders.

19 What does that mean?

20 A Sold to?

21 Q Yes.

22 A That is just part of the invoice. That
23 is how they come but --

24 Q It doesn't mean you are selling
25 anything to Kenneth Scott Builders?



1 A No, no, no. Any material that we would
2 always get it was either they got it. They paid
3 for it, they got it I guess. I don't know.

4 Q When it says city, state, Cypress
5 Ridge.

6 Does that mean the location you were
7 working?

8 A Kind of, yeah I guess.

9 Q I don't want you to guess.
10 I want to you tell me yes or no?

11 A I believe so. It says there city or
12 state, but that is not a city or a state, it is
13 a location.

14 Q It says 1 load of rock from Ulmer
15 Brothers to Cypress Ridge.

16 Do you see that?

17 A Yes, I see that.

18 Q Did you ever load rock from Ulmer
19 Brothers to Cypress Ridge?

20 A Did I ever load?

21 Q Did you ever carry rock from Ulmer
22 Brothers to Cypress Ridge?

23 A What do you mean?

24 Q Did you ever take rock from Ulmer
25 Brothers to Cypress Ridge?



1 A That is what it says, yeah. Yes, sir.

2 Q So when it says that, it means you did
3 it?

4 A I guess so. Sometimes I did and
5 sometimes I didn't.

6 But going back to this ticket it is
7 like so many years back I wrote it down, I guess
8 so.

9 Q March 1, 2017, Cypress Ridge, working
10 there loading dirt all day.

11 Is that fair to say what that says?

12 A Yes, sir.

13 Q Let me rephrase that.

14 Is that fair to say that is what that
15 says?

16 A That is what it says.

17 Q And this is a Bates Stamp No. 258,
18 Invoice No. 355949. The next invoice that
19 doesn't have an invoice number, it is cut off it
20 appears, but it says March 2, 2017.

21 You are working at Cypress Ridge
22 loading dirt that day.

23 Does that appear to be correct?

24 A Yes.

25 Q And the next is Bates Stamp 259, and it



1 says 8 loads to nursery place.

2 What is nursery place?

3 A I do not recall that one.

4 Nursery place? I can't recall that
5 one.

6 Q And it says 1 load to Rose Dhu?

7 A Nursery place?

8 Q Or Rose D.

9 What is Rose D?

10 A Rose D or Rose Dhu, the same thing I
11 guess.

12 I can't recall the nursery. Nursery?

13 Q When you are taking loads and you are
14 not indicating where they are coming from, where
15 would they be coming from?

16 A It all depends where they tell me. It
17 is not -- it wasn't up to me to say oh, I am
18 taking.

19 It is more like they have places I
20 believe. But he will always say this from this
21 and this and this. You know what I mean? Pick
22 up this at this location or do this from this.
23 Deliver here. But at the moment I can't recall.

24 Q Would it be abnormal to take a load
25 from Cypress Ridge and bring it to one of these



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1 places?

2 A At one point they had a bunch of stuff
3 that it was like not useful for Cypress Ridge,
4 and they did took out a bunch of material out
5 that it was not supposed to. They didn't have
6 no place for it. But maybe that is a place that
7 we are talking about, I can't confirm it, but
8 that is what I am trying to --

9 Q That is from February 5, 2017?

10 A That is what it says.

11 Q February 27, 2017, it says 1 load from
12 Conrad to Rose Dhu.

13 And that is Conrad is a place in
14 Hardeeville?

15 A That is Hardeeville, yeah, that is a
16 rock place.

17 Q February 20, 2017 and this one says
18 Cypress Ridge, dirt.

19 Does that mean you are loading dirt at
20 Cypress Ridge all day?

21 A Probably, yes.

22 Q And this says -- the previous and this
23 one is Bates Stamped 260 ending in 260, Invoice
24 No. 355948.

25 And again this is working at Cypress



1 Ridge on February 28, 2017.

2 Is that correct?

3 A Yes, that is what it looks like.

4 Q Can we just agree that this says the
5 same thing on the next page on Bates Stamp 261,
6 the first invoice, loading dirt at Cypress
7 Ridge?

8 A Okay, yes.

9 Q And here it says: Top soil to HHP.
10 What is HHP?

11 A To my knowledge right now it could be
12 Hilton Head Plantation.

13 Any other thing I can't think of.

14 Q And do you know where that top soil
15 would have coming from to Hilton Head
16 Plantation?

17 A No.

18 Q Did you load top soil from any other
19 work site you were working from and take it off
20 other than Cypress Ridge?

21 A Oh man. It says Cypress Ridge on the
22 bottom, so I imagine it is from there.

23 Q Do you remember where you loaded it to
24 Hilton Head Plantation?

25 A Oh, no, sir.



1 Q Did you have a gate pass for Hilton
2 Head Plantation?

3 A Sometimes they do it. Sometimes back
4 in the days you didn't have to. It was
5 commercial. Sometimes they just let you go by.

6 Q And you would have to pay a fee?

7 A A fee.

8 Q That was Bates Stamped 261, ending in
9 261.

10 This is Bates Stamp ending in 262,
11 Exhibit number 28. Cypress Ridge, 15 loads of
12 top soil, 30 per load, from February 18, 2017?

13 A Uh-huh.

14 Q Why would you put 30 per load on this
15 particular invoice --

16 A Like I say, like they had a bunch of
17 material they didn't use and there were a bunch
18 of trucks they were hiring, and I guess we wrote
19 down how many truckloads they got and I guess
20 that is how much they were paying for that.

21 Q They were paying?

22 A \$30.

23 Q They were paying \$30 per load to take
24 it off of Cypress Ridge?

25 A I can't call it because it doesn't say



1 where to take it or where to bring it in. But
2 it was something based on that.

3 Q At one point were people coming in to
4 purchase dirt and removing it from Cypress
5 Ridge?

6 A Not purchasing it, no. He got it all
7 arranged already. I can't say that. I can't
8 say somebody just came and there is a store
9 where they come and buy dirt. There is nothing
10 like that.

11 But he had it arranged like maybe how
12 many loads going here or there, you know. And
13 if we wrote that -- I don't know why we wrote 30
14 per load when that is --

15 Q Were there times where people other
16 than yourself were coming on to remove dirt from
17 Cypress Ridge?

18 A There were some truckers, yes. There
19 were different truckers that he had worked with
20 before, too, yes.

21 Q And they would come to Cypress Ridge,
22 take dirt and take dirt off-site?

23 A I can't recall that. They either bring
24 into or out. Sometimes I did keep track because
25 they asked me to, and sometimes I didn't.



1 Q This is March 15, 2017. And you agree
2 that is Cypress Ridge, working in Cypress Ridge
3 that day, is that correct?

4 A Yes.

5 Q And that is Bates Stamp ending in 262.
6 Bates Stamp ending in 263.

7 Again March 13, 2016. Do you think
8 that was a typo, the 2016 or do you think you
9 might have worked on March of 2016 at Cypress
10 Ridge?

11 A I don't remember, sir. I can't.

12 Q Because the other earliest invoice you
13 have is from November or early November, I
14 believe, of 2016 or something along those lines?

15 A It is probably -- yeah, it was probably
16 a mistake on the numbers.

17 Q Okay.

18 A Yeah, because there was no way it was
19 '16 and we were on Cypress Ridge, I don't think
20 so.

21 Q So 18 loads of dirt in Cypress Ridge
22 that day whether it is '16 or '17? March 13, is
23 that correct?

24 A It could be, yes.

25 Q And being that the next invoice is



1 March 11, 2017, you think that was probably
2 March 13, 2017?

3 A Probably.

4 Q And you can't read this invoice on this
5 scanned copy. That is Bates Stamp ending in
6 263.

7 Ending in 264, again both of these
8 invoices from March 16th and March 10, 2016,
9 show that you are hauling dirt at Cypress Ridge
10 all day.

11 Is that fair to say?

12 A Yes, sir.

13 Q And that is your handwriting?

14 A That is my handwriting.

15 Q And then 265, Cypress Ridge to Sea
16 Pines.

17 Do you see that?

18 A Yes.

19 Q Do you recall loading to Sea Pines?

20 A Cypress Ridge to Sea Pines, I do not
21 recall that.

22 But it says on the ticket.

23 Q Does that mean you hauled dirt from
24 Cypress Ridge to Sea Pines?

25 A I wouldn't know what type of material



1 it was.

2 Q It says four loads of select?

3 A Select. Sometimes they call the dirt
4 select, yeah.

5 Q What is Select?

6 A Select, it is just dirt. They call it
7 different names. Select dirt, fill dirt, good
8 dirt.

9 Q It says 65 per hour.
10 Is that different from your normal
11 rate?

12 A It could be, yeah.

13 Q And would that be taking the dirt from
14 Cypress Ridge to Sea Pines?

15 A That is what the ticket says.

16 I can't recall the date.

17 Q I am not asking that, but the dates
18 states it is March 22, 2017.

19 Is that correct?

20 A It looks like it is there, yeah.

21 Q Is there any reason to believe it is
22 not that date?

23 A I don't know. It has been so long I
24 can't -- it looks like my handwriting. I am
25 trying to, you know, not -- but it looks like



1 it, yeah. But they say Select. Dirt, any type
2 of dirt that you call it, probably four loads of
3 Select, it is probably regular dirt.

4 Q Correct.

5 A Regular? What is it called? With
6 Select 1 they call it, which is fill dirt, good
7 dirt, you know.

8 Q And do you remember ever moving dirt to
9 Sea Pines?

10 A I do not remember to be honest.

11 Q But this would have been, if you made a
12 ticket for it, that would have been you loading
13 the dirt to Sea Pines, correct?

14 A Yes.

15 Q And it would have been coming from
16 Cypress Ridge to Sea Pines, is that correct?

17 A That is what it says, yes, sir.

18 Q And then the next is March 23rd of
19 2017. It says Cypress Ridge to Sea Pines, 4
20 loads of select?

21 A 4 loads of select, the same thing yes,
22 sir.

23 Q So that would have been hauling from
24 Cypress Ridge to Sea Pines on that date?

25 A Okay.



1 Q I am asking is that what it says?

2 A That is what the ticket says, yes, sir.

3 Q If the ticket says that would have been
4 you loading it?

5 A Okay, probably. Yes, sir.

6 Q And that would have been loading dirt
7 from Cypress Ridge to Sea Pines?

8 A Loading dirt from Cypress Ridge to Sea
9 Pines? I mean that is what the ticket says.
10 You are kind of pushing me to say yes.

11 Q I am asking because --

12 A No, you are pushing right now. Right
13 now I am trying to figure out --

14 Q The ticket say 4 loads of Select --

15 MR. IMHOFF: Guys, you are talking
16 over each other.

17 Can he finish what he was saying,
18 please?

19 MR. SHELTON: Sure.

20 THE WITNESS: You are asking me, I
21 feel like I am getting pushed in to say
22 yes. I can't go back to those days and
23 say yes, I did this, I did that
24 exactly. Probably you can't go back a
25 week from now and say I did this this



1 morning.

2 I am trying to explain to you,
3 yes, Select. I don't know. I wrote it
4 down. But yeah, I can't recall the
5 exact date. That is what the ticket
6 says, probably we did that.

7 BY MR. SHELTON:

8 Q Let me rephrase the question. I am not
9 trying to put you in a position where you are
10 saying things that --

11 A No, that is the last thing I want to
12 do.

13 Q Let me rephrase the question.
14 Does the ticket indicate that this
15 occurred on March 23, 2017?

16 A Okay, that is what the ticket says,
17 yes, sir.

18 Q Yes.

19 A Okay.

20 Q And is that your handwriting?

21 A That looks like my handwriting, yes.

22 Q And does the ticket indicate that there
23 is something done from Cypress Ridge to Sea
24 Pines?

25 A Yes. That is what the ticket says,



1 yes.

2 Q And it says four loads of Select,
3 correct?

4 A Four loads of Select from 8:00 a.m. to
5 5:00 p.m. that is what the ticket says. If I
6 wrote it down that is probably what happened.

7 I can't assure that is exactly what we
8 did. Because if you can tell there is no
9 signature sometimes and there is no, you know.

10 Q And you can see that the top of this
11 invoice is cut off and the bottom one the
12 signature --

13 A That is why I am taking my time and
14 look at them, and I don't want to say yes to
15 everything.

16 Q So what I am asking is based on this
17 ticket, does it appear to you that four loads of
18 Select something were taken from Cypress Ridge
19 to Sea Pines by you?

20 A At the moment with what the ticket
21 says, yes.

22 By me, or yeah, by me or somebody else,
23 yeah.

24 Q Would you have put your time down if it
25 were by someone else?



1 A The time, yeah, we always write the
2 time for anybody, yeah.

3 They come in and go out, yeah, because
4 like I say that is how they keep track of who is
5 going to get paid or how they pay them, you
6 know.

7 Q Right.

8 And if it were to be paid to someone
9 else would you have indicated it would be paid
10 to somebody else beside you?

11 A Yes, yes. Sometimes an d -- he will
12 know. He will know. He knows what type of
13 truck. He will know who will bring in, it is
14 like this, oh tomorrow I need this many trucks
15 to haul some stuff. Okay, I only helped that
16 one. I only did. So if I could have helped,
17 okay guys, there is work out here, come and see,
18 he will know what type of trucks would come in
19 and how many. There is no --

20 Q And when you needed help like that, who
21 would you call?

22 A People that I kind of see on the road.
23 There is a bunch of people that I know. They
24 are friend of mine sometimes. Not friend of
25 mine, but I know them because I see them



1 working.

2 Q Do they work with Mr. Ramos?

3 A No, no, I can't say that.

4 Q Do you know them through Mr. Ramos?

5 A No, I know them -- I am the type of guy
6 if I am like in the business or maybe doing
7 something if I work. Now I do all different
8 stuff. I work and I see people doing yard and
9 come and talk to them. How do you do this?
10 What do you do? That is how I get to many
11 people.

12 Q Okay.

13 This says, this is a ticket 069360. It
14 is dated March 25, 2017.

15 Do you see that?

16 A Yes, sir.

17 Q And this would be Bates Stamp ending in
18 266, Exhibit number 28.

19 It says Cypress Ridge to nursery?

20 A Nursery.

21 If I am not mistaken, nursery --
22 nursery is -- it is -- what is it called?

23 Where they sell plants and stuff like
24 that.

25 Q Correct.



1 A Yes.

2 So there was one across on the other
3 side of on 46 right by the Fire Department, and
4 we did drop some loads there.

5 Q Okay.

6 Across from the Fire Department where?

7 A Not across. Next to the Fire
8 Department, that is on 46.

9 Q Is that on 46?

10 A What is it called -- I mean it is off
11 46 coming off the circle, 170 straight down on
12 46, you find a Fire Department on your right and
13 now there is a Dollar Store. In front of the
14 Dollar Store there is a nursery right there.

15 Q Correct.

16 A Yeah.

17 Q So if you are leaving Cypress Ridge and
18 you take a right and you get to the circle?

19 A Okay.

20 Q You take a left on the circle, the
21 third exit on the circle?

22 A No, you take a right.

23 Q A right at the circle?

24 A If you are going to the circle and you
25 go around the circle, you will get to the third



1 exit on the right.

2 Q That is what I mean. It is equivalent
3 of taking a left-hand turn.

4 You take the third exit on the circle?

5 A Yes, I guess.

6 Q Okay.

7 A Okay.

8 Q So if there is a stop sign you would be
9 taking a left?

10 A I can't -- no. Oh, coming out of
11 Cypress Ridge, yes. You can either do left or
12 right or go straight, yes. Go straight and make
13 a left.

14 But if you do take a right like you are
15 saying go into the circle and then you go around
16 the circle and exit right.

17 Q Exit right?

18 A Yes.

19 Q Correct. And you would be going in
20 that direction at that point you are moving
21 east, if you are familiar with directions?

22 A No, I am not familiar.

23 Q So you are heading toward Bluffton?

24 A That is correct.

25 Q As you are heading toward Bluffton, is



1 that nursery on your right-hand side?

2 A It is going to be on the right-hand
3 side.

4 Q Before you reach the fire station?

5 A No, you pass the fire station.

6 Q And then it is on your right-hand side?

7 A Then it is on your right-hand side.

8 Q On the corner of another road?

9 A Yes.

10 Q I know what you are talking about.

11 So 22 loads, 30 per load.

12 Again, do you have any idea why it was
13 written 30 per load?

14 A I can't remember that one.

15 Q Do you know whether you charged the
16 nursery 30 per load?

17 A No, I never deal with them. I only
18 deal with Mr. Ken. That is their stuff.

19 Q And based, again based on this ticket
20 does it appear to you does this mean you were
21 loading from Cypress Ridge to the nursery?

22 A That is correct.

23 MR. IMHOFF: Object to the form.

24 BY MR. SHELTON:

25 Q March 24, 2017, loading at Cypress



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1 Ridge.

2 Does that appear to be correct?

3 A Yes, sir.

4 Q And it is Bates Stamp ending in 266.

5 And then Bates Stamp ending in 267,
6 again March 29th. That says 15.

7 Do you think that is correct?

8 A No, that is not correct. I wasn't even
9 driving trucks at that time. It is probably a
10 handwriting mistake.

11 Q These others in the sequence are 17.

12 You believe this would have been 17 as
13 well?

14 A Probably -- yes, sir.

15 Q Cypress Ridge, it says 20 loads.

16 Again, any time it says Cypress Ridge
17 and the amount of loads --

18 A Yes, it is the 17 period of time.

19 Q And when you do these marks, the
20 counting marks, does that mean the amount of
21 loads that you loaded that day?

22 A That is correct.

23 Q So we are not talking over each other
24 and maybe this will help move things along a
25 little bit, when it says Cypress Ridge and there



1 is no other indication and it has the amount of
2 loads, whether it is counting or written out,
3 that means you were working on Cypress Ridge and
4 the amount of loads you loaded that day, is that
5 correct?

6 A Yes, sir.

7 Q I am going to ask as I go through these
8 that if this appears to be your handwriting, if
9 this appears to be a copy to the best of your
10 recollection, okay?

11 A Yes.

12 Q Okay.

13 So March 30, 2017, Bates Stamp ending
14 in 267, you go down here, Bates Stamp ending in
15 268, the same thing Cypress Ridge, 24 loads.
16 March 28th, another invoice below that, it says
17 Cypress Ridge. There are indications of 15
18 loads.

19 Does that look correct?

20 A Yes, sir.

21 Q On March 31, 2017 -- and all of these
22 appear to be your handwriting?

23 A That looks like my handwriting, yes,
24 sir.

25 Q And to the best of your recollection



1 except for being cut off in certain areas what
2 you do see is a true and accurate copy of what
3 you had presented to Kenneth Tosky?

4 A Uh-huh.

5 Q Is that a yes?

6 A Yes.

7 Why are some of them cut off and some
8 of them are just regular?

9 Q I will submit to you these were
10 produced by Kenneth Scott Builders.

11 A Okay.

12 Q So when they scanned them in, that is
13 how they scanned them I guess. I can only
14 presume.

15 Again, 9 loads on 3/27/17, Cypress
16 Ridge.

17 And then 24 loads, Cypress Ridge,
18 April 4, 2017?

19 A Uh-huh.

20 Q Does that appear to be correct?

21 A Yes, sir.

22 Q And the it says: I went to Ulmer
23 Brothers to pick up rock from 2:00 to 3:30.

24 Do you see that?

25 A Yes.



1 Q Does that mean what it says it means?

2 A Yeah, yeah. When they tell you -- that
3 is why I wrote it down I believe so. They tell
4 you so they can specify you what am I doing on
5 their time, you know.

6 Q And then Bates Stamp ending in 270.
7 16 loads of Cypress Ridge on April 3,
8 2017.

9 And then April 8, 2017, that would be
10 26 loads at Cypress Ridge.

11 Does that appear to be correct?

12 A Yes, sir.

13 Q Bates Stamp ending in 271, the first
14 ticket on this has indications of 16 checks.

15 Does that mean 16 loads at Cypress
16 Ridge, is that correct?

17 A Okay. Yes, that is 16 checks.

18 Q And that is on April 7, 2017.
19 Correct?

20 A Correct.

21 Q And then below that is a ticket out of
22 sequence, but it appears March 25, 2017, it says
23 11 loads, it doesn't say where.

24 Do you see that?

25 A I see on the bottom it says taken to



1 Bluffton.

2 Q One load was taken to Bluffton 2 hours.
3 So total ten loads to nursery.

4 And the last one to -- I can't read
5 that. It may say Bluffton area. I don't want
6 to put words in your mouth but --

7 A Yeah.

8 Q If it doesn't say -- to indicate where,
9 where do you think you were working or taking
10 those loads from?

11 A By the day I say in Cypress Ridge. So
12 it really doesn't say. It was cut off.

13 Q Like here, city, state where sometimes
14 you write Cypress Ridge, it doesn't say that
15 here?

16 A Okay, yeah. More likely it was from
17 there.

18 Q From Cypress Ridge?

19 A Yes, sir.

20 Q And the next one is Bates Stamp ending
21 in 272. This is still Exhibit Number 28. 24
22 loads at Cypress Ridge on April 6, 2017,
23 correct?

24 A Correct.

25 Q And then April 5, 2017, it says 17



1 loads at Cypress Ridge.

2 Is that correct?

3 A Yes.

4 Q And April 12, 2017, it says 26 total
5 here.

6 Do you see that?

7 A Yes, sir.

8 Q It doesn't indicate where.

9 Would it be your understanding that
10 this would have been a Cypress Ridge?

11 A I -- I can't say yes or no. I don't
12 know. Maybe. Probably.

13 Q Most probably?

14 A Yeah.

15 Q More than likely it would have --

16 A More than likely.

17 Q I am just trying to reiterate?

18 A Yes, more than likely I mean. But --

19 Q And then the next ticket on 4/11, this
20 was 4/12. 4/11?

21 A You see, that is what I am saying, it
22 is 4/11, 4/12.

23 Q And 4/11 states Cypress Ridge, is that
24 correct?

25 A Cypress Ridge.



1 Q So you are stating most likely or more
2 than likely 4/12 was Cypress Ridge as well?

3 A Okay.

4 Q I am asking?

5 A Okay, yeah.

6 Q Okay.

7 And then April 10th I see 21 loads at
8 Cypress Ridge, is that correct? I am counting
9 5, 15, 20, 21.

10 A Yes, sir.

11 Q And then April 14, 2017, again it
12 doesn't indicate where?

13 A Yeah, you see, but that is the
14 difference now. If you go back -- well, I don't
15 think that matters, but that is not my
16 handwriting.

17 Q This isn't your handwriting here?

18 A No.

19 Q Do you know whose handwriting that
20 would have been?

21 A No, sir.

22 Q But the invoice of 4/14 is not your
23 handwriting?

24 A Yeah.

25 Q How about the invoice of 4/10?



1 A Yes, sir.

2 Q That is your handwriting?

3 A Yes, sir.

4 Q The same, 4/13. Is that someone else's
5 handwriting?

6 A Yes.

7 Q But it is for Jacob AU Trucking,
8 correct?

9 A Yes, sir, that is what it says.

10 Q And then 4/21/2017, this is your
11 handwriting?

12 A Yes, sir.

13 Q And that is for Cypress Ridge as well.
14 And then Bates Stamped 276. That previous one
15 was Bates Stamped 275. Again 4/20/2017, Cypress
16 Ridge, and it says 16 loads.

17 Is that correct?

18 A Yes, sir.

19 Q And that is your handwriting?

20 A Yes, sir.

21 Q And then 4/17/2017, it says from
22 Cypress Ridge to Sea Pines?

23 A From Cypress Ridge to Sea Pines, 2
24 loads. Yeah, that is my handwriting.

25 Q Again, I am not asking you to recall



1 exactly what happened on that day.

2 I am asking you based on this ticket
3 does it appear to you that you loaded 2 loads
4 from Cypress Ridge to Sea Pines?

5 A Okay.

6 MR. IMHOFF: Object to the form.

7 BY MR. SHELTON:

8 Q I am asking you does it appear to
9 you --

10 A That is what it appears to me too, yes.
11 But like I said I don't know exactly. The type
12 of question does it appear on the ticket, yes, I
13 agree with you. I don't know exactly where we
14 went or if we did this or we pay a ticket or
15 anything for that, I don't.

16 But if the ticket that is what it says,
17 that is pretty much kind of what happened.

18 Q So typically would you have things on
19 tickets that didn't happen?

20 A Oh, no, I wouldn't know that. No, no,
21 of course not. No.

22 Q Okay.

23 A But no, because before I feel like you
24 were asking me what exactly what I did, where I
25 go, I can't recall that.



1 Q And I apologize, I am trying to ask you
2 your interpretation of what these tickets say
3 because you wrote the tickets.

4 A Yes, sir.

5 Q Okay.

6 Do you recall whether you had insurance
7 on your truck?

8 A I can't recall on that, but probably
9 didn't.

10 Q Do you recall who you had insurance
11 with?

12 A At the moment I don't.

13 Because there were different locations
14 out here and they disappear for a reason, I
15 don't know why. But there was guys doing things
16 that they weren't supposed to, I believe. And
17 yeah, you call them and they say you pay; and
18 then it wasn't there, you know.

19 Q You mean you thought you had paid for
20 insurance and you didn't get it?

21 A Yes, sometimes yeah. There were a
22 bunch of people like that out here.

23 Q So do you recall whether your insurance
24 was ever canceled or whether you ever --

25 Did you ever cancel your insurance?



1 A No, I don't remember that.

2 Q Do you know whether you ever operated
3 without insurance?

4 A No, sir.

5 Q And do you know whether you were ever
6 cited for operating without insurance?

7 A What happened, like I said, I can't
8 recall that or you know at the moment or -- but
9 what it was we were pretty much at one point
10 from Cypress Ridge, we didn't move from there
11 and we just stayed there, you know.

12 And probably I didn't pay attention if
13 the insurance was on the truck or anything. We
14 never moved from there and this -- at the
15 beginning of these tickets, yes, it looks like
16 we did go here and there. But I can't recall
17 the dates or if at that moment we had insurance,
18 I can't say yes or no.

19 Q Do you know whether you were required
20 to have insurance on your vehicle?

21 A From Mr. Ken?

22 Q Right, from Mr. Ken or for your
23 vehicle, period, were you required --

24 A Yes, yeah, you have to. Yeah.

25 Q Are you stating that because you were



1 on I don't want to put words in your mouth, but
2 I am trying to understand, were you stating
3 because you were working on Cypress Ridge
4 predominantly that you didn't believe you needed
5 to have insurance?

6 A No, I didn't believe. I just didn't
7 pay attention to it to be honest. We never left
8 the place and it was just there.

9 Q You said we never left the place, we
10 have several tickets showing --

11 A Yes, yea, there are a bunch of tickets
12 I did went. And I don't know if at that moment
13 we had the insurance in it or not, I cannot
14 recall it. But there were a bunch of them we
15 did send all the trucks to do whatever.

16 Q But when it is your name on the
17 ticket --

18 A Yes, sir.

19 Q -- It says from Cypress Ridge to Sea
20 Pines, does that indicate to you that you went
21 from Cypress Ridge to Sea Pines?

22 A Sometimes I would write it for the
23 other truckers because I was the one who talked
24 to Mr. Ken. They never talked to him. I was
25 the one in charge of saying like Mr. Ken, this



1 is how many trucks you requested. We just have
2 the tickets for these guys. They did this.
3 They did that.

4 Q Would you have put a different truck
5 number if the other truck was doing the work for
6 you?

7 A No, I did not.

8 Q And --

9 A Sometimes they did have it. At one
10 point they did have -- I am sorry to interrupt.
11 They had like other tickets and they did turn it
12 in. Then sometimes they didn't.

13 Q Right.

14 So was one of those -- I will get to
15 that. I actually don't have it as an exhibit
16 prepared. But if I need to we can look at it.
17 But there are other trucking companies that
18 Kenneth Scott Builders used, correct?

19 A Yes.

20 Q Do you know whether he billed them
21 directly or not?

22 A I do not recall that one. I don't know
23 that one. I wouldn't know.

24 Q But if you gave him an invoice from
25 Jacob AU Trucking, would you get paid and then



1 pay the other trucking company?

2 A Sometimes I did.

3 But then I was like, you know, this is
4 not how I did it, so I gave it to them. They
5 went directly with Ken.

6 Q So they would typically invoice
7 directly to --

8 A Yes.

9 Q Would they typically invoice directly
10 to Ken?

11 A Yes.

12 Q 276.

13 Bates Stamped ending in 277, this has
14 no indication as to where, but it says 10 loads
15 to nursery.

16 Do you see that?

17 A I see it.

18 Q And April 22, 2017.

19 Do you see that?

20 A Uh-huh.

21 Q Do you recall ever loading any loads to
22 the nursery other than bringing it from Cypress
23 Ridge?

24 A No, because it was -- it is top soil,
25 that is what they call it. So a nursery, that



1 is where I guess they need it; so they arrange
2 between those two companies, and I am just
3 bringing it in. That is it.

4 Q So I am asking would you have been
5 bringing it from Cypress Ridge to the nursery?

6 A Yes, yes.

7 Q And then there is no location indicated
8 on this. There is no date on this ticket. It
9 just says 16 loads.

10 Can you tell me anything about that
11 ticket?

12 A No, sir.

13 Q And that is 277 Bates Stamped on
14 Exhibit Number 28.

15 Then we have 278. It says Cypress
16 Ridge, 9 loads, April 4, 2017.

17 Again, Cypress Ridge down below here,
18 23 loads on the next invoice, that is May 1,
19 2017.

20 Do you agree with that?

21 A Yes.

22 Q Bates Stamped ending in 279. It says
23 Cypress Ridge, 19 loads, May 6, 2017, and it
24 appears to be 17 loads to nursery.

25 Would that be from Cypress Ridge to the



1 nursery?

2 A That is, yes.

3 Q And that would be May 6, 2017?

4 A Yes, sir.

5 Q And May 5, 2017, it says 23 loads,
6 Cypress Ridge.

7 Does that mean you are loading all 23
8 loads within Cypress Ridge?

9 A On-site.

10 Q And then May 2, 2017, 27 loads, that is
11 Cypress Ridge, is that correct?

12 A Yes, sir.

13 Q And then that was Bates Stamped 280.
14 Bates Stamp 281 will be 15 loads,
15 Cypress Ridge. And then the next thing that
16 would be dated April 24, 2017.

17 And the next one is dated April 25,
18 2017, 18 loads to Cypress Ridge.

19 Do those appear to be correct?

20 A Yes, sir.

21 Q The next is Bates Stamped 282. I will
22 show you the Bates Stamp. Cypress Ridge, it
23 indicates 20 loads.

24 Is that correct?

25 A Yes, sir.



1 Q On April 26, 2017.

2 And then again Cypress Ridge, 11 loads,
3 on April 27, 2017, is that correct?

4 A Yes, sir.

5 Q April 28, 2017, 20 loads to Cypress
6 Ridge, this is Bates Stamped 283.

7 And then it says Cypress Ridge on
8 May 11, 2017, 4 loads to nursery?

9 A Yeah, the same. Probably the same
10 thing coming from Cypress Ridge to the nursery.

11 Q And then Bates Stamp 284, it has no
12 location. It says 29 loads.

13 Is there any reason to believe that on
14 May 11, 2017 you are anywhere other than Cypress
15 Ridge?

16 A No, that is probably there.

17 Yeah, it is there.

18 Q And then May 10, 2017, 22 loads at
19 Cypress Ridge.

20 Is that correct?

21 A Yes.

22 Q And it is Bates Stamped 284.

23 Bates Stamp 285. There is no location
24 here. 27 loads from May -- I don't know if that
25 is a 7 or a 9.



1 Can you tell me?

2 A Oh, man. It looks like a 9, yeah.

3 Q 2017.

4 The next one is May 8, 2017. The one
5 before is May 10th, May 11th. Assuming that is
6 May 9, 2017, it is 27 loads, no location, would
7 that be Cypress Ridge?

8 A That is correct.

9 Q And then on May 8, 2017, Cypress Ridge,
10 17 loads, is that correct?

11 A Yes, sir.

12 Q And then Bates Stamped 286, Exhibit
13 Number 28, we have 7 loads of mulch.

14 Do you remember loading mulch?

15 A No. I know what mulch is, but no, I
16 don't remember loading mulch.

17 Q It says Cypress Ridge?

18 A Cypress Ridge to Ulmer Brothers.

19 Q Does this ticket indicate to you that
20 you loaded 7 loads of mulch from Cypress Ridge
21 to Ulmer Brothers on May 22, 2017?

22 MR. IMHOFF: Object to the form.

23 THE WITNESS: Yes. Probably,
24 yeah.

25 Cypress Ridge to Ulmer Brothers,



1 mulch.

2 BY MR. SHELTON:

3 Q And then on May 26, 2017, what does
4 this ticket indicate to you?

5 A The same thing as the other one. It is
6 6 loads of mulch from Cypress Ridge to Ulmer
7 Brothers.

8 Q And then 287 from Cypress Ridge, 23
9 loads on May 16, 2017.

10 And then on May 17, 2017, there is no
11 location. Would that be anywhere other
12 than Cypress Ridge?

13 A No, sir. Not that I believe, no. I
14 think it is there.

15 That was our main job right there.

16 Q And then Bates Stamped 288, 6 loads of
17 mulch to Ulmer's. It doesn't say where from.

18 Do you know where that would have been
19 from?

20 A Probably the same place.

21 Q The same place as where?

22 A Yeah, from Cypress Ridge.

23 Q And then May 19, 2017, the same thing?

24 A 4 loads of mulch, yes, sir.

25 From Cypress Ridge, yeah, to Ulmer



1 Brothers.

2 Q May 15, 2017, 21 loads.

3 Do you know where that would have been?

4 A Cypress Ridge.

5 Q May 19, 2017, 5 loads to nursery?

6 A To nursery, top soil, from Cypress
7 Ridge.

8 Q It says a receiving record.

9 Do you recognize this slip here on
10 Bates Stamp 290 on Exhibit Number 28?

11 A I do not.

12 Q It says received from Cypress Ridge to
13 Ulmer Brothers?

14 A Total 15 loads, \$65 an hour.

15 Like I say that is probably truckers
16 there since I was there and I checked in, like
17 to see how many loads they got out. Maybe in
18 deals like that they put my name, but that is
19 not my handwriting.

20 Q So this could be a slip from another
21 trucker?

22 A Probably.

23 Q And down here this is sideways, I can
24 rotate it.

25 You see this, Alfredo to Cypress Ridge



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1 to -- it says Allman Brothers.

2 But I think it is Ulmer Brothers?

3 A No, sir.

4 Q Other than a concert.

5 Top soil, 4 loads.

6 And then on June 1, 2017, this is Bates
7 Stamped 291, Cypress Ridge, 14 loads?

8 A 14 loads, 8:00 to 3:30, yeah.

9 Q To nursery? Does it say 5 loads?

10 A 5 loads.

11 Q Where would that be from to nursery?

12 A Probably from Cypress Ridge I would
13 say.

14 Q On 292. To nursery, 15 loads, would
15 that be from Cypress Ridge as well?

16 A Yes, sir.

17 Q And then 7 loads to Ulmer Brothers,
18 mulch, and that would be from Cypress Ridge as
19 well?

20 A Yes, sir.

21 Q And that is on May 30, 2017?

22 A Yes, sir.

23 Q 6 loads of mulch. It doesn't say
24 where.

25 Do you have any idea what that means?



1 A 6 loads of mulch, no, I do not, sir.

2 Q That was on May 31, 2017.

3 On June, I think it is 9, 2017.

4 Does that look like a 9 or a 7 to you?

5 A That looks like a 9 to me.

6 Q Cypress Ridge to nursery.

7 Is that 20 loads from Cypress Ridge to
8 nursery?

9 A Top soil, yes, sir.

10 Q That is Bates Stamped 293. Bates Stamp
11 294 we are on now. It says 17 loads to nursery?

12 A Yes, sir.

13 Q On June 8, 2017?

14 A More likely from Cypress Ridge.

15 Q I am saying for 6/6/2017?

16 A Yes, sir.

17 Q And how many loads is that to the
18 nursery?

19 A That looks like 10 marks.

20 Q Would that be from Cypress Ridge?

21 A Yes, sir.

22 Q And then here on June 5, 2017, it says
23 one load to Rose D.

24 Is that Rose Dhu?

25 A Rose Dhu.



1 Q And then 15 to nursery?

2 A Yes, sir.

3 Q Would those loads be coming from
4 Cypress Ridge as well?

5 A Yes, sir.

6 Q And June 13, 2017, Cypress Ridge, 6
7 loads to X-fit gym?

8 A I don't know what that is.

9 Q Is that Crossfit?

10 A Yes, Crossfit Gym, but I wouldn't know
11 where to.

12 Q Would that be from Cypress Ridge?

13 A Yeah. It says Cypress Ridge.

14 Q On June 13, 2017.

15 Then on June 14, 2017, so it says?

16 A 5 loads to CrossFit. Yes, that is
17 Crossfit, yes, and hauled inside Cypress Ridge.

18 Q Would those loads be from Cypress
19 Ridge?

20 A I can't recall those, yeah.

21 Q And then June 15, 2017, it says 11
22 loads Off Road from 8:00 to 1:30.

23 Would that be working from Cypress
24 Ridge?

25 A Yes, off load, that means the yellow



1 truck.

2 The off road truck.

3 Q So that was you operating Ken Tosky's
4 yellow truck?

5 A Probably.

6 Q And then 3 loads to Crossfit?

7 A Probably, yes.

8 Q Would those loads be coming from
9 Cypress Ridge most likely?

10 A I will say yes, sir.

11 Q And then it says Cypress Ridge, 7
12 loads, new -- what is that?

13 A New Pat building.

14 Q What is the Pat building?

15 A What I call Pat building is where you
16 do a pad I guess for concrete and stuff. But I
17 don't know probably if it was probably on-site
18 or somewhere else. Because they building houses
19 in there so maybe we took dirt to a new Pat
20 building or a new pad house.

21 Q June 16, 2017.

22 And June 12, 2017, to nursery, top
23 soil?

24 Would that be like the others from
25 Cypress Ridge?



1 A Yes, sir.

2 Q And June 17, 2017, 3 loads to 10th
3 avenue, Bluffton Park?

4 A 10th Avenue, Bluffton Park.

5 Okay, it doesn't say where it is coming
6 from. But --

7 Q Did you load from other places during
8 that time frame other than Cypress Ridge?

9 A I can't recall it. But if it was not
10 from Cypress Ridge, it is from somewhere that he
11 knows.

12 Q What was 10th Avenue, Bluffton Park?

13 A Where is it?

14 Q I know where it is, but do you know
15 what it is?

16 A Not off the top of my head I don't know
17 exactly where it is. I kind of know where it
18 is, Bluffton Park, but I got to follow the 9,
19 7th Avenue he has, but I know where it is
20 located, the area.

21 Q And then 623, 1 load of rock from
22 Ulmer's and 2 loads of rock from -- I can't read
23 that.

24 Does that say Sheridan Park?

25 A That is my handwriting. Two loads of



1 dirt to Sheridan Park.

2 Q And it doesn't say where it is from.

3 Do you know where that load of dirt
4 was?

5 A One load of rock from Ulmer's, which is
6 Ulmer Brothers. And 2 loads of dirt, but the
7 dirt, I don't know where it came from.

8 Q Could it have come from Cypress Ridge?

9 A I don't know.

10 Q Could it have come from Cypress Ridge?

11 MR. CONNER: Object to the form.

12 THE WITNESS: Could have, but I am
13 not certain.

14 BY MR. SHELTON:

15 Q June 21, 2017, Cypress Ridge, 6 loads,
16 and it says to Sheridan Park Crossfit?

17 A Sheridan Park Crossfit. Oh, that is
18 what the other one was too. Sheridan Park, it
19 is the same location. I was thinking I don't
20 remember Sheridan Park, but it is the same.

21 Q Is that where the Crossfit was located?

22 A Oh yeah, it is the CrossFit. It is 843
23 Crossfit in Bluffton.

24 Q Would that be the load from Cypress
25 Ridge? It says Cypress Ridge here.



- 1 A Oh, yes. Yes.
- 2 Q And June 20, 2017?
- 3 A Yes, the same thing.
- 4 Q 6 loads to Sheridan Park Crossfit from
- 5 Cypress Ridge, is that correct?
- 6 A Yes, sir.
- 7 Q And then June 19, 2017, it says Cypress
- 8 Ridge to Sheridan Park Crossfit.
- 9 Is that 2 loads?
- 10 A Yes.
- 11 Q And that would be from Cypress Ridge to
- 12 Sheridan Park Crossfit?
- 13 A Yes, sir. Can I make a phone call real
- 14 quick?
- 15 MR. SHELTON: Sure, we will take a
- 16 quick break.
- 17 (Whereupon, a break was
- 18 taken from 2:28 p.m.
- 19 to 2:38 p.m.)
- 20 BY MR. SHELTON:
- 21 Q Okay, I can't remember exactly how we
- 22 left it off, but Bates Stamp 300, we were
- 23 talking about Sheridan Park Crossfit.
- 24 A Yes, sir.
- 25 Q On June 19, 2017, Cypress Ridge.



1 Does this indicate that you took two
2 loads from Cypress Ridge to Sheridan Park
3 CrossFit?

4 A Yes, sir.

5 Q Here June 27, 2017, from Hampton Lakes
6 to Sheridan Park.

7 A Okay.

8 Q You see that?

9 A From Hampton Lakes, yes, sir.

10 Q And So Hampton Lakes you testified
11 earlier it had some type of sand pit or dirt pit
12 of some sort?

13 A Yes, they had it for a while. It was
14 there on the side of the road you could tell.
15 There was a bunch of dirt in there and they be
16 selling it to people I guess.

17 Q When you did take it from Hampton Lakes
18 would you indicate on your invoices that you did
19 take it from Hampton Lake?

20 A Like that one, yes, yes.

21 That one is marked, yes, sir.

22 Q And that is June 27, 2017, Bates
23 Stamped ending in 301.

24 A Yes.

25 Q Again, 8 loads from Hampton Lakes to



1 Sheridan Park?

2 A Yes, sir.

3 Q June 29, 2017, that indicates 9 loads.

4 It actually counts 10 loads and then
5 says 9 loads.

6 Do you know which one that is?

7 A Yeah, either one.

8 Q Either one?

9 A Yes.

10 Q From Hampton Lake to Sheridan Park?

11 A From Hampton Lake to Sheridan Park,
12 yeah.

13 Q Bates stamp ending in 302.

14 From Hampton Lake to Sheridan Park, do
15 you see that?

16 A Yes, sir.

17 Q June 30, 2017.

18 Again July 7, 2017.

19 And then we have Bates Stamp ending in
20 303, 9 loads, again Hampton Lake to Sheridan
21 Park.

22 Do you see that?

23 A Yes, sir.

24 Q And then July 5, 2017, 9 loads, Hampton
25 Lake to Sheridan Park?



1 A Yes, sir.

2 Q During this time frame do you know
3 whether you were working in Cypress Ridge?

4 A Yes. I wouldn't know exactly, but what
5 we did is like going back and forth, back and
6 forth probably. But I can't recall exactly how
7 or time frames. Right now it says 0506. So we
8 probably did that little job and then come back
9 to Cypress Ridge. That is what it looks like to
10 me.

11 Q On July 10, 2017, it says 7 loads from
12 Conrad to Cypress Ridge?

13 A To Cypress Ridge.

14 Q Would that be rock?

15 A Well --

16 Q Let me ask it a different way.
17 What would you load from Conrad?

18 A They got different material. They got
19 dirt. They got rock. They got top soil. They
20 got a bunch of different material.

21 But yeah, it looks like rocks because
22 it says tons total.

23 Q And then 7/11/2017?

24 A That is from Conrad to Cypress Ridge.
25 That is more likely rock, because that is all



1 they sell is rock in that place.

2 Q And then July 12, 2017?

3 A To Cypress Ridge from Ulmer Brothers.
4 Okay.

5 Q I will ask you a question, do you know
6 whether D.R. Horton had a project going on at
7 the same time as Cypress Ridge at Rose Dhu?

8 A No, I didn't know.

9 Q Do you know now?

10 A Oh no, I just started hearing about it.
11 But never -- I didn't know who was -- who they
12 work for at the moment.

13 Q Well, you say you started hearing about
14 it, what did you hear about it?

15 A Oh god, right now you guys are
16 mentioning D.R. Horton, you know, but I never --

17 Q Oh, I am asking about Rose Dhu.
18 Rose Dhu, do you know whether Rose
19 Dhu --

20 A Oh, Rose Dhu, no, no. I don't know who
21 they were working for. I believe he was a
22 builder. More than anything he was doing pads.
23 I call it house pads, you know, when they level
24 the dirt and stuff.

25 Q Correct.



1 A But I don't know exactly who he did it
2 for. On Cypress Ridge, I didn't know at that
3 time he was working for them or was he. But I
4 saw trucks and stuff like that, so I imagine it
5 was him.

6 But beside that on the other jobs, I
7 don't know who he was working for.

8 Q So you don't have knowledge as to
9 whether D.R. Horton had a job site going on
10 in --

11 MR. SHELTON: Off the record.
12 (Whereupon, an off-the-record
13 discussion was held.)

14 BY MR. SHELTON:

15 Q So you are not aware of whether or not
16 D.R. Horton had a project operating at or was
17 doing any work in Rose Dhu during the time you
18 were working at Cypress Ridge?

19 A I do not, sir.

20 Q It says one load, 11 tons to Cypress
21 Ridge from Ulmer Brothers.

22 And then do you know what you had been
23 loading from Ulmer Brothers to Cypress Ridge?

24 A Oh man, like I said they do have two --
25 let's just say -- well, I am not going to say



1 because I am not reading there, but more likely
2 rock, rock. Any they at that time they would
3 get from there it was like rock. It is like
4 crush and run, but I am not sure exactly what it
5 was. But by saying 11 tons, yeah, probably
6 rock.

7 Q July 13th, it says 7 loads from Conrad.
8 You can't see where on this invoice?

9 A No.

10 Q You don't know where that was going?

11 A No, sir.

12 Q July 14, 2017.

13 A It is probably the same thing as the
14 other one, from Conrad to Cypress Ridge.

15 Q So looking at July 14, 2017, July 13,
16 2017, you think it was likely to Cypress Ridge?

17 A It looks like it is going to be like
18 that one, yeah.

19 Q The previous one was Bates Stamped 305.
20 This one it says from Conrad to Cypress Ridge is
21 Bates Stamped 306, and dated July 14, 2017 for
22 the record.

23 The next invoice is July 20, 2017. It
24 says 7 loads to nursery. It doesn't indicate
25 from where.



1 As previously would that be most likely
2 from Cypress Ridge?

3 A Yes.

4 Q Bates Stamped 307. It says 8 loads to
5 nursery and finishing up with clean up with
6 dirt.

7 A Yes.

8 Q Would that be clean up with dirt at
9 Cypress Ridge?

10 A Yes, sir.

11 Q Would those loads be coming from
12 Cypress Ridge?

13 A They say a load to nursery and
14 finishing up the cleanup with dirt. We were
15 probably cleaning up the road at Cypress Ridge.
16 Clean up with dirt.

17 Q On July 19, 2017, it says 13 loads to
18 nursery and 1 load of rock from Ulmer Brothers.

19 What would be the 13 loads to nursery.

20 What does that mean?

21 A Top soil, sir, from Cypress Ridge and 1
22 load back from Ulmer Brothers.

23 Q July 18, 2017, 2 loads from Conrad.

24 Hauled to nursery 3 loads.

25 A Yes, sir.



1 Q Would that be --

2 A 3 loads from Conrad. Hauled to nursery
3 3 loads, Yes, sir to Cypress Ridge
4 and -- from/to, yes.

5 Q From Cypress Ridge to the nursery?

6 A Yes, and then yeah from -- yeah, from
7 Conrad to the Cypress Ridge, and from Cypress
8 Ridge to the nursery, sir.

9 Q And then July 31, 2017, number 4 rock
10 from Ulmer Brothers hauled fill dirt, 3 loads?

11 A Uh-huh.

12 Q Would that be hauling on-site from on
13 Cypress Ridge 3 loads?

14 A More likely, yes, sir.

15 Q And would that #4 rock from Ulmer
16 Brothers, would that be to Cypress Ridge?

17 A To Cypress Ridge, yes.

18 Q And that is Bates Stamped 308, date
19 7/31/2017. This is one is dated

20 8/2 -- it looks like a 2.

21 Is that a 2?

22 A Yes, sir.

23 Q 2017?

24 A 8/2/2017.

25 Q It says 14 loads fill dirt, Cypress



1 Ridge.

2 The next one says 8/3/17 Cypress Ridge.

3 A 13 loads.

4 Q 13 loads, as the previous one's where
5 it doesn't indicate to or from, does that
6 indicate to you that you were working at Cypress
7 Ridge loading dirt?

8 A Yes, sir.

9 Q Yes?

10 A Yes, sir.

11 Q For both of those dates?

12 A Yes.

13 Q And that was Bates Stamped ending in
14 309.

15 This is Bates Stamp ending in 310. 11
16 loads of fill dirt there is no indication of
17 where. That is that is on August 1, 2017.

18 Where would that have been?

19 A I imagine Cypress Ridge, but I can't
20 really assure you.

21 Q And then Port Royal dirt, concrete to
22 Ulmer Brothers.

23 Do you know what Port Royal indicates?

24 A Port Royal is the Plantation of Port
25 Royal, and we probably took dirt and concrete



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1 from there and bring it to Ulmer Brothers.

2 Q Can you tell what date that is?

3 A Oh man, I don't know. Is it scratched
4 off? I don't know if it is a 9, but I am not
5 assuring. I am not assuring if it is a 9. It
6 looks like it is a 9.

7 Q 8/9/2017? That is what it looks like,
8 but you are not sure?

9 A That is what it looks like.

10 Q That is fair enough.

11 And then this is 8/8, probably 2017, is
12 that correct?

13 A Yes, sir.

14 Q From Ulmer Brothers to CrossFit, number
15 4 construction rock.

16 And then August 10, 2017, 2 loads from
17 Wexford to Ulmer Brothers and hauled on-site at
18 Cypress Ridge?

19 A Uh-huh.

20 Q Do you remember what you were doing in
21 Wexford?

22 A I do not, sir.

23 Q Were you just hauling things out at
24 someone's request?

25 A What do you mean?



1 Q Do you think that there is a project
2 there and someone called Mr. Tosky to haul
3 things out?

4 A I don't know, I don't know. But yeah,
5 if I haul something out, if it is on that ticket
6 maybe he say just haul this out. But I don't
7 know if someone else did say or call him or you
8 know.

9 Q Yeah.

10 A Yeah.

11 Q So from Wexford, do you remember going
12 to Wexford?

13 A I do not. I have been in Wexford many
14 times. I do not remember for that exact moment
15 there.

16 Q August 11, 2017, 3 loads of dirt and
17 concrete from Wexford to Ulmer Brothers and
18 hauled Select on-site at Cypress Ridge?

19 A Yes.

20 Q Again is Select just a better quality?

21 A It is just regular dirt. Select. Fill
22 dirt. Good dirt.

23 Q Okay.

24 Dirt you can use for building?

25 A Dirt you can use for building pads that



1 is going to pass inspection I believe.

2 Q 8/18/2017, 2 loads from --

3 A From Conrad to Wexford.

4 Q And then 1 load from Wexford to Ulmer
5 Brothers, is that correct?

6 A Uh-huh.

7 Q And all these we are going over, this
8 is all your handwriting?

9 A Yes, more likely. On the times
10 sometimes it is not my handwriting, but on this
11 side, yes, this is my handwriting.

12 Q And anything you are not pointing out
13 is your handwriting is your handwriting?

14 A Yes, sir.

15 Q 8/16/2017, it looks like here you are
16 working at Conrad and Margaritaville?

17 A Margaritaville.

18 Q 2 loads to Ulmer Brothers and 2 load of
19 crusher run from Conrad to Wexford?

20 A Most likely.

21 Q 8/17/2017 similar?

22 A It looks like it, yes.

23 Q We don't see Cypress Ridge on either of
24 these tickets?

25 A No, I don't see it.



1 Q 8/13/2017?

2 A 2 loads from Wexford to Cypress Ridge.

3 Q Okay.

4 So you loaded 1 load of number 4 from
5 Ulmer Brothers to Cypress Ridge on this date?

6 A Yes, sir.

7 Q And then August 23, 2017?

8 A Yes, sir.

9 Q It doesn't appear that you did any work
10 at Cypress Ridge on this date?

11 A It doesn't look like it.

12 Q August 24, 2017, the same?

13 A The same probably.

14 Q Do you remember what you were doing in
15 Wexford?

16 A I do not.

17 Q August 22, 2017, it appears to be
18 Margaritaville, Conrad and Wexford.

19 Is that fair?

20 A Yes, sir.

21 Q And August 21, 2017, similar, it states
22 on the bottom it is Wexford, Margaritaville,
23 Conrad.

24 Is that fair to say?

25 A Yes, sir.



1 Q It says: I had to wait for concrete
2 trucks and tow trucks to move out of the way?

3 A Probably, yeah.

4 Q What happened?

5 A If I wrote it down it is like I say you
6 have to specify what you do with your time with
7 them. That way they don't think you are not
8 doing what you are supposed to do. That is why
9 I don't know what happened. But if it was there
10 probably there was a truck on the way and just
11 waiting.

12 Q If you weren't on task and on time,
13 would they have an issue with what you were
14 doing?

15 A I never had that problem, so I wouldn't
16 know.

17 Q But you put it in there for a reason?

18 A Yes.

19 Q What was the reason you inserted that
20 comment?

21 A Like I say that way they know what I am
22 doing with their time.

23 Q With their time?

24 A Yeah, like I am on their time so.

25 Q August 25/2017, 1 load of dirt from



1 Wexford to Ulmer Brothers.

2 This is October 17th of 2017, 5 loads
3 to CrossFit Gym and then 6 loads of fill dirt to
4 Cypress Ridge.

5 Do you know where the 5 loads to
6 CrossFit gym would have come from or likely to
7 have come from?

8 A No, sir.

9 Q You were loading fill dirt from Cypress
10 Ridge?

11 A I don't know where it would have come
12 from. Probably either from there or Hampton
13 Lake, either one; but I can't recall it.

14 Q There is a gap here, 8/25/2017 to
15 October 17, 2017. Unless there is some -- let
16 me just breeze through these. They might have
17 been out of sequence. Oh, they are out of
18 sequence, I apologize. Let me go back.

19 So for the record we just reviewed 3/16
20 and now we are onto Bates Stamped ending 317,
21 and this is still Exhibit Number 28.

22 And then the next ticket here,
23 October 19th of 2017, it says 18 loads, fill
24 dirt? Cypress Ridge?

25 A Uh-huh, 18 loads fill dirt, Cypress



1 Ridge, yes, sir.

2 Q And then on the 10th, October 10th of
3 2017 moving on to Bates Stamp ending in 318, 13
4 loads, Cypress Ridge?

5 A Yes, sir.

6 Q And then the invoice on the bottom
7 invoice it is 245135, 14 loads at Cypress Ridge?

8 A Yes, sir.

9 Q And that is on October 18, 2017?

10 A Yes, sir.

11 Q And then on Bates Stamp ending in 319,
12 October 11, 2017, it says CR.

13 What does CR mean?

14 A Cypress Ridge.

15 Q And that is 16 loads?

16 A Yes, sir.

17 Q And building pads, is that what you are
18 talking about earlier, building the houses?
19 What is building pad?

20 A Yes, sir.

21 Q And do you remember working on building
22 pads in Cypress Ridge?

23 A Yes.

24 Q What were you doing?

25 A Like I said, bring dirt in, move from



1 one place to another one; and help them out
2 maybe dumping the roller, rolling it down.

3 Q October 12, 2017, 15 loads, fill dirt,
4 Cypress Ridge.

5 Do you see that?

6 A Yes, sir.

7 Q That is all your handwriting?

8 A Yes, sir.

9 Q And then September 28, 2017, it says
10 one load of fill dirt to Sea Pines?

11 A 1 load of dirt to Sea Pines, okay.

12 Q And 1 load to CrossFit?

13 A Okay.

14 Q Do you know where that dirt would have
15 come from?

16 A No, sir.

17 Q And then September 22, 2017?

18 A Okay, yeah. It says right there, but
19 the other one I can't recall where it would have
20 come from, the dirt.

21 Q Would this dirt, this CrossFit, come
22 from Cypress Ridge most likely?

23 A I can't -- I don't know.

24 Q It says 1 load of number 57 from Conrad
25 to Rose Dhu.



1 A Okay, more than likely if I was already
2 there it is from Cypress Ridge to --

3 Q To CrossFit?

4 A To CrossFit.

5 Q And was that the Sheridan Park
6 CrossFit?

7 A Sheridan Park, yes. It is only for 3.
8 CrossFit Gym, They are off the Parkway.

9 Q And that is September 22, 2017, Bates
10 320.

11 And the next one is Bates 321. It says
12 7 loads of fill dirt from Hampton Lake to
13 CrossFit?

14 A Hampton Lake.

15 Q And here you specify it is from Hampton
16 Lake, correct?

17 A Yes.

18 Q And that is on September 21st.

19 September 20th, again 6 load of fill
20 dirt from Hampton Lake to CrossFit.

21 Is that correct?

22 A Yes, sir.

23 Q And then September 19th, the same
24 thing, fill dirt from Hampton Lake to CrossFit?

25 A Yes, sir.



1 Q And then September 18th from Hampton
2 Lake to CrossFit?

3 A Yes, sir.

4 Q And you are specifying each time it is
5 from Hampton Lake?

6 A Yes.

7 Q And September 5, 2017, it says one load
8 of top soil from Wexford from CR.

9 Is that Cypress Ridge?

10 A That is Cypress Ridge.

11 Q And it says one load of rock from Ulmer
12 to Cypress Ridge?

13 A It is Cypress Ridge.

14 Q And one load from Hampton Lake to Rose
15 Dhu?

16 A To Rose Dhu.

17 Q Is that correct?

18 A Yes.

19 Q And then 5 loads from Hampton Lake to
20 CrossFit?

21 A Yes, sir.

22 Q That was September 27th.

23 Now we are at October 6, 2017, Bates
24 Stamp ending in 324, invoice number 164796. It
25 says 12 loads, Cypress Ridge building pads.



1 Do you see that?

2 A Yes.

3 Q And then October 5, 2017, 13 loads from
4 Cypress Ridge, correct?

5 A Correct.

6 Q And then October 27th, it doesn't
7 indicate where, but it indicates 20?

8 A It is probably on-site on Cypress
9 Ridge.

10 Q And then on October 23, 2017, 18 loads,
11 it says Cypress Ridge, correct?

12 A Correct, sir.

13 Q And then October 24th of 2017, it says
14 3 loads from Sheridan Park CrossFit to Sea Pines
15 Calibogue.

16 Do you see that?

17 A Yes.

18 Q Do you remember what the Sea Pines
19 Calibogue trip was?

20 A I do not.

21 Q Again you indicated waited for concrete
22 trucks to unload?

23 A To unload, yes, sir. To specify the
24 time to --

25 Q Would you be reimbursed for this \$25



1 pass?

2 A Yes.

3 Q And who would reimburse you?

4 A Ken Scott.

5 Q Bates Stamp ending in 326, October 25,
6 2017, 3 loads from CrossFit to Calibogue Sea
7 Pines again.

8 Is that correct?

9 A That is correct, sir.

10 Q And then Bates Stamp ending in 327,
11 October 26, 2017, it says fill dirt from Cypress
12 Ridge.

13 It doesn't say where to?

14 A Fill dirt from Cypress Ridge. It was
15 probably from Cypress Ridge on-site. Too many
16 loads.

17 Q November 3, 2017, rock from Ulmer
18 Brothers to CrossFit.

19 A Cypress Ridge.

20 Q Does that indicate you were working in
21 Cypress Ridge from 10 to 4:30?

22 A Yes, sir.

23 Q The Bates Stamp ending in 328 we have
24 hauled dirt from both sides, Cypress Ridge?

25 A Yes, that means when you say both sides



1 that means in and out. In and like bad and
2 good, good and bad, you know. Bringing bad out
3 and bringing good in all day.

4 Q And October 31, 2017, haul fill dirt.
5 18 loads on the Cypress Ridge, is that right?

6 A Yes, sir.

7 Q And then Bates Stamp ending 239, we
8 have hauled fill dirt 18 loads on November 4,
9 2017?

10 A Yes, sir.

11 Q Cypress Ridge?

12 A Yes.

13 Q And November 6, 2017, Cypress Ridge, 19
14 loads fill dirt, is that correct?

15 A Yes, sir.

16 Q And then November 7, 2017, is that 13
17 loads --

18 A Yes, sir.

19 Q -- Of fill dirt at Cypress Ridge?

20 A It looks like 13.

21 Q And it counts 13, correct?

22 A Yes.

23 Q November 8, 2017, 15 loads of fill
24 dirt, Cypress Ridge, is that correct?

25 A Yes, sir.



1 Q That was Bates Stamp ending in 330.
2 This is Bates Stamp ending in 331, 11
3 loads on it looks like 11/9/2017, Cypress Ridge?

4 A Uh-huh.

5 Q Correct?

6 A Correct.

7 Q On 8:00 to 5:00. Would it take you
8 9 hours to load 11 loads at Cypress Ridge; or
9 would this be a day you may have been working on
10 some of the equipment as well?

11 MR. IMHOFF: Object to the form.

12 BY MR. SHELTON:

13 Q Would it take you nine hours to do 11
14 loads at Cypress Ridge?

15 A I mean I can't recall it. But yeah,
16 that is what it says. Working in and out, you
17 know. I can't say I did this and that but I
18 mean --

19 MR. IMHOFF: A lot of these
20 objections are you keep saying loading,
21 loading, and he says I don't know.

22 BY MR. SHELTON:

23 Q It says loads.

24 So to be specific it says loads on your
25 tickets?



1 A Yes, sir.

2 Q And when you are doing the loads, when
3 it says loading you are hauling 11 loads, is
4 that fair to say?

5 A That is what I am --

6 Q Okay.

7 A When it says 11 loads that means that
8 is how many was maybe from this site to the
9 other site. But I don't know -- if you ask me
10 which it was I wouldn't at this moment I can't
11 remember, right? But 11 loads, yeah and if
12 that -- I don't know if that would take me from
13 8:00 to 5:00 just to do that, I don't know.
14 Maybe we did something else in there. I was
15 working, you know. So it is just an hourly
16 thing.

17 Q Right. Okay.

18 A Yeah.

19 Q Then when it says 7 loads, it is
20 hauling 7 loads of fill dirt, would that be in
21 Cypress Ridge? It doesn't indicate, do you
22 know?

23 A It does not. Probably was there, but I
24 am not a hundred percent sure. But yeah, if we
25 broke dirt and that number 4 was more likely



1 going there to Cypress Ridge.

2 Q And that is on November 13, 2017.

3 And it says one load of number 4 rock
4 from Ulmer Brothers. You just testified that
5 that number 4 was likely going to Cypress Ridge,
6 is that what you are referring to?

7 A More likely, yes, sir.

8 Q Bates Stamp 332, November 14, 2017, it
9 says 5 loads from CrossFit to Cypress Ridge?

10 A That is what it says.

11 Q What would you be loading from CrossFit
12 to Cypress Ridge?

13 A Oh man, that is something -- I don't
14 know. Maybe dirt, maybe rock that is left over.

15 I can't recall it at the moment. I
16 didn't specify it. I didn't write it down.

17 Q On November 15, 2017, 7 loads from
18 CrossFit to Cypress Ridge?

19 A Yeah.

20 Q CrossFit, was that a site that Ken
21 Tosky to your knowledge was actually building or
22 was he preparing the pad?

23 A No, he prepared the pad. That is what
24 I explained to you earlier he -- what he does is
25 he works the land like, you know. He clear it



1 out, make a pad. Takes whatever is not good on
2 the property, I guess gets it out and brings
3 good stuff in, so now it can be built in. That
4 is to my knowledge, so that is what we were
5 doing.

6 Q That was Bates Stamped 332.

7 Bates Stamped ending in 333 is November
8 18, 2017, 3 loads of fill dirt and concrete from
9 CrossFit to Cypress Ridge.

10 Is that what you did that day?

11 A Yes.

12 Q And then the same thing on November 17,
13 2017, it indicates I see 5, is that correct?

14 A That is correct.

15 Q Does that mean 5 loads of fill dirt --

16 A Yes, 5 hauled, yes.

17 Q Hauled from CrossFit to Cypress Ridge?

18 A CrossFit to Cypress Ridge.

19 Q And that was Bates Stamped 333.

20 We are now on Bates Stamp 334, fill
21 dirt, concrete to Ulmer Brothers and Cypress
22 Ridge.

23 Do you see that?

24 A Fill dirt, concrete to Ulmer Brothers
25 and Cypress Ridge. Yes, sir.



1 Q November 16, 2017?

2 A Uh-huh.

3 Q Do you know where that fill dirt and
4 concrete would have come from?

5 A I don't, sir.

6 Q November 20, 2017, it has 1 load of --
7 it sys CR, is that crush and run?

8 A Yes -- no, that is one load of crusher
9 run. CR is like Cypress Ridge, it looks like
10 it; but it says one load of crusher run.

11 Q Okay.

12 A It wouldn't say one load of Cypress
13 Ridge.

14 Q Of Cypress Ridge, that doesn't make any
15 sense.

16 A No.

17 Q From Southeast Ready Mix?

18 A From Southeast Ready Mix to CrossFit
19 and then hauled fill dirt in Cypress Ridge.

20 Q Where is Southeast Ready Mix?

21 A Southeast Ready -- Southeast?

22 Q Or where was it? I don't know if it is
23 still there or not.

24 A I don't think they are still there.

25 But they were right down at Sheridan Park too, I



1 believe so, right on the corner of the DMV.

2 Q In Sheridan Park?

3 A Yes, sir.

4 Q Okay.

5 A That is what they were called. I am
6 not sure if they call it that now.

7 Q That is that little -- it looks like
8 a --

9 A It is a concrete plant.

10 Q It is a concrete plant there at
11 Sheridan Park Drive?

12 A Yes, sir. I think so. That got to be
13 it.

14 Q And that was November 20, 2017.

15 Now we are at Bates Stamp ending in 335
16 on Exhibit Number 28.

17 You indicate 8 lots of crusher from
18 Southeast Ready Mix to --

19 A That is probably it because it was
20 convenient, it is just close by.

21 Q Okay.

22 A You see how they are corner to corner?

23 Q Right.

24 So Sheridan Park, Southeast Ready Mix
25 and CrossFit are in the same --



1 A The same --

2 Q The same complex?

3 A Yes.

4 Q Same neighborhood?

5 A Yeah.

6 Q What is the 8 loads, do you know what
7 that means?

8 A Of crusher run. It says it right there
9 of crusher run?

10 Q Okay.

11 On November 21, 2017, the same thing,
12 13 loads hauled of crusher run.

13 Or you say run of crusher?

14 A Run of crusher, crusher run, the same
15 thing, sir.

16 Q From Southeast Ready Mix to CrossFit?

17 A Yes.

18 Q November 29, 2017, it says 1 load of
19 number 4 rock from Cypress Ridge.

20 Where did that number 4 rock come from,
21 do you know?

22 A Number 4, it would be coming from the
23 Ulmer Brothers more likely.

24 Q But not from inside of Cypress Ridge?

25 A No. They don't have no number 4. They



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1 don't sell number 4's.

2 Q That was November 29, 2017.

3 We are now on Bates Stamp ending in
4 336. November 28, 2017, 3 loads from Southeast
5 Ready Mix to CrossFit, and then hauled in
6 Cypress Ridge fill dirt?

7 A Yes, sir.

8 Q Okay.

9 Do you need to take another phone call?

10 A No, I got to work tomorrow.

11 Q Okay.

12 A They looking for me. You coming or
13 not? I am sick. Please -- sorry. I am good
14 now.

15 Q November 30, 2017, this is Bates
16 Stamped 337.

17 A 14 tons of #4 rock from Ulmer Brothers
18 to Hampton Lake. And then hauled fill dirt
19 inside of Cypress Ridge.

20 Q And then November 27, 2017. And then
21 it cuts off down here but --

22 A Okay --

23 Q Southeast Ready Mix to CrossFit from --
24 it doesn't say where?

25 A Okay.



1 Q There is no indication you were working
2 on Cypress Ridge on November 27, 2017?

3 A Not that it looks like there.

4 Q Bates Stamp ending in 338. It says
5 pick up load of fill dirt to take it to CrossFit
6 to do the inspection test. Then hauled inside
7 Cypress Ridge?

8 A That is right.

9 Q This is for December 5, 2017.
10 What is the inspection test?

11 A The inspection test is -- I believe I
12 picked the dirt from Cypress Ridge. Inspection
13 test is a roll up test, that is what they call
14 it. So once they bill a certain amount of dirt
15 on the pad, you got to put a truck in or I guess
16 or something that is heavy, so they roll it and
17 inspect to see that you are not sinking in, so
18 they approve it.

19 Q Okay.

20 And you took that fill dirt from
21 Cypress Ridge?

22 A Yes, sir.

23 Q December 4, 2017, hauled fill dirt
24 inside Cypress Ridge.

25 Is that correct?



1 A Yes, sir.

2 Q And then moving onto Bates Stamp 339,
3 hauled fill dirt inside Cypress Ridge on
4 December 6, 2017.

5 Is that correct?

6 A Yes, sir.

7 Q And in Bates Stamp, this is 340, five
8 loads from Southeast Ready Mix to Cypress Ridge?

9 A Yes, sir.

10 Q Ready Mix is a concrete plant, right?

11 A Yes, sir.

12 Q What were you doing concrete work for
13 in Cypress Ridge?

14 A For Southeast, probably crusher run.
15 They sell crusher run too.

16 Q And that is January 15, 2018, is that
17 correct?

18 A That is what it looks like, sir, yes.

19 Q Do you know during any time since
20 April 17, 2017 through January 15, 2018 whether
21 you had insurance on your vehicle?

22 A I do not, sir.

23 Q Did you have your vehicle inspected at
24 any time between November 2016 through
25 January 2018?



1 A I doubt it. I don't recall that.

2 Q January 17, 2018, 7 loads of crush and
3 run from Southeast -- is that Ready Mix I am
4 assuming?

5 A Ready Mix.

6 Q To Cypress Ridge. That is ending Bates
7 Stamp 340.

8 Again this is all your handwriting?

9 A Yes. It looks like my handwriting.
10 Yes, it is.

11 Q And then January 16, 2018, five loads
12 of crush and run from Southeast Ready Mix to
13 Cypress Ridge.

14 Do you see this?

15 A Yes, sir, I see it.

16 Q January 2, 2018, it just says 6 loads.
17 Do you have any idea what you are
18 doing?

19 A No, sir.

20 Q Typically where you don't indicate a
21 location, where were you working?

22 A I could have said Cypress Ridge, but I
23 am not a hundred percent sure.

24 Q January 5, 2017, 6 loads. Weather
25 conditions bad?



1 A Oh, yeah, that is one thing, you know.
2 That will answer your question of 11 loads
3 maybe.

4 Q Okay.

5 A You can't do much, so we did something
6 else which is like work on-site because -- you
7 know --

8 Q Yeah.

9 A -- 6 loads, weather conditions bad.
10 That means why there were no more loads going in
11 from one site to another site.

12 Q So the same question, there is no
13 indication of a location.

14 Typically when you don't indicate a
15 location where are you working?

16 A Oh yeah, that was in Cypress Ridge.

17 Q And I believe this is December 29,
18 2017. 7 loads of -- what does that mean? What
19 does the hash tag rock mean?

20 A Probably meant to put the #4.

21 Q From Ulmer Brothers.

22 Where would that be going to?

23 A Yeah, we were going to Cypress Ridge.

24 Yeah, the same thing on the bottom.

25 Q Yes, December 28, 2017, 7 loads of #4



1 rock from Ulmer Brothers to Cypress Ridge.

2 Is that accurate?

3 A Yes, sir.

4 Q December 27, 2017, the same thing, 7
5 loads of #4 rock from Ulmer Brothers to Cypress
6 Ridge?

7 A Yes, sir.

8 Q And January 8, 2017, 3 loads of #4 rock
9 from Ulmer Brothers to Cypress Ridge, correct?

10 A Yes, sir.

11 Q And then 3 loads of crusher run from
12 Southeast Ready Mix to Cypress Ridge?

13 A Uh-huh.

14 Q So what is the difference between run
15 crusher, crusher run and #4 rock?

16 A What is the difference?

17 Q Yes.

18 A #4 is a big rock, a clean rock that is
19 used sometimes for -- if you were to build your
20 house, so people can go in and they don't drag
21 mud out. That way the entire is cleaned up on
22 the little pads. I don't know if you have ever
23 been on construction sites you see this big, old
24 clean entrance with big old rocks, that is
25 number 4's.



1 And that is like sometimes they put in
2 a drain or they do like -- instead of using that
3 number 57 for drainage, they use #4. It all
4 depends where you are going to use it.

5 Q That is a larger crushed rock?

6 A No -- yes, larger crushed rock, bigger
7 rock. So it kind of filtrates water too. I
8 mean it can be used for a lot of things.

9 Q Do you know what you are doing at
10 Cypress Ridge at this time using that #4 rock?

11 A No. Like I said they did a bunch of --
12 since they were digging a lot, they had to do a
13 lot of water pumps. So they had to lay it
14 sometimes rock where the water pump was sucking
15 in, so they wouldn't suck the dirt out, you
16 know, or build something, I don't know, or road
17 or something inside of the houses, the previous
18 house pads, you got to do it in front of them,
19 so trucks can go in and out or pickups, or
20 anything like that.

21 Q On January 6, 2018, this is Bates Stamp
22 ending in 344. We are on now 7 loads of run
23 crusher from Southeast Ready Mix to Cypress
24 Ridge, correct?

25 A Correct.



1 Q And any time the time says 8:00 and
2 5:00, is that 8:00 o'clock in and 5:00 o'clock
3 out?

4 A 5:00 p.m. yes, sir.

5 Q And to the best of your knowledge are
6 all these times accurate?

7 A What do you mean?

8 Q I mean are all the times that are on
9 these time sheets?

10 A Probably yes. I will say yeah I mean.
11 Yeah, they are accurate.

12 Q I say time sheets for invoices. Are
13 all the times that are on these invoices --

14 A Yes, they have times like I say I like
15 to write it down or once you are working, you
16 know, I mean.

17 Q On January 10, 2018 it says 6 loads of
18 run crushers from Southeast Ready Mix to Cypress
19 Ridge. And now we are on Bates Stamp ending in
20 345, and then January 11, 2018, again it says 6
21 loads of run crusher from Southeast Ready Mix to
22 Cypress Ridge?

23 A Uh-huh.

24 Q Again, just as an observation it appear
25 that you are doing a good amount of work with



1 run crusher and rock at this stage.

2 Do you remember exactly where you were
3 working in Cypress Ridge at this stage in early
4 2018?

5 A He was in charge -- we were doing not
6 just house pads. Roads, building roads. Yeah,
7 more than anything all the roads that were
8 there, I think Kenneth Scott Builders did those
9 roads. In the front area, not the way in the
10 back. The back was already kind of built in.
11 But what I am talking about Cypress Ridge, if
12 you look to your right it is Cypress Ridge and
13 then connects to Mill Creek, all of that, that
14 is where he was working and then on your
15 left-hand side there is a lake and a big old
16 clubhouse and all the back, I think it was going
17 to be an RV park --

18 Q Correct --

19 A Or something like that.

20 So that is what crusher run was used
21 for. Crusher run is used for roads, like roads
22 that you are going to throw something on top of,
23 which is concrete or asphalt.

24 Q Did you do a good amount of work around
25 what you call that clubhouse?



1 A The clubhouse? I mean that is the
2 first house, the first building pad that we did
3 there.

4 Q So you built that building pad?

5 A No, I didn't build it. They built it.

6 Q Who is they?

7 A The Kenneth Scott Builders.

8 Q But did you help with that?

9 A Yes, I did help.

10 Q Okay.

11 A I didn't build it.

12 Q But you did work on that building pad?

13 A We like just bring material, I believe
14 so, you know. More than anything I mean help
15 them get prepared for what they need.

16 Q Is that so when you come into that
17 entrance -- not the main Mill Creek entrance,
18 but the other one?

19 A No, the other one that is in Cypress
20 Ridge.

21 Q That is in Cypress Ridge.

22 Is that the first left as you come in?

23 A Yes, you come in the first left.

24 Q And you keep going past that what you
25 call a clubhouse, that big house.



1 A I think that is what they call it, I am
2 not sure. It is a white big house, a white big
3 building.

4 Q When you go past that building is that
5 how you get to the RV park?

6 A I think so, yes. It is in the back up
7 there, yes, sir. I don't know how the roads are
8 made at the moment, I can't remember any more.
9 But yeah, you have to pass through it in order
10 to go to the back.

11 Q We may be able to help with that in a
12 little bit, okay?

13 On January 11, 2018, 6 loads of run
14 crusher from Southeast Ready Mix to Cypress
15 Ridge.

16 Is that correct?

17 A Yes, sir.

18 Q Is that your handwriting?

19 A Yes, sir.

20 Q Now, ending in Bates number 346, 5
21 loads of Southeast Ready Mix to Cypress Ridge.

22 Do you see this, January 12, 2018?

23 A Yes, sir.

24 Q And then ending in 346, this is invoice
25 number 896018, it says 4 loads of fill dirt to



1 Hilton Lakes. 1 load of dirt from Cypress Ridge
2 from Okatie Construction?

3 A Uh-huh.

4 Q What was Okatie Construction?

5 A Okatie?

6 Q Yeah?

7 A Okatie, yeah.

8 Q What is Okatie Construction, is that a
9 site?

10 A It is a site -- no, I am sorry, they
11 sell dirt. They have a pit of dirt, yes.

12 Okatie Construction is -- I mean it is
13 a big company. They do sell dirt and they do
14 their own work, yeah; and that is where they
15 send me for fill dirt.

16 Q And that was February 15, 2018.

17 Do you see that?

18 A Yes.

19 Q Now we are to Bates ending in 347. We
20 see 7. So 7 loads of dirt from Okatie to
21 Cypress Ridge.

22 Is that Okatie Construction again?

23 A Yeah, it says Okatie to Cypress Ridge.

24 Q And then 1 load of dirt to Hilton
25 Lakes?



1 A Hilton Lakes.

2 Q What is Hilton Lakes?

3 A I don't know.

4 Q Is it Hilton Head Lakes? Is it the one
5 off of 278 across from Margaritaville?

6 A It could be that one, yeah. That is
7 the only one called Hilton Lakes, right?

8 Q I don't know. I am asking you? Do you
9 know?

10 A Probably that is Hilton Lakes. I don't
11 think there is -- I do not recall seeing
12 another Hilton Lakes somewhere.

13 Q Do you know where that dirt came from
14 that went to Hilton Lakes?

15 A No, sir.

16 Q That is on February 16, 2018.

17 Another invoice, 896016, it says 6
18 loads of fill dirt from Ridgeland Okatie pit to
19 Cypress Ridge?

20 A Uh-huh.

21 Q What is the Ridgeland Okatie pit?

22 A I don't know the address, but it is in
23 Ridgeland. It is on Bees Creek Road.

24 Q So it is off of Bees Creek Road.

25 A Yes.



1 Q It is on the left side of 170 as you
2 are going towards Beaufort?

3 A Do you know where Bees Creek is?

4 Q Yeah.

5 A Way in Ridgeland.

6 Q So it is all the way in Ridgeland on
7 Bees Creek Road? So not like the --

8 A No, you are talking about 462.

9 Q Correct.

10 A That is the road you are saying, right?

11 Q No, no, that is okay.

12 But it is in Bees Creek Road in
13 Ridgeland?

14 A Yes, sir.

15 Q And that is in Jasper County, correct?

16 A I believe so, yes.

17 Q That is February 13, 2018, that is all
18 your handwriting?

19 A Yes, sir.

20 Q And then Bates Stamp No. ending in 348,
21 it says 2 loads of Select from Okatie
22 Construction to Cypress Ridge.

23 Where exactly is Okatie Construction
24 again?

25 A It is the same pit.



1 Q Oh, that is the same pit?

2 A Yes, sir.

3 Q That is the one that is off of Bees
4 Creek Road?

5 A That is one off of Bees Creek Road.

6 Q In Ridgeland?

7 A Yes, sir.

8 Q 4 loads of run crusher from Southeast
9 Ready Mix to Palmetto Bluff 158 D?

10 What is Palmetto Bluff 158 D?

11 A Palmetto Bluff, I guess it is the
12 plantation of Palmetto Bluff.

13 Q Right.

14 A But 158 D I wouldn't -- I don't know.
15 Maybe the address of maybe 158 Palmetto Bluff
16 Road or --

17 Q You don't recall that one?

18 A I do not.

19 Q That is February 7 of 2018.

20 That is February 14th of 2018, we have
21 five loads of fill dirt from Okatie Construction
22 to Hilton Head Lakes.

23 Do you see that?

24 A Yes, sir.

25 Q Moving on to Bates Stamp ending in 349,



1 5 loads of fill dirt from Okatie Construction to
2 Hilton Head Lakes. Again that is 2/9/2018.

3 Moving down to invoice number 896014,
4 it says 3 load of run crushers from Southeast
5 Ready Mix to Palmetto Bluff. And then 3 loads
6 of fill dirt from Okatie Construction to Cypress
7 Ridge.

8 A Okay.

9 Q Do you know why you are getting fill
10 dirt all the way out from Ridgeland for Cypress
11 Ridge at this point?

12 A I didn't know, sir. They arrange that.

13 Q The next is Bates Stamped 350, 12 loads
14 of dirt from Downtown Bluffton Deli to Ulmer
15 Brothers, finished loading up myself.

16 Do you remember that date? This is
17 from January 29, 2018.

18 A Okay. Downtown Deli, that is the one
19 you were talking about?

20 Q Correct.

21 A Okay yeah, they had a job there. Yeah.

22 Q What does finish loading up myself,
23 what does that mean?

24 A Me using the equipment to load up
25 myself.



1 Q Okay.

2 A To load up or move the dirt around too.

3 Q So that would be Kenneth Scott's
4 equipment?

5 A Yes, sir.

6 Q And that would be like a front end
7 loader or an excavator?

8 A I think at that moment it was a front
9 end loader.

10 Probably yes, it was a front end
11 loader.

12 Q And that is Bates Stamped ending in
13 350, 896012. I am sorry, let me go
14 back to the invoice one moment that is 896006.
15 Where would you have been loading up yourself?
16 Would that be at Downtown Deli or would that be
17 at Cypress Ridge?

18 A That would be at Downtown Deli.

19 Q 696012, it says one load of run crusher
20 from Southeast Ready Mix, 5 loads of fill dirt
21 from Okatie Construction pit to Cypress Ridge,
22 that is on February 6, 2018.

23 Do you see that?

24 A Yes, sir.

25 Q How do you get from Okatie Construction



1 pit to Cypress Ridge?

2 A How do I get there?

3 Q How do you drive that road?

4 A There is too many -- you can either do
5 170 or do 17 or either one.

6 Q Okay.

7 A I don't recall which one I did.

8 Q Do you know how long it takes to get
9 from one place to the other?

10 A An hour, maybe.

11 Q Okay.

12 Ending in 351, Kenneth Scott Builders,
13 this is invoice 896009, and that is the Bates
14 Stamp ending in 351, February 2, 2018, 12 loads
15 of fill dirt from Hampton Lake pit to Cypress
16 Ridge.

17 Do you see that?

18 A Yes, sir.

19 Q And then on January 31, 2018, hauled
20 dirt from downtown Deli to Ulmer Brothers. And
21 then it says 1 load of fill dirt from Hampton
22 Lake to Cypress Ridge?

23 A Yes, sir.

24 Q And then next is 352, Bates Stamp
25 ending in 352. This is from January 30, 2018,



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1 hauled dirt from Downtown Deli to Ulmer
2 Brothers.

3 And then January 24, 2018, it says 5
4 loads of run crusher from Southeast Ready Mix to
5 Cypress Ridge.

6 A Okay.

7 Q Is that correct?

8 A Yes, sir.

9 Q And these are all your handwriting
10 still?

11 A Yes, it looks like my handwriting.

12 Q And to the best of your recollection
13 these are true copies of these invoices?

14 A Yes, sir.

15 Q Bates Stamp ending in 353, this is 6
16 loads of crush and run.

17 Do you have any idea of where that was
18 to or what it was for?

19 A No, sir.

20 Q January 23, 2018, it says two loads of
21 dirt to Sea Pines, and it says 5 loads of
22 crushing rock from Southeast Ready Mix to
23 Cypress Ridge?

24 A Uh-huh.

25 Q Do you know where the dirt would have



1 come from that went to Sea Pines?

2 A Probably from inside Cypress Ridge.

3 Q And then on January 22, 2018, 6 loads
4 of fill dirt from Hampton Lakes to Sea Pines
5 Calibogue?

6 A Okay, no can --

7 Q And then February 23rd of 2018, hauled
8 on-site at Cypress Ridge. 1 load of run crusher
9 from Southeast to Cypress Ridge.

10 Do you see that?

11 A Yes, sir.

12 Q That is February 23, 2018.

13 And then February 22, 2018, hauled
14 on-site at Cypress Ridge.

15 Is that right?

16 A Yes, sir.

17 Q And now we are on Bates Stamp ending in
18 355.

19 And then February 2, 2018 hauled
20 on-site at Cypress Ridge.

21 Do you see that?

22 MR. IMHOFF: Object to the form.

23 BY MR. SHELTON:

24 Q I will rephrase it.

25 Does it say hauled on-site at Cypress



1 Ridge?
2 A Hauled on-site?
3 MR. IMHOFF: It was the date.
4 MR. SHELTON: Thank you.
5 BY MR. SHELTON:
6 Q February 21, 2018, is that the date
7 that you see?
8 MR. SHELTON: Thank you.
9 BY MR. SHELTON:
10 Q Do you see that date?
11 A The date?
12 Q Yes, it is February 21, 2018, is that
13 correct?
14 A Yes, sir.
15 Q And it says hauled on-site at Cypress
16 Ridge?
17 A Yes, sir.
18 MR. IMHOFF: I heard you say the
19 22nd, that is why I objected.
20 MR. SHELTON: Okay, thank you.
21 BY MR. SHELTON:
22 Q February 20, 2018, it says 1 load of
23 fill dirt from Okatie Construction to Hilton
24 Lakes, and then it says hauled on-site at
25 Cypress Ridge.



1 Is that accurate?

2 A Yes, sir.

3 Q And then it says 1 load of fill dirt
4 from 7:00 a.m. to 8:30?

5 A Uh-huh.

6 Q And then it says from 8:30 to
7 3:30 p.m., hauled on-site at Cypress Ridge.

8 Is that correct?

9 A Yes, sir.

10 Q I am assuming -- I have to ask you the
11 question. It may seem like a stupid question
12 and I apologize.

13 But does that mean you hauled one load
14 of fill dirt between the hours of 7:00 and 8:30
15 in the morning to Hilton Lakes?

16 A Say that one more time.

17 Q Does that mean that you hauled fill
18 dirt from Okatie Construction to Hilton Head
19 Lakes from 7:00 o'clock in the morning to 8:30?

20 A Yes, sir.

21 Q And then it means that you worked
22 on-site at Cypress Ridge from 8:30 to 3:30?

23 A Yes, sir.

24 Q Okay.

25 And then on February 19, 2018, hauled



1 on-site at Cypress Ridge?

2 A Yes, sir.

3 Q And all of these times again, I ask you
4 again to the best of your knowledge these are
5 accurate times as the times you worked?

6 A I would say yes, it is pretty accurate.

7 Q And that was Bates Stamped ending in
8 356.

9 And this is Bates Stamps ending on 357,
10 hauled on site at Cypress Ridge on February 26,
11 2018.

12 Is that correct?

13 A Yes, sir.

14 Q From 8:00 a.m. to 5:00 p.m.

15 Is that correct?

16 A Uh-huh.

17 Q And then on January 27, 2018, hauled
18 on-site at Cypress Ridge. It says from 12:30 to
19 5:00 p.m.

20 Do you see that?

21 A Yes, sir.

22 Q And it says: This truck started late.
23 I was fixing it.

24 A Yeah.

25 Q And it says truck number 702?



1 A Okay.

2 Q Do you know what truck number 702 was?

3 A No.

4 702, it was probably a truck that we
5 brought in maybe.

6 Q Do you remember what work you were
7 doing on truck number 702?

8 A Man, I don't. I can't remember that
9 one.

10 Q And then this one says truck number
11 701. It says hauled on site moving dirt at
12 Cypress Ridge, February 27, 2018 from 8:00 to
13 5:00.

14 A At one point we brought another truck
15 in from different people, and that is probably
16 how they mark it.

17 Q Okay.

18 A Because that is not in my handwriting
19 on truck number; see that is not me.

20 Q Where?

21 A On the top where it says truck number.

22 Q Okay.

23 A That is not my numbers, so I don't know
24 what they put on there.

25 Q But you were only on one truck,



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1 correct?

2 A Yes.

3 Q And you only operated personally with
4 one truck?

5 A Yes.

6 Q Yes?

7 A Yes, sir.

8 Q And this is Bates Stamped ending in
9 358. It says -- I think we looked at this
10 already, but February 27, 2018, hauled on-site
11 moving dirt at Cypress Ridge.

12 Is that correct?

13 A Yes, sir.

14 Q And then the invoice below that,
15 987901, hauled on site, Cypress Ridge, and that
16 is on February 28, 2018.

17 Do you see that?

18 A Yes, sir.

19 Q From 8:00 to 5:00.

20 Is that correct?

21 A That is correct.

22 Q Would you take a lunch break?

23 A I did?

24 Q Would you?

25 A If I did from there? I don't remember.



1 They pretty -- if it was just right then we
2 never left the place. Yeah.

3 Q Would you stop working for 30 minutes?

4 A Some times I think I did, yeah.

5 I can't recall it; but yes, sometimes
6 we did. Yes.

7 Q I noticed that earlier --

8 A Yeah --

9 Q In your invoice you had a break for
10 30 minutes --

11 A Yeah.

12 Q -- and then it started back up.

13 Did you stop taking lunch or did you
14 just stop backing off the time?

15 A I can't remember, but if we did
16 sometimes when you are working on equipment like
17 that, you just grab an apple and just eat it
18 through.

19 Q Just keep working?

20 A Yeah, just keep working. You don't
21 really need to sit and make a full dinner.

22 Q This is March 5, 2018, hauled on-site,
23 dirt at Cypress Ridge.

24 Do you see this?

25 A Uh-huh.



1 Q And then on March 6, 2018, hauled
2 on-site, dirt at Cypress Ridge.

3 Do you see that?

4 A Yes, sir.

5 Q And that is all in your handwriting?

6 A Yes, that is my handwriting.

7 Q That was Bates Stamp ending in 359.

8 This is Bates Stamp ending in 360. It says
9 3/8/18 hauled on-site.

10 Where would that be?

11 A Hauled dirt on-site on Cypress Ridge.

12 Q And then 3/9?

13 A The same thing.

14 Q Hauled on-site. And that would be at
15 Cypress Ridge as well?

16 A Yes, sir.

17 Q And then on March 7, 2018, on-site
18 hauling dirt.

19 Would that also be at Cypress Ridge?

20 A Does that say hauling or loading?

21 Q I can't tell. You tell me. I
22 shouldn't put words in your mouth.

23 A I think it says loading or hauling,
24 either one, but probably it is on Cypress Ridge.

25 Q And that is all of them.



1 So do you know what you did on the days
2 between March 8th and March 9, 2018 and
3 March 13, 2018?

4 A I do.

5 Q What would you do?

6 A My father recently has passed away on
7 January 26th; and my brother, he was getting
8 married, we didn't know, and they didn't decide
9 to cancel it, so I went to their wedding.

10 Q Where was that?

11 A In Mexico.

12 Q What day was the wedding held?

13 A I think it was -- I can't remember the
14 exact date, but it was one of those weekends, so
15 yeah.

16 Q Was it right before the accident?

17 A Yes. Actually I came back the day
18 before the accident, and I was home. And then I
19 worked the next day and that is when things
20 happened.

21 Q Do you believe you didn't work on
22 March 10th?

23 A The 10? The 10, that is a Sunday,
24 isn't it?

25 Q One second.



1 I think it was a Saturday?

2 A Because what happened I still remember
3 it. That would never go away. It was a
4 Tuesday, March 13.

5 Q Right, March 13.
6 12, 11, 10 was Saturday.

7 A Okay.

8 Q So did you work on that Monday?

9 A I don't think --

10 Q The 12th?

11 A I can't recall that one if I did. I
12 probably did work that Monday on Cypress Ridge.
13 And then the next day was -- I can't
14 remember.

15 Q Because if we look at your pay checks
16 for this report showing your payable, okay? You
17 see that you are paid sometimes, like for
18 example, on January 25th of 2018, January 14,
19 2018, you are paid \$800. January 25, 2018 you
20 are paid \$4,000. January 26, 2018 you are paid
21 \$1560.

22 You see that?

23 A Uh-huh.

24 Q That is what this reflects -- I am not
25 saying --



1 A Okay. Yup.

2 Q On January 27, 2018 there is a check
3 for \$2174.25.

4 On January 23, 2018 this record
5 indicates there was a check of \$5,000.

6 A Actually that \$5,000, I probably can
7 recall it, that is when they actually lend me
8 money with what I was going through with
9 expenses on my father and stuff like that.
10 Yeah.

11 Q So they basically gave you an advance
12 at that time?

13 A Yeah, or a borrow and I can pay it off
14 with time.

15 Q And when you say "they", you mean
16 Kenneth Scott Builders?

17 A Kenneth Scott Builders, yes, sir.

18 Q And then on March 15, 2018 you were
19 paid \$4,372.50.

20 Do you know what that payment was for?

21 A I don't, sir. It is probably the dates
22 that I did work with them. All I can tell on
23 those dates -- maybe there is no tickets on
24 there, but I did work pretty much. That is what
25 we were working on-site the end of those days.



1 Q And on March 15, 2018 you received
2 another check for \$2,235.

3 A I do not recall that one to be honest.
4 That is the same date, though.

5 Q Do you know why you would have had two
6 checks written on the same date two days after
7 the accident?

8 A No, sir.

9 Q All of these invoices that we went
10 through, except for the one's that you
11 identified that were not your handwriting, were
12 all the other one's your handwriting?

13 A It looks from my knowledge, yes, sir.

14 Q And I know some of these copies aren't
15 the best, they are what we have. Some of them
16 are cut off, but beside being cut off do they
17 appear to be true and accurate copies of all of
18 the invoices you provided to Kenneth Scott
19 Builders?

20 A Yes, sir.

21 Q We talked a lot about the work you did
22 on Cypress Ridge.

23 Do you need to take a call or make
24 another phone call or anything? It is 3:40. If
25 we need to take a quick break. The rest of



1 these -- that is the longest exhibit by far we
2 will be going through, okay?

3 All right. Do you recognize this map
4 here? This is Exhibit Number 29.

5 Are you familiar with the Bluffton
6 area?

7 A Yes, sir.

8 Q It is a little fuzzy blown in this
9 much, but do you see it says Highway 278?

10 A Yes, sir.

11 Q SR 170?

12 A Correct.

13 Q And this is SR 46?

14 A Is that 46?

15 Q If I back out, it will be easier to
16 see.

17 A Okay.

18 Q Right there?

19 A Okay.

20 Q Do you see that?

21 A I see the line, yes, sir.

22 Q You see this says May River?

23 A May River Road?

24 Q No, it just says May River.

25 Let me ask you this, what does this map



1 appear to be of? What does this map appear to
2 be?

3 A I don't know. I have never seen it
4 before.

5 It is like a diagram or something?

6 Q Are you familiar with maps? Do you
7 know how to read maps?

8 A Kind of.

9 Q Do you know where Highway 278 is in
10 Bluffton?

11 A Yes, sir.

12 Q Do you see it on this map?

13 A It is right over there.

14 Q Right here?

15 A Yes, sir.

16 Q And do you know where State Road 46 is
17 in Bluffton?

18 A May River Road?

19 Q May River Road?

20 A I don't think that map is accurate.

21 Well yeah, okay, yeah, that is where
22 the circle is right there in the corner, right,
23 and that is 46, that is May River right there.

24 But you are missing the road that cross
25 from Cypress Ridge -- I mean from Mill Creek all



1 the way down to 46.

2 Q Let us zoom in. Really I am just
3 saying -- you see this?

4 A Yes, sir, I see it.

5 Q Okay.

6 But is this where it says site, does
7 that appear to be the site of Cypress Ridge in
8 general?

9 Do you even know?

10 A No, not really.

11 Q Do you know where Cypress Ridge is on
12 the map?

13 A I do know.

14 Q Okay.

15 If I back it out, does that help?

16 A Like I say you are missing roads in
17 there.

18 Q I am just asking, though, even though
19 it is missing --

20 A I am saying okay, that is where the
21 corner of that circle is, that will be Cypress
22 Ridge from there. Well, not actually now it is
23 some type of retirement place, right?

24 Q I am asking at the time in 2016, 2017
25 and 2018.



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1 A Yeah.

2 Q I don't want to make this a difficult
3 exhibit.

4 A Okay.

5 Q I thought this would be easy to point
6 out where Cypress Ridge is.

7 A Okay.

8 Q Does that appear to be the site?

9 A I wouldn't know the distances then, how
10 big it is.

11 Q Right.

12 A But that is kind of where it would be
13 located.

14 Q Okay, that is all I am asking. And I
15 don't want to make it --

16 A Okay.

17 Q I am not trying to trick you into
18 anything I promise.

19 A No, no, I am just trying to be clear.

20 Q And then this is blown up a little bit
21 more, okay?

22 You were describing the two entrances
23 to Cypress Ridge?

24 A Yes, sir.

25 Q Can you tell what this is here?



1 A Yes. Now you got Gibbet Road, that is
2 the road I was talking about. That is Mill
3 Creek, and this would be right here the Cypress
4 Ridge Road right here.

5 Q You can stand up and show us.

6 A This is where the light is at the
7 moment. This is your Gibbet Road that connects
8 you down to 46, and this will be the entrance
9 for Cypress Ridge at the moment.

10 This, I imagine, this is the lake, and
11 this is a little lake. So if you are there now
12 you can go this way. This is the area we worked
13 on. None of this was done. None of this was
14 made. Nothing. It was empty. So we started
15 working on this site first, and right here that
16 is where the -- or somewhere right here, that is
17 where the clubhouse is or whatever. And down
18 this way is the RV boat or whatever, storage
19 units, whatever you want to call it.

20 Q And for the record, you are first
21 pointing out the area where it looks like kind
22 of a dense area or there is townhouses, and it
23 says phase 7, correct?

24 A I don't by name what it is called, but
25 this is exactly where we bring the dirt from



1 this site to this site.

2 Q So when you are loading bad dirt into
3 good dirt, where were you loading -- excuse me,
4 good dirt into the bad area --

5 A The bad dirt would have come from here
6 and bring it back this way. And then the good
7 dirt would come from here, there. So it was
8 actually covering -- not bad dirt, but it wasn't
9 code dirt I guess.

10 Q And the clubhouse you are discussing,
11 was that built at the time?

12 A No, they actually built it during when
13 I was there.

14 Q And when you say "they", do you know
15 who built it?

16 A I believe Kenneth Scott Builders built
17 it. That is all I deal with. I never --

18 Q Okay.

19 A Yeah.

20 Q You can sit back down.

21 Do they actually build the building?

22 A That is something I wouldn't know, sir.

23 Q But while you are working there, did
24 the building go up?

25 A My God, I cannot recall that one



1 exactly. But some of that stuff yes was going
2 up, yeah.

3 I never got to see it all the way to
4 when it was finished until now when I pass by
5 and see it sometimes.

6 Q But you worked in this, I am using my
7 cursor, it says RV boat in the bottom?

8 A Yes.

9 Q And in this area, that is what you are
10 calling the clubhouse and you worked on that
11 pad?

12 A Yes, sir.

13 Q And here is an another picture, this is
14 the area that you said you are loading the good
15 dirt into, is that correct?

16 A Yes, sir.

17 Q All right. That is Exhibit Number 29.

18 I will close that out.

19 Exhibit Number 30, this is Google maps. This is
20 an exhibit that I printed out. Google maps
21 direction from Downtown Deli to Cypress Ridge,
22 okay?

23 A Okay.

24 Q Was that the route you were taking that
25 day?



1 A Pritchard Road Circle, yes.

2 Q Why don't you stand up and show us
3 where was the dirt loaded on that map in your
4 truck on the day you took it to 1223 May River
5 Road?

6 A Oh, bring it -- so this will be Cypress
7 Ridge, right? So you will be on the side of the
8 right-hand side. So if you are coming in, it
9 will be on your right-hand side.

10 Q Okay.

11 I can go back to this other exhibit.
12 It might be a little bit easier to see.

13 A This site right here.

14 Q And that was the area that your truck
15 was loaded that day?

16 A Yes, sir.

17 Q And then you brought that to 1223 May
18 River Road.

19 You testified earlier that was your
20 second load that you had taken there that day?

21 A I can't recall if it was my second or
22 first one, but I know it was two going there.

23 Q You knew you had to take two loads that
24 day?

25 A (Nods).



1 Q And you don't know whether it was your
2 second or your first?

3 A No, I wouldn't know that.

4 Q So you took this route, and then you
5 took a right from 1223 May River Road, and you
6 were headed back toward Cypress Ridge at the
7 time of the accident, correct?

8 A Correct.

9 Q And can you show on this map, do you
10 have any idea approximately where the accident
11 happened?

12 A No, not really.

13 Can you Zoom it in?

14 Q Yes, I can.

15 A Oh, yeah, well, I am guiding myself by
16 the Buckwalter.

17 Q I can move it for you. One second.

18 A This will be Buckwalter. So I will say
19 somewhere between this right there.

20 Q Somewhere right here?

21 A Yes, somewhere right there.

22 Q All right, thanks. I am going back to
23 the Google Maps. I also just some Google
24 searches. Can you recognize where this is by
25 chance?



1 A Yes. That is the Cypress Ridge, sir.

2 Q And is this the area where the dirt was
3 loaded in your truck that day?

4 A That is correct. You are facing the
5 right-hand side. So the back of you will be the
6 clubhouse.

7 Q And this is Exhibit Number 30.

8 And then if we go back, and what is --
9 what do you see here?

10 A That is -- I don't know what they call
11 it. I call it a clubhouse, but that is the one
12 that I was talking about.

13 Q And are these the pads that you -- part
14 of your work was -- sorry, let me finish real
15 quick. I know it has been a long day.

16 Some of these pads are the ones that
17 you helped build?

18 A Yes, sir.

19 Q And did you help build the pads for
20 this actual clubhouse?

21 A I did.

22 Q And how do you get to the RV lot from
23 here?

24 A You go straight that road.

25 Q And with the RV lot, did you all do



1 work on the RV lot as well?

2 A Yes, sir.

3 Q Was that sign there when you were doing
4 the work?

5 A I never saw that sign.

6 Or maybe didn't pay attention, but I
7 don't recall it.

8 Q And what do you see here?

9 A Right there -- where do you go?

10 Q Maybe I could do this.

11 A Okay, you turn.

12 Q Yes.

13 A Okay, cool, yes. There is a lake right
14 there. To your right-hand side there is a
15 bigger lake on there and then you go across the
16 houses, the new houses that they built.

17 Q Where was the hole that you were
18 hauling into?

19 A We hauled pretty much through
20 everything in here. There was new dirt coming
21 in. All of this had to get new dirt. To my
22 knowledge there was a hole right here, somewhere
23 right here, this house pads, they had a hole.
24 And what I heard was whoever did it first they
25 did it with bad dirt, and they covered it up.



1 And then they find out that it had to be dig
2 back out. So that is what happens. That is
3 what I heard. I am not positive, sure of that.

4 Q And here is another Google Map image,
5 and this one is just an overlay.

6 Is this where -- I am going to zoom in
7 on it a little bit for you.

8 Is this where you were working here on
9 the pads?

10 A Yes, sir.

11 Q And then is this the RV park right
12 here?

13 A That is correct.

14 Q And you see this Bluffton Division
15 office by D.R. Horton right here?

16 A Which one, sir?

17 Q You see that dot?

18 A Okay.

19 Well, that is not a clubhouse?

20 Q I am not going to tell you one way or
21 the other. I am just asking if you see that.

22 A Oh, I see it.

23 Q And this is a little bit closer in.

24 So you turn into Cypress Ridge here.

25 To the right is where the lots were. Down here



1 is where the RV lot is.

2 A Correct.

3 Q This is the area where you are building
4 out what you call the clubhouse, correct?

5 A Correct.

6 Q And you are hauling bad dirt -- good --
7 you are hauling --

8 A They dig -- what they did, they dig
9 where you see the pad right there, where you see
10 the clear stuff, the white little mark right
11 there where you say the RV park is, all of that
12 was dugged out.

13 Q Where was the dirt that would come
14 off-site from D.R. Horton? Where would that
15 come from?

16 A I mean that was a whole process. I
17 don't know to be honest. I mean it will come
18 out from both sides.

19 Q Both sides?

20 A Both sides, yeah. But there is a
21 difference, because on this site they had a
22 bunch of top soil, what they call top soil, dirt
23 that you use for your grass and stuff and
24 plants. And the other one sometimes they have
25 good dirt and everything, so I don't know. And



1 good dirt will come out of there too.

2 Q So would you haul off dirt from this
3 area that was dug out from this area?

4 A Yeah, yeah.

5 Q When I say this area, I am pointing my
6 cursor over the RV park?

7 A Yes, sir.

8 Q And just to be clear, this image is
9 Exhibit 32. The previous one was 31.

10 This is a closer in image of the RV
11 park.

12 Do you see that?

13 A Yes, sir.

14 Q This was all work you did with Kenneth
15 Scott Builders as far as the grading and dirt
16 moving and hauling on the site, is that correct?

17 A That is correct.

18 Q And this is the area where some of the
19 dirt would be hauled out off-site from Cypress
20 Ridge right here?

21 A Yes, sir.

22 Q And my cursor, just for the record, is
23 going over the RV park area.

24 Have you ever been asked this -- I ask
25 this of everyone, so please don't take offense



1 of this.

2 Have you ever been charged of a crime
3 other than a traffic offense?

4 A I did back when I was young.

5 Q What happened?

6 A I was in school, and it was a minor
7 offense. Some friends of mine, they had like a
8 piece of metal in their hand. They started
9 hitting -- they started hitting the soccer, the
10 metal, the soccer goalie. And they were hitting
11 it. So I went and asked. I said, what do you
12 got? Because it sound like bang, bang. And so
13 he showed me and he hand it to me. So when he
14 hand it to me we started walking and looking at
15 it.

16 So I guess the people from the school
17 saw what happened, and they are like what did
18 they have. And when they came and found out,
19 oh, this is brass knuckles and this and that.
20 So I did get arrested for that.

21 Q What happened with that?

22 A Oh nothing. I went to Court and they
23 did it to me because I was already 17, so they
24 treat me as an adult.

25 So after I got out I went in and joined



1 the program, and then I went back to the school.

2 Q So they did like a pre-trial
3 intervention program?

4 A No, no, no.

5 Actually they got mad because they did
6 do that to me so --

7 Q Yeah.

8 A Yeah, and there was a lawyer involved
9 in that.

10 Q We previously have your DMV record, and
11 yesterday I went through the public index and
12 pulled your name in Jasper and Beaufort County
13 and just to see if it was missing anything.

14 So I want to go through some of these
15 public charges and this is nolle prosequi is
16 what we call nolle prosequi, which means that they
17 dismissed it, okay?

18 A Yeah, and that is what is called the
19 bottom: Carrying weapons on school property.

20 Q And the arrest date was 8/28/2003, so
21 that was really early in the school year?

22 A Yes, sir. So they put it as that. But
23 in reality it was a piece of metal. They call
24 it brass knuckles and they just put it there,
25 and we put a lawyer. And actually I went back



1 to school after that.

2 Q Okay.

3 Next is a traffic. It says forfeiture
4 of criminal traffic.

5 Do you know what forfeiture means?

6 A No, sir.

7 Q And it says: Speeding 10 miles an hour
8 or less over the speed limit.

9 This is from January 25, 2007.

10 Do you remember this ticket?

11 A I do not, sir.

12 Q Do you remember being charged with
13 speeding more than 25 miles an hour over the
14 speed limit?

15 A No.

16 Q And do you remember being convicted of
17 speeding 10 miles an hour or less over the speed
18 limit?

19 A What do you mean convicted by?

20 Q When it says forfeiture of criminal
21 traffic what it means, if you are asking me the
22 question, it means that there was a no show at
23 Court, and the Court forfeited your bond, and it
24 came in as a conviction.

25 A What?



1 Q Yes. So you will see this is a common
2 theme, okay?

3 A I never heard of that one.

4 Q So this is your name, correct?

5 A That is correct.

6 Q So that is January 25, 2007, and then
7 October 1, 2008, Beaufort Magistrate's Court.

8 This is you, correct?

9 A Yes.

10 Q And this is traffic, operating or
11 permitting operation of vehicle which is not
12 registered and licensed.

13 Do you remember this charge?

14 A I remember that one.

15 Q And again forfeiture criminal traffic
16 which means --

17 A Yeah, because I didn't have no -- at
18 that moment my residency wasn't legal, so I
19 didn't have no paperwork with the United States,
20 like meaning legal status.

21 Q Okay.

22 A I guess that is what they mean by that.

23 Q Okay.

24 Well, the vehicle was not registered or
25 licensed, okay?



1 A Okay.

2 Q That is what the charge was.

3 Not operating without a license?

4 A Okay.

5 Q It was operating a vehicle which didn't
6 have a license?

7 A Operating a vehicle that didn't have a
8 license.

9 Q And then we go to October 9, 2008, the
10 same thing. Arrest date is 10/4/2008. This is
11 in Ridgeland?

12 A Yes, sir.

13 Q So this is a day separate or about a
14 week separated, not a good week for you. And
15 this is in Ridgeland, so it is in a separate
16 jurisdiction and there is another charge,
17 traffic, 25 miles an hour above the speed limit.
18 And then you ended up with a conviction of
19 25 miles an hour above the speed limit. And
20 then a forfeiture again, which means you didn't
21 show up for Court.

22 A Okay.

23 Q Do you remember that?

24 A No.

25 Q Do you remember getting that ticket in



1 Ridgeland in 2008?

2 A I do not, sir.

3 Q In 2011 here is a speeding 10 miles or
4 less over the speed limit, and then the
5 disposition date is 01/2011.

6 This is you, correct?

7 A Yes, sir.

8 Q It is called TIA, guilty, bench trial,
9 which means you didn't appear for Court. Fine
10 only. So there is another instance where you
11 did not appear for Court.

12 Do you see that?

13 A Okay, yeah.

14 Q And that was 2011. The file date was
15 February 22, 2011. The disposition date was
16 March 3, 2011.

17 Here is one that is another speeding
18 ticket, traffic 10 miles or less over the speed
19 limit. The file date is September 16, 2014.
20 Disposition date is October 2, 2014, and again
21 forfeiture of criminal traffic. Didn't show up
22 for Court.

23 Do you see that? Do you remember
24 getting that ticket?

25 A Yes, sir. I think I do with that one.



1 Q And do you remember speeding that day?

2 A I do not.

3 Q And the next one is March 3, 2015 was
4 the file date. The arrest date is January 7,
5 2015.

6 And this is a violation of EPS Safety
7 Rules, beginner's permit.

8 And this is your name?

9 A Yes.

10 Q Do you know what this was about?

11 A Oh, that is when I started getting my
12 CDL and I drove a truck, and they actually
13 stopped me and it was just that.

14 Q So you had your CDL at the time --

15 A A permit.

16 Q -- But you didn't have a qualified --
17 the permit?

18 A The permit. And you can actually drive
19 it, but there has to be somebody with a CDL on
20 you. It was right then on Okatie I believe so.

21 Q Who were you working for at that time?

22 A I was not working. Somebody just said
23 oh, drive it through on the parking and it was
24 like he saw me ride in the parking lot.

25 Q So this involves you driving a



1 commercial truck with a permit --

2 A I think so.

3 Q -- But a violation without having a
4 qualified driver with you?

5 A Okay, yes, sir.

6 Q And it says you pled guilty, is that
7 correct?

8 A Well, I did I mean.

9 Q Yeah.

10 And that was on April 14, 2015?

11 A I can't recall exactly the day, but
12 yeah probably.

13 Yes.

14 Q And this is Judge Badgett.

15 So this is actually also in Jasper
16 County.

17 Do you remember where they pulled you?

18 A It was right there on -- I don't know
19 the address, but it is the back road of Walmart.

20 Q Near Hardeeville?

21 A Parking lot, no.

22 Oh yeah, Hardeeville, yes, I am sorry.

23 The parking lot where Napa is. I don't know the
24 address to be honest, but that is what it was.

25 Q Next we have another speeding ticket.



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1 This date is August 31, 2015, and it was another
2 forfeiture which is on December 22, 2015, which
3 appears that you didn't show up for Court.

4 Do you remember getting this speeding
5 ticket in August of 2015?

6 A I do not.

7 But when it says that let me ask you,
8 does that mean -- but when the cops say you pay
9 for it you don't have to show up to Court or --

10 Q All I can say if the cop -- if it says
11 that you pay for it and you don't show up for
12 Court and that means you are going to have it on
13 your record.

14 A So that is pretty much what it is
15 saying.

16 I didn't know.

17 Q So next is another traffic speeding
18 10 miles or less over the speed limit. This
19 date is September 1, 2016. Disposition judge
20 was Judge Finger. This is in -- do you remember
21 in September 29th of 2016 being convicted of
22 speeding?

23 A No, sir, I do not.

24 Q Do you remember getting the ticket in
25 September of 2016?



1 A Probably. Yes, sir, probably I did.

2 Q Is this around the time you started
3 working for Kenneth Scott Builders?

4 A I can't recall that, sir, to be honest.
5 I don't know if it was in a regular car or a --
6 I can't recall that one.

7 Q This is February 7, 2017. It says
8 operating or permitting operation of a vehicle
9 which is not registered and licensed. The
10 disposition was March 9, 2017.

11 Do you remember this incident?

12 A No, sir.

13 Q Do you remember receiving a ticket? It
14 was in Beaufort Magistrate's Court?

15 A Beaufort?

16 Q It could have been in the Town of
17 Bluffton. It could have been the Bluffton
18 Magistrate Court, but Beaufort County --

19 A Yeah, I do remember. But they don't --
20 they didn't give me no ticket. They gave me
21 like a warning or something, and then you go and
22 pay for it was for the -- it for the car, like
23 no registration and you go pay for it and they
24 take it off.

25 Q Was that for your car --



1 A Yeah, car.

2 Q -- Or was it for your commercial truck?

3 A No, no, it was for personal car.

4 Q So that was February 9, 2017?

5 A Yes, sir. Yes, sir.

6 Q Did you tell Kenneth Scott Builders
7 about this?

8 A No, no.

9 Q Did he ever ask you if you had any
10 speeding tickets?

11 A No, we never had that type of
12 conversations.

13 Q Here is another one. This is a
14 seatbelt violation. This is from March 3, 2017.

15 Do you remember receiving a seatbelt
16 violation?

17 A Probably I did.

18 Q Do you remember whether you were
19 driving a commercial truck?

20 A No, it was in a regular car. '17,
21 yeah.

22 Q And then this is six days later,
23 another seatbelt violation. This happened in
24 March 9, 2017.

25 Do you remember that?



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1 A If I wear my seatbelt? No, sir. If it
2 is there, it is there, but I do not recall it.

3 Q Was this in your commercial vehicle
4 or --

5 A No more likely all of this one's from
6 being in the regular car.

7 Q And then this is the actual incident
8 date, March 13, 2018, traffic uninsured motor
9 vehicle, fee violation.

10 Do you remember receiving this ticket
11 after the accident?

12 A I probably did. I have paperwork on
13 it.

14 Q Right. Again, it is a forfeiture
15 indicating you didn't show up or you paid it
16 on-line?

17 A Probably, yes.

18 Q And then the same here, which is --
19 this is your left center, failure to maintain
20 lane charge?

21 A Okay.

22 Q So that is it before the incident date.
23 After the incident date there are a few
24 more, okay?

25 A Yeah.



1 Q On February 9th of 2018 you have a
2 miscellaneous size, weight, and load violations,
3 Title 56, chapter 5. This is out of Jasper
4 County.

5 Are you still driving a commercial
6 truck?

7 A I used to. Not at the moment, yeah.
8 Now I am doing other type of work.

9 Q But back in April?

10 A Yeah, I did. I tried, yes.

11 Q That was back in February of 2019 you
12 were?

13 A I am sorry?

14 Q In February of 2019 you were still
15 driving a commercial truck?

16 A Yes, sir.

17 Q What is this load violation? What is
18 this violation?

19 A Sometimes when you go get loaded, they
20 don't have scales. And they give you a warning
21 for -- like the DOT stops you. They weigh in
22 your truck, and if you are over for whatever
23 they say, yeah, then they give you a ticket;
24 which that can be either take it back to the
25 company that you work for, and they arrange



1 that, you know. But I didn't know it comes out.

2 Q And this is another from more recent --

3 A No.

4 Q -- October 2021. Do you remember this
5 charge, it is operating or permitting operation
6 of a vehicle which is not registered and
7 licensed?

8 A It is the same thing, registration.

9 Q What vehicle was this relating to?

10 A Probably the personal car.

11 Q And this was in Jasper County.

12 Do you see that?

13 A Yes, sir.

14 Q Do you remember getting charged with
15 that?

16 A I do not remember.

17 Q And then 2022, another seatbelt
18 violation?

19 A Oh man.

20 Q Disposition date of August 2022, do you
21 see that?

22 A Yes, I see it.

23 Q Do you have any other traffic offenses
24 that you know of that I didn't just go over?

25 A There is probably another one of



1 registration, but besides that I don't have any
2 other.

3 Q When was that and where was that?

4 A I can't recall it at the moment. It
5 has been a while.

6 Q Exhibit Number 34, you talked about
7 your truck a little bit earlier, and this was a
8 request made by a previous attorney from
9 Mr. McGilton asking for information about your
10 truck.

11 Do you remember your truck being a
12 1986?

13 A Yes, sir.

14 Q And do you remember, what did you have
15 to do with that truck to get the decals renewed?

16 A Just go and pay the fees and just go to
17 DMV and get your stuff.

18 Q Do you remember now whether you
19 purchased the truck in Camden, South Carolina?

20 A I think so, yeah. It was like
21 2-1/2 hours or 2.

22 Q Do you remember whether you purchased
23 it for \$3,500?

24 A No.

25 Q It was \$14,000?



1 A Yes. Close to 14, 15, yes, sir.

2 Q Okay.

3 Why would it show sale price of \$3500
4 on your purchase date of June 13, 2013?

5 A I don't know.

6 Q Did you meet the previous owner?

7 A What do you mean by meet? Like know
8 him?

9 Q Yeah, how did you get in touch with
10 him?

11 A Somebody told me about him that they
12 were selling a truck, so I called him and we
13 talk and like any other regular sale goes.

14 Q Did you have the truck inspected before
15 you purchased it?

16 A Not really.

17 Q Did you bring it to a mechanic?

18 A No, sir.

19 Q Did you personally inspect it?

20 A I did. You know, it was running, yeah.
21 I didn't check overall like.

22 Q Did you have a commercial license on
23 June 13, 2013?

24 A I think I did. I am not sure.

25 Q Did you drive it back to Bluffton?



1 A I had somebody drive it.

2 Q You say insurance certification, you
3 certified the insurance would have insurance
4 with National General.

5 Do you see that?

6 A Yes, sir, I see that.

7 Q Did you always keep your insurance with
8 National General?

9 A I think I did. National General.
10 Then it was Progressive or something
11 like that.

12 Q When did you have Progressive
13 Insurance?

14 A When I did? I don't know. But more
15 likely at that time it was the National General.
16 I can't recall dates or things, you know.

17 Q I am going to skip up to Exhibit 38. I
18 got this out of sequence.

19 We sent a Subpoena to National General
20 to get your insurance information.

21 A Uh-huh.

22 Q And you can see we asked for all copies
23 of your insurance from January 1, 2012
24 through December 31, 2019.

25 What they produced is a cancellation



1 document, which I am scrolling down to; and we
2 shared this with opposing Counsel last week when
3 we got it?

4 This states that your insurance was
5 canceled for nonpayment.

6 You see this?

7 A Okay.

8 Q On April 17, 2017 do you remember
9 receiving notice that your insurance was being
10 canceled?

11 A I do not, sir.

12 Q Did you obtain any insurance on the
13 vehicle after April 17th of 2017?

14 A I had an agency from -- it was from
15 Charleston. The guy named Key was the -- a guy
16 named Key. He was supposed to be like the
17 manager of the type of insurance, and I forgot
18 what was it called to be honest.

19 But it was in Charleston. Everybody
20 had it kind of around here, the area, in
21 Bluffton everybody got it.

22 Q Who gave you Key's name?

23 A I got it from right there from mouth to
24 mouth from guys that had trucks. But I forgot
25 what was the name. Then one day I got pulled



1 over by DOT, and when they requested your
2 license and your registration, I gave it to them
3 and your insurance. And the truck popped out
4 that it was not insured. And I say yes, and
5 they call it in.

6 And so that is why there are a bunch of
7 mixed in stuff, I guess, because I called the
8 office and I said hey, this truck is not
9 registered with you guys. Oh, yes, we are. And
10 what they did I guess is they just went and
11 changed numbers and send it to the Officer.

12 Q Do you have any proof that you had
13 insurance after April 17th, 2017?

14 A I probably do. If not, I have to look
15 into it.

16 Q You understand you were not insured at
17 the time of the accident?

18 A Yes, I understand it.

19 Q When did you lose your insurance before
20 the accident?

21 A I can't remember that.

22 Q What insurance company did you use to
23 have insurance after April 17th of 2017?

24 A I can't recall it, sir. The name or
25 you know.



1 Q Is it possible that you just didn't
2 have any insurance after April 17, 2017?

3 A No, no. It was -- no, we had, we had
4 insurance. I don't know how long before that
5 happened, the accident happened that it was
6 canceled. But after that it was insured.

7 Q What led to it being canceled then? If
8 you got new insurance after this, after this --

9 A I don't know what led to --

10 Q Let me finish. If you had new
11 insurance after April 17, 2017, what led to that
12 insurance being canceled?

13 A Probably the lack of money and
14 circumstances that we were going through.

15 Q What do you mean by that?

16 A My father had cancer.

17 A bunch of little things that we didn't
18 have the help to -- you know, sometimes people
19 ask.

20 Q So you just didn't have the money to
21 pay the premium?

22 A Probably, yes, sir.

23 Q And but you don't know the name of the
24 insurance company?

25 A I do not.



1 Q -- you obtained insurance with after
2 this?

3 A I do not.

4 Q And did you have any other trucks at
5 the time?

6 A No, no.

7 Q Sitting here today do you have any
8 proof that you had any insurance on that vehicle
9 after --

10 A At the moment I don't.

11 Q I am sorry, after April 17, 2017?

12 A Not at the moment I don't. I didn't
13 even look into it to be honest.

14 But I can probably call it in or
15 something to research it.

16 Q What is your understanding of the
17 insurance requirements as a commercial vehicle
18 operator in South Carolina?

19 A What do you mean by that?

20 Q What insurance are you supposed to have
21 driving a dump truck?

22 A Like I say, I was a newbie and I didn't
23 know what type of insurance you need. I was new
24 on everything. So through the time I understand
25 you have to have your liability and your



1 Workers' Comp and all of that.

2 But I didn't know exactly up to what
3 certain amount or anything, yeah.

4 Q You said you were a newbie?

5 A Like I mean I didn't know exactly how
6 to handle that or what type of paperwork, you
7 know.

8 Q Did anybody else -- were you the only
9 person in your company?

10 A Yes.

11 Q Did anyone else help you with your
12 company?

13 A No. I wish.

14 Q If we go to Exhibit Number 35. We
15 searched the Secretary of State's office, your
16 name as registered agent. I found three items.
17 One is Genesis and J Hauling, LLC. It was
18 incorporated March 20, 2018.

19 A Uh-huh.

20 Q That is seven days after the accident.

21 A I was trying to see if I could and I
22 didn't have the truck, and I thought it was
23 fixable; but it isn't.

24 Q Did you haul any under Genesis and J
25 Hauling, LLC?



1 A We managed to buy another truck
2 afterwards and I did.

3 Q And who did you work for?

4 A Who did I work for during the time?
5 Just personal, regular people that need sand and
6 dirt to fill lots and stuff.

7 Q Did you work for Ken Tosky any more?

8 A No, I didn't.

9 Q Didn't you work back on Cypress Ridge
10 at least once or twice after you got Genesis and
11 J Hauling?

12 A After the accident?

13 Q After the accident.

14 A I do not believe so.

15 Q What is Uriostegui, is that right? I
16 am sorry.

17 A Yes Uriostegui.

18 Q Uriostegui Trucking, LLC?

19 What is that?

20 A It was me trying to open it, but I
21 never actually open it just. Trying to see if I
22 could open it.

23 Q Why when you had Jacob AU Trucking,
24 LLC?

25 A Because I thought it was done.



1 It was like I had nothing going on.
2 And I said let me try and see if I can redo
3 another one.

4 Q But that was incorporated in
5 February 15, 2018.

6 A Yeah.

7 Q The accident wasn't until March 13th of
8 2018.

9 Why --

10 A I don't know.

11 Q Why did you open that company in
12 February 15, 2018?

13 A Oh, the date? Oh, I don't know. I
14 can't recall that, but that one was never
15 operating. 2015? 215 -- huh?

16 Q How long did you haul with Genesis and
17 J Hauling, LLC?

18 A I did for like two or three years.

19 Q You said you bought another truck?

20 A Yes.

21 Q Were you just able to buy another truck
22 and keep your license after the accident?

23 A No, I was not able to keep my license.
24 I had to pay fees and stuff like that, and I
25 actually went to the DMV and they gave me my



1 license.

2 Q This is material we received about
3 Jacob AU Trucking, LLC from the Secretary of
4 State's office very recently.

5 A Yes, sir.

6 Q It says 44 Brendan Lane. It says you
7 are the agent of service and you are the
8 organizer, Alfredo Uriostegui.

9 A Uh-huh.

10 Q Do you know what an organizer means in
11 a company?

12 What it means to be an organizer?

13 A It means to have everything organized
14 or everything with paperwork I guess.

15 Q Do you know whether this LLC was member
16 managed or manager managed?

17 A I am sorry, what?

18 Q Do you know whether the LLC was member
19 managed or manager managed?

20 A I don't know what that is.

21 Q How is your LLC structured? Do you
22 have any Officers?

23 A No, I don't.

24 Q Do you have any members other than
25 yourself?



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1 A Yeah. No, I don't. It was only me.

2 Q And this is Jacob AU Trucking, LLC I am
3 talking about specifically.

4 Have you ever had a members' meeting?

5 A No, sir.

6 Q Do you have an Operating Agreement?

7 A No, sir.

8 Q Do you know what an Operating Agreement
9 is?

10 A No.

11 Q Do you keep corporate minutes of any
12 sort?

13 A No, sir.

14 Q Have you ever had a resolution of any
15 type regarding Jacob AU Trucking, LLC? A
16 corporate resolution?

17 A No, sir. When I did that, I opened
18 that, it was just working for Kenneth Scott
19 Builders and see how things were going and that
20 was about it. I was learning through the
21 process too. So I didn't have nothing, no
22 structure or anything like that.

23 Q Walk me through that a little bit.

24 When you are working that --

25 A When I got the truck I started working



1 and just going as it goes. Like all this,
2 whatever you are saying organizer and things
3 like that, I was just managing myself, you know,
4 trying to survive and trying to provide; but I
5 didn't have all of that.

6 Q Who told you to -- did anyone tell you
7 to make a company for yourself?

8 A No, just me thinking about it, doing
9 something.

10 Q Why did you create a company?

11 A I guess the hunger or trying to be --
12 or do something different.

13 Q And why didn't you just operate in your
14 own personal name?

15 A Why I didn't?

16 Q Correct.

17 A Oh, I don't know. Because when I went
18 and tried to open that I see everybody doing
19 LLC's or incorporate. I didn't know exactly
20 what the deal was.

21 Q Did you have a corporate bank account?

22 A I did at one point.

23 An LLC account or what do you mean?

24 Q Did you have an account in the name of
25 the LLC?



1 A I did at one point, yeah.

2 Q You say at one point. What happened to
3 it?

4 A I can't recall it. I don't know.
5 Maybe I just let it loose or let it get lost.

6 Q When you received your paychecks from
7 Kenneth Scott Builders, where did you deposit
8 them? In your personal account?

9 A Like I said before I deposited some of
10 it, and some of it I would just cash them out.

11 Q Would you deposit in your personal or
12 your corporate account?

13 A No, you can't deposit them in my name.
14 It has to be under the Jacob.

15 Q And when you cashed them out, what did
16 you use that cash for?

17 A To provide for my family. My children.

18 Q Did you ever file any corporate tax
19 returns?

20 A I did. I did. I have, yes. Yes, sir.

21 Q Was the truck registered to the name of
22 the company?

23 A Yes, sir.

24 Q And did the company own anything other
25 than the truck?



1 A No, just the truck.

2 Q Did you have general liability
3 insurance at any time?

4 A Yes, I did.

5 Q And as well as vehicular insurance?

6 A Yes, yeah. At that point, yes.

7 Q So motor carrier insurance, that is the
8 same.

9 Did you have that with National General
10 as well?

11 A I think so. I believe so.

12 Q Do you know what a member meeting is?

13 A A member, no, sir.

14 Q Do you know what a corporate resolution
15 is?

16 A No, sir.

17 Q Do you recognize this location?

18 A Yes, that is Ramos's yard.

19 Q What is Ramos' yard? Is that Miguel
20 Ramos?

21 A Yes, sir.

22 Q Did you ever park your truck here?

23 A I did way back before I started working
24 with Ken.

25 Q This is Exhibit Number 36.



1 Before you started working with Ken,
2 when would you park your truck here?

3 A Anywhere right there on the side or --
4 where it was paved.

5 Q Would Mr. Ramos charge you for parking
6 your truck there?

7 A Yes.

8 Q How much did he charge?

9 A I can't recall it. But it was like 80,
10 \$90.

11 Q When you were working with Ken, did you
12 ever keep your truck anywhere but Cypress Ridge?

13 A What do you mean?

14 Q Did you keep your truck anywhere other
15 than Cypress Ridge?

16 A Oh, no, it was over there because that
17 was the main --

18 Q I don't mean to be rude, but let me
19 finish the question. I think you answered the
20 question, but I want to make sure the question
21 is clear.

22 Did you ever keep your truck while you
23 were working in Cypress Ridge anywhere other
24 than Cypress Ridge?

25 A Oh no, sir.



1 Q So you kept it there overnight every
2 night?

3 A Yes, there was nothing out there and
4 all the equipment would have stayed there too.

5 Q And you worked on your truck there,
6 correct?

7 A Yes, sir.

8 Q Did you ever bring your truck to Ramos
9 to work on?

10 A No, sir.

11 Q Where did you get the tools to work on
12 your truck?

13 A I had a couple of tools of myself.

14 Q Did you keep them in the truck?

15 A I had a pickup, yes.

16 Q In your pickup truck?

17 A Yes.

18 Q Is your pickup truck registered to
19 yourself or to your company?

20 A It was registered to me.

21 Q And after the accident did your truck
22 end up back in this location?

23 A Yes, it did.

24 Q How so?

25 A Because when they were trying to pull



1 it or something, I didn't have no money or
2 anything. And they said well, you can sell
3 little parts like a bed and stuff like that. So
4 I did ask Ramos, I was like take it. I am
5 parked right here. And they are like okay, that
6 way you get some money out of it, but nothing
7 was working.

8 Q Did he charge you for keeping it there?

9 A No.

10 Q Did you ever share any of your profits
11 or any of your money with Ramos Trucking?

12 A No, sir.

13 Q Did you ever get kickbacks or referrals
14 from other truck drivers?

15 A No, sir.

16 Q And did you ever have any dispatch
17 system with Ramos Trucking?

18 A No.

19 Q Do you still know Miguel Ramos today?

20 A I still what?

21 Q Do you know Miguel Ramos today?

22 A Yes. Oh, yes.

23 Q Are you friends?

24 A Yes.

25 Q Do you all hang out together?



1 A No.

2 Q Do you get beers together?

3 A No, not like that. We don't hang out
4 like that, but I do if I see him I still say hi
5 to him, and he does says hi.

6 Q Are you involved in any way in his
7 operations?

8 A No.

9 Q Why did you stop working under Genesis?

10 A Genesis & J Hauling?

11 Q Yes.

12 A Because there is no money in it pretty
13 much.

14 Q And for the record, that was the Ramos
15 Trucking Google maps pictures, Exhibit No. 36.

16 What do you mean there is no money in
17 it?

18 A To me like there is no -- I mean to me
19 I can't do that. It is too much money to keep a
20 truck or things like that up working.

21 Q Is it costly to keep a truck working?

22 A Oh, yeah.

23 Q Is it costly to keep insurance on a
24 truck?

25 A A lot.



1 Q And you don't remember how much you
2 were paid by the hour by Mr. Tosky?

3 A It all depends from where he wanted me
4 to.

5 Q What is the range?

6 A It was from 30 to \$25. \$30.

7 Q How do you run a truck for \$25 an hour?

8 A Yeah. Don't ask me that.

9 So pretty much it was a lot of things
10 going on.

11 Q I mean seriously, how do you put gas in
12 a truck for \$25 an hour?

13 A I don't know. You know.

14 Q You can't take a truck to go shop for
15 \$25 an hour, can you?

16 A What, sir?

17 Q Can you get new tires on a truck when
18 you are getting \$25 an hour?

19 A No. Like I say it all depends on what
20 you are doing with it, you know. Yes, it was
21 pretty low. It was pretty -- yeah, I am not
22 going to -- it is what it is.

23 Q You didn't have a lot of -- did you
24 have many other options at the time?

25 A No, sir.



1 Q And how many kids did you have?

2 A At that moment I only had -- I only had
3 one. Actually my little girl was born two -- a
4 month and a half before the accident.

5 Q So you had two kids?

6 A Two kids at the moment of the accident.

7 Q And those were both with not your wife?

8 A Not my wife, no.

9 Q Was that Yannina?

10 A Yes, it was her.

11 Q And was that a tough relationship?

12 A Oh, yes. Yeah. Yeah. And then after
13 the incident and everything, I think that had
14 something to do with this with everything. All
15 the things that come with it, problems, stress,
16 all of it.

17 Q Did you ever cash out your insurance to
18 get money for any reason?

19 A No, no.

20 Q Or cancel it to get a refund?

21 A No, sir.

22 Q Did you feel like you were kind of
23 trapped in working for Kenneth Scott Builders?

24 MR. CONNER: Object to the form.

25 THE WITNESS: Oh, no, no.



1 BY MR. SHELTON:

2 Q This is Exhibit Number 37. Very
3 recently we just looked into some parcels and
4 tried to look for anything that you may have in
5 your name.

6 Who was Vania Uriostegui?

7 A That is my sister.

8 Q That is your sister?

9 A Yes.

10 Q You don't have any interest in this
11 house? This is a mobile home I believe.

12 Do you own this mobile home at all?

13 A No, nothing to do with it.

14 Q It just had your last name, so I wanted
15 to ask.

16 A No, there is a lot of people that have
17 my last name.

18 Q Now, this is a parcel at 44 Brendan
19 Lane that you are affiliated with.

20 And this has -- it has a trust.

21 Who is the Alfredo Reynoso Uriostegui,
22 Martha?

23 A No, Uriostegui, Alfredo, that was my
24 dad.

25 Uriostegui, Martha, that was my mother.



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1 That was their home.

2 Q That was their home?

3 A Yeah.

4 Q Who owns this home now?

5 A It is under my mother's I believe so.

6 Q So she still lives there?

7 A Yes.

8 Q It looks like it is a Habitat For
9 Humanity home?

10 A Yes.

11 Q So you don't have any financial
12 interest in that?

13 A Oh, no. That is not --

14 Q Now, Jasper County we searched and
15 there is this place 1056 Jenkins Avenue. I
16 actually thought you lived there.

17 A Yeah.

18 Q It is 13 acres on Highway 46.

19 Do you own this property?

20 A It is my in-laws' and my wife.

21 Q It is under your name?

22 A I don't know why it comes out like
23 that. But it does on the paperwork that they
24 have and they let us live, they lend my wife
25 about two acres. And they let us put a mobile



1 home, which is recently we are moving in in
2 there.

3 Q You are living there now?

4 A I just moved in possibly this past
5 weekend. I am still moving things in.

6 Q Do you know why it is owned under your
7 name?

8 A I don't know.

9 Q Is there a mortgage on this property?

10 A Oh, yeah. They still owe money on it.

11 Q Who do they owe money to?

12 A The seller, the guy that sell them.

13 Q Mr. Baggett?

14 A Yes, Mr. Baggett.

15 Q Do you know whether that mortgage is
16 recorded?

17 A Not to be honest.

18 Q Where do you live now?

19 A I lived on -- I was renting right there
20 on Pinecrest, 133 Pinecrest Circle. And then we
21 are moving, that is another house of my
22 in-law's.

23 Q I just click on a new map, this is
24 Exhibit Number 37 I am on, and there is a map
25 linking it that shows the GIS data.



1 Is this where it is?
2 A Yes.
3 Q What is this?
4 A That is land.
5 Q It looks white?
6 A That is dirt.
7 Q Sand?
8 A Right now where you are pointing a
9 little forward, that is where is the mobile home
10 now.
11 Q What is over here?
12 A It looks like dirt I guess piles of
13 dirt that was a lot that is now being cleared
14 out.
15 Q Okay.
16 A Yeah.
17 Q What is back here?
18 A Trees, water.
19 Q What is this?
20 A Dirt.
21 Q Why is it in your name?
22 A I don't know why it comes out. I guess
23 when I went and did the paperwork because I am
24 buying the mobile home. I applied for it and I
25 went and got the permits. I don't know why it



1 came up.

2 Q Is 4 Old Bridge Drive, is that --

3 A That was not my address. That is back
4 when the accident happened, yeah. And then from
5 that, 4 Old Bridge, I moved to 133 Pinecrest
6 Circle.

7 And now we are recently passing over to
8 Jenkins Avenue.

9 Q And I don't mean this in any
10 disrespectful way at all, I am just asking, is
11 it your in your name because you have a Social
12 Security Number or you have legal credentials?

13 A Probably will be something like that.

14 Q Okay.

15 A Yeah.

16 Q And do you know how much is owed on
17 that property?

18 A I don't, sir.

19 Q What are you doing today?

20 A Me?

21 Q Yes, for work?

22 A Oh.

23 Q When I say today obviously you are here
24 today.

25 A Oh man, I have got to eat.



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1 Q What are you doing for work in general?

2 A In general I help out with my in-laws.
3 He does carpet. He does carpet and flooring.
4 And I still got my CDL. Sometimes they call and
5 see if they request a driver for night work and
6 do whatever they ask for, whatever.

7 Q Who is "they"?

8 A Companies, regular guys that I know.

9 Q Like who?

10 A Some of them is called -- what is this
11 guy called -- it is called SLT Trucking. They
12 are from Hardeeville.

13 Q And any others? Any other trucking
14 companies you still get called on to work with
15 sometimes?

16 A No, that is pretty much it. From time
17 to time I do the extra night.

18 Q When you got the Genesis Trucking
19 Company, when did you buy that truck?

20 A Well, I didn't buy it because like
21 that, they lend it to me and I kept making
22 payments on it for the next two or three years
23 too.

24 Q And when did they --

25 A After the accident.



1 Q And who is "they"?

2 A It was a lady. I forgot her name. She
3 stayed on the island.

4 Q Is she affiliated at all with
5 Mr. Ramos?

6 A Not that I know of.

7 Q Did you have insurance on that truck?

8 A Yes. Oh, yeah.

9 Q Do you know when that insurance kicked
10 in?

11 A No, to be honest.

12 Q And why did you not just keep doing
13 business as Jacob AU Trucking?

14 A Because I didn't -- I thought I was
15 done. I thought I was in the hole. I couldn't
16 do anything more and then no opportunities came
17 by.

18 Q Would Genesis Trucking, who is the --
19 are you the member of Genesis Tucking?

20 A I was, yes.

21 Q And did you have any other vehicles --
22 you didn't have any other commercial vehicles
23 beside your truck at the time of the accident?

24 A Yes, sir.

25 Q And what work did you get with Genesis



1 Trucking directly after the accident?

2 A What work did I get?

3 Q Yeah, who were you working for?

4 A I was hauling like little bit of dirt
5 here and there for personal people that I know.
6 A bunch of Hispanic guys that they needed dirt.

7 MR. SHELTON: Those are all the
8 questions I have. I have one other
9 thing I might want to dig up and show
10 him after we are done very briefly, but
11 that is all I have right now.

12 MR. IMHOFF: Let us take a break.

13 MR. SHELTON: Yeah, let us take a
14 break.

15 (Whereupon, a break was
16 taken from 4:35 p.m.
17 to 5:53 p.m.)

18 CROSS-EXAMINATION

19 BY MR. IMHOFF:

20 Q Again, my name is Jason Imhoff. I
21 represent D.R. Horton. And I didn't know if you
22 know, there are actually two lawsuits going on
23 now.

24 A I didn't know.

25 Q One is in Beaufort County and one is in



1 Jasper County.

2 You didn't know that?

3 A No, sir.

4 Q So the one we are here for today is
5 actually in Jasper County where Mr. McGilton has
6 sued D.R. Horton and Lotty Trucking.

7 A Yes, sir.

8 Q I think that is your friend?

9 A Yes, I know Miguel.

10 Q Miguel, yeah.

11 So we are actually here for a case that
12 you are not in. I don't know if you know that
13 or not.

14 A Yeah.

15 Q But I might invite you to our case. So
16 if I send a Subpoena to you, we are going to try
17 this case in October.

18 A Okay.

19 Q And I may send a Subpoena to you to
20 come to that trial. And Mr. Shelton was asking
21 you earlier about you living on your in-laws'
22 land now and that kind of thing.

23 Is that where you are living?

24 A Yes, that is where I just moved in
25 last -- this past weekend. I am still moving



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1 in.

2 Q But if we have a trial in October and I
3 send you a trial Subpoena --

4 A Oh, you can't send it there. They are
5 there in 133, they live there. They will give
6 it to me. That is what they did recently.

7 Q Okay. All right, great.

8 Earlier this morning I told you before
9 we went on the record, early this morning you
10 testified about the day of the accident, where
11 you were going and that kind of stuff.

12 A Yes, sir.

13 Q I have a couple of questions about
14 that.

15 The morning of the accident did you
16 drive to Cypress Ridge in your pickup truck?

17 A I did, sir.

18 Q And so you don't recall if you had
19 dropped one load off or two loads off at 1223
20 May River Road, is that right?

21 A That day I do not recall that, sir.

22 Q I will represent to you that -- you
23 call him Ken, Ken Scott?

24 A I call him Mr. Ken.

25 Q Mr. Ken, okay.



1 A That is what I call him.

2 Q We took his deposition and he testified
3 that there was a load of dirt on site, and then
4 you dropped a second load of dirt.

5 And then he got a call from you that
6 you had been in an accident?

7 A Okay.

8 Q Do you disagree with his memory?

9 A I don't remember if it was dirt on
10 that. But then I did call. I guess I called
11 him, I was in shock. I was in shock probably.
12 But I did call him and I talked to him probably.
13 I probably did, because I was working with him.

14 And then at that time the only two
15 people that I would have had called it would be
16 my -- the mother of my children and it would
17 have been Mr. Ken Scott, yes.

18 Q But if Ken Scott says he dumped two
19 loads of dirt that morning.

20 A Okay.

21 Q Then that job was over for you that
22 day, is that right?

23 A No.

24 Q That job, 1223 May River Road?

25 A Oh, I don't know.



1 Q You don't know?

2 A I can't, no. I won't say anything that
3 I don't know.

4 Q And you don't know or remember if you
5 were headed back to Cypress Ridge to do more
6 work, or if you were headed back to Cypress
7 Ridge to get your pickup truck, is that right?

8 A I remember I was getting -- yeah, I was
9 going back to Cypress Ridge to either work or do
10 something. But I don't know exactly if I was
11 going to do some more work or that was it, to be
12 honest.

13 Q You don't know?

14 A No, I do not. I do not recall that.

15 Q And you went through all of those trip
16 ticks or whatever you want to call them with Mr.
17 Shelton this afternoon?

18 A That is correct.

19 Q And what I wrote down is that the last
20 time that your dump truck left Cypress Ridge was
21 February 23, 2018, before the date of the
22 accident with Mr. McGilton.

23 Does that sound right?

24 A The last ticket?

25 Q The last time you left the Cypress



1 Ridge site?

2 A The last time I left Cypress Ridge?

3 Okay, on the ticket that is what it says,
4 probably that is what happened.

5 Q And then you did some on-site hauling
6 at Cypress Ridge?

7 A That is correct.

8 Q In the pit?

9 A That is correct.

10 Q And then you went to Mexico for the
11 wedding?

12 A Yes, sir.

13 Q Right? And then you came back from
14 Mexico, right?

15 A Yes, sir.

16 Q And the first job you had was for
17 Kenneth Scott Builders' job at 1223 May River
18 Road, is that right?

19 A That is -- this is what I -- in this
20 because it is not on the ticket, but it was
21 actually a Tuesday. I actually I think I
22 presented myself on a Monday; and then that is
23 when that happened, the accident happened on a
24 Tuesday.

25 Q What did you do on the Monday?



1 A I don't want to say I did something
2 that I can recall, but if I did anything with
3 them it was right there on Cypress Ridge.

4 Q On Cypress Ridge?

5 A Yes, sir.

6 Q And would you have driven your dump
7 truck off of Cypress Ridge if Ken hadn't asked
8 you to?

9 A Yeah, I wouldn't.

10 Q You would not?

11 A No.

12 Q Okay.

13 And the reason that you went to 1223
14 May River Road is Ken asked you to go there with
15 full loads of dirt, right?

16 A That is correct, sir.

17 Q To build a pad, a building pad on that
18 site?

19 A Now that I see a building, because it
20 was not there at that time, now I believe it was
21 to make that pad. At the moment I didn't know
22 if it was going to be a pad or something to be
23 honest; but he did -- that is the main reason we
24 went there.

25 Q I got that a little bit today, you are



1 not even sure what they are doing when you are
2 hauling this stuff?

3 A Yeah, yeah, no, I mean I am a worker.
4 That is what I do.

5 Q They tell you to go get it?

6 A Yeah.

7 Q They tell you to move it or haul it,
8 you haul it, is that right?

9 A Yes, hire me.

10 Q Would you agree with me that Kenneth
11 Scott Builders was working on the pad or the
12 site of 1223 May River Road --

13 A Correct.

14 Q -- On the day of the accident?

15 A Correct.

16 Q And he asked you to go to that site
17 with dirt?

18 A That is correct.

19 Q To build something on that site?

20 A Correct.

21 Q And you don't remember why you were
22 going back to Cypress Ridge? It was to get your
23 pickup or do some more work or do some more work
24 on-site?

25 MR. SHELTON: Objection to the



1 form.

2 BY MR. IMHOFF:

3 Q Is that right?

4 A Oh, I was going yeah, to either pick up
5 more or work on Cypress Ridge, either one I was
6 doing. But I was working. It was early in the
7 morning. It was -- I never got off early like
8 that, but it was like around 11:00-ish if I am
9 not requesting it, around there.

10 Q Did Kenneth Scott Builders employ other
11 dump trucks?

12 A He had, yes. He had in the past, yes,
13 he did.

14 Q And I saw several names in there.

15 A Yes, sir.

16 Q Can you tell me some? Do you know the
17 other guys that he would employ?

18 A Oh man, not the guys' names but maybe
19 -- to be honest there was a bunch of -- because
20 I mean when I met him he already had somebody
21 working for him, different types of people. But
22 at the moment I can't recall somebody that
23 worked like me always trying to be there, you
24 know.

25 Q Yeah.



1 So I have --- let me give you a couple
2 of names.

3 A Maybe if you give me a name I will
4 remember.

5 Q Yeah, give me a second here.
6 Yami Trucking?

7 A Yami?

8 Q Y-a-m-i Trucking?

9 A Oh yes, that was there. They were
10 there at one point.

11 Q Who is that?

12 A Yami Trucking, and actually I think
13 they not even in the area anymore. But I knew
14 them. They were some Hispanic guys too.

15 Q Were they working on Cypress Ridge?

16 A I believe they used to bring dirt in to
17 and out. I don't know exactly what they were,
18 you know.

19 Q What about GHP Trucking, do you know
20 them?

21 A GHP?

22 Q Yes.

23 A That is not -- that doesn't sound --

24 Q That doesn't sound familiar?

25 A No.



1 Q What about Genesis and J Hauling, was
2 that your company?

3 A Yes, but I never work on that Cypress
4 Ridge after the accident.

5 Q What about before the accident?

6 A No, it was not on there.

7 Q When you were going hot and heavy, you
8 had a borrow pit over here and bringing it over
9 there, how many trucks were being used at that
10 time, if you know?

11 A While we were working on Cypress Ridge,
12 it was only used mine and their off road truck.

13 Q Okay.

14 A They had an off road truck, a yellow
15 one on-site too. And they used to -- not all
16 the time. They had the people to operate it
17 too; and I would jump on it too and ride it too.

18 Q But you said earlier there were other
19 dump trucks that work?

20 A Yeah. Oh whenever -- not on-site --
21 oh, on-site either there was -- there was this
22 G&J. G&J. G&J?

23 Q Maybe that is what it was, G&J?

24 A No, G&J. G&J. They were some green
25 trucks.



1 Q Did you say Greek?

2 A Green.

3 Q Oh, green, okay.

4 A No, not Greek.

5 Q Okay.

6 A Green trucks.

7 And but the people that you go there
8 before, like people that go there like sometimes
9 they wouldn't like stay. They would probably go
10 for one day or two days, that is what I was
11 trying to say.

12 And I was the one who would be there,
13 and besides the other truck, the big off road
14 truck that they had.

15 Q Like I said, we saw a lot of these
16 things and they are not every day, Mr. Shelton
17 asked you about it.

18 What are you doing on the days we don't
19 have a trip tick for?

20 A Sometimes I don't know. I don't know
21 if they send you everything, but more likely we
22 were there every day. Every day.

23 And I don't know maybe the times that I
24 didn't have a ticket, I don't know. But the
25 times that -- sometimes we didn't write loads or



1 anything, I helped out with the excavator and
2 stuff like that.

3 Q Okay.

4 A Yeah.

5 Q Was the truck parked on-site overnight
6 for a year?

7 A Not for a full year I will say. But it
8 was more likely it was there since we started
9 that job in January, it has been there for.
10 That was my two cup plays, I just get there in
11 the morning. And they tell me what to do in the
12 morning. Either I jump on the truck or jump on
13 this or that. Just go from there, but that
14 was -- because I didn't have money to pay
15 somewhere else to stay, that is the truth.

16 Q Yeah.

17 Probably saved you some money driving
18 back and forth and that kind of thing?

19 A And you got to pick things where you
20 got to park, and I didn't have the sources to do
21 that.

22 Q So during that period of time Cypress
23 Ridge was going on, Kenneth Scott Builders had
24 you working on a whole bunch of other sites and
25 projects, is that right?



1 A Yes, sir.

2 Q And I wrote them down as we went.

3 You would go to -- never heard of this
4 before, Rose Dhu?

5 A Rose Dhu.

6 Q Rose Dhu.

7 A It is a plantation right off of 46.

8 Q And you would go to the Bojangle's
9 site?

10 A Bojangle's, that is what it is called.
11 Bojangle's is where they send me to. That is
12 like a fast food place.

13 Q Yeah.

14 A That is off of Buckwalter Road, if it
15 is still there.

16 Q But Kenneth Scott Builders had a
17 project there, right?

18 A Yes, that is the first time I met them,
19 yeah. I call it Bojangle's, but I don't know if
20 it is exactly that. But it was right there on
21 Buckwalter Road.

22 Q Well, let us clarify that. All right.

23 So Kenneth Scott Builders had a client,
24 he was doing work on Buckwalter Road?

25 A Correct.



1 Q By a Bojangle's?

2 A By a Bojangle's or Bojangle's, yes,
3 sir. It was a construction site.

4 Q So we will call it the Bojangle's
5 construction site, but it may have had nothing
6 to do with Bojangle's?

7 A Maybe.

8 Q But that is another construction site,
9 right?

10 A Yes, sir.

11 Q And obviously you went to 1223 May
12 River Road?

13 A Yes.

14 Q And then Hilton Head Plantation is at
15 least another site he was working on?

16 A Yes, that is what it means, HHP. That
17 was what was on the ticket. But like I said I
18 can't recall if it was -- pretty much that is
19 how it will say HHP or Hilton Head Island HHI.
20 So I am thinking it is Hilton Head Plantation.

21 Q And I see a couple in there, Sea Pines?

22 A Sea Pines, yes, sir.

23 Q And one is called Calibogue?

24 A That is an address on Sea Pines.

25 Q So that is another construction site



1 that Kenneth Scott Builders was working on,
2 right?

3 A Correct.

4 Q That you went to?

5 A Correct.

6 Q All right.

7 Were there more than one lots in Sea
8 Pines that you would go to during that period of
9 time?

10 A I cannot recall that, sir. I don't
11 think so.

12 Q And then I saw there was a site in
13 Bluffton that you went to a couple of times.
14 Do you remember that one?

15 A A site in Bluffton?

16 Q Right.

17 A CrossFit?

18 Q I am going to get to that one. It just
19 said Bluffton.

20 A Bluffton? By the deli?

21 Q I don't know. We will skip that one.

22 A Okay.

23 Q The next one is in fact CrossFit Gym.

24 That is another place that Kenneth
25 Scott Builders was working, right?



1 A Yes, sir.

2 Q And you went to that site also, is that
3 right?

4 A Correct.

5 Q And then what else is there? Hampton
6 Lakes, that is another site?

7 A Hampton Lakes, okay.

8 Q Do you remember seeing Hampton Lakes on
9 the trip ticks?

10 A Yes, yes. That is where -- Hampton
11 Lakes is where the dirt would sometimes being
12 picked up too.

13 Q Okay.

14 And you went to Port Royal Plantation,
15 that is another construction site?

16 A Port Royal Plantation, that is correct.

17 Q So that is someone else who hired
18 Kenneth Scott Builders that you went to with
19 your truck, right?

20 A Correct.

21 Q Were there more than one site in Port
22 Royal or just one?

23 A Probably just one. In those type of
24 plantations, since they are big, I believe what
25 I am saying is it could be just one because they



1 are just multimillion dollar houses.

2 Q So it is six lots for that guy?

3 A I don't think it is going to be like --

4 Q Maybe it is Ben's house.

5 A Yeah, probably.

6 Q Another construction site that Kenneth
7 Scott Builders was working on was Wexford?

8 A Wexford.

9 Q Have you ever been to that site?

10 A Yes, I know where Wexford is. It is
11 actually close bu.

12 Q And you went to that site according to
13 the trip ticks, right?

14 A Okay, yes, sir.

15 Q And Margaritaville?

16 A Margaritaville, okay.

17 Q That was another construction site that
18 Kenneth Scott Builders was working on that you
19 went to?

20 A Correct.

21 Q Right?

22 A Correct.

23 Q It says Bluffton PORH maybe?

24 A Porh? Porch?

25 Q Oh, Bluffton Park?



1 A Bluffton Park, that is actually where
2 the address 123 or 331, where ever I dumped my
3 last load, that is in the back of that. That is
4 Bluffton Park area.

5 Q Was that a different site than 1223 May
6 River Road?

7 A Oh my gosh, that wouldn't be -- that is
8 actually a good question. Bluffton Park, it
9 could be the same, because he did all the -- he
10 did the deli, which is the deli is right here on
11 the corner. Let's say the deli and where that
12 dump is right here, all Piggly Wiggly was there
13 in the same complex. So I don't know if it is
14 there. I call it Bluffton Park, because I call
15 the whole area Bluffton Park.

16 Q Okay.

17 And Kenneth Scott Builders had another
18 construction site in Hilton Lakes, is that
19 right?

20 A Hilton Lakes. Now that I -- but yeah,
21 I guess so. I went there so.

22 Q I will tell you, I got all these names
23 from your trip ticks?

24 A Yes, from the tickets. Yeah, yeah.
25 No, yeah.



1 Q So that was another Kenneth Scott
2 Builders construction site that you went to, is
3 that right?

4 A Yes, sir.

5 Q And then you said you went to the
6 Okatie Construction site?

7 A That is not a construction site. When
8 we said on the ticket, Okatie Construction, it
9 is actually, that's the name of a company,
10 Okatie Construction. That is the name of the
11 company. But what they do is they have their
12 pits. They sell you the dirt.

13 So when Mr. Ken Scott, you have to go
14 to Okatie Construction, it means you got to go
15 to pick up dirt.

16 Q Let me ask you this, is Okatie
17 Construction actively building in there and also
18 selling dirt?

19 A No.

20 Q Or just sell dirt?

21 A They just sell dirt. That is a pure
22 dirt pit.

23 Q I will put that in supplier.

24 Kenneth Scott Builders had another
25 construction site, another client at Palmetto



1 Bluff?
2 A Palmetto Bluff.
3 Q Do you remember that?
4 A I know where Palmetto Bluff is, yes.
5 Q And again that came from up here.
6 So you took your dump truck to Palmetto
7 Bluff for Kenneth Scott Builders, right?
8 A Probably, yes. Yes.
9 Q And then the Bluffton Deli.
10 A The Bluffton Deli.
11 Q That is another customer of Kenneth
12 Scott Builders where you took your truck, is
13 that right?
14 A Okay, yes, sir.
15 Q And then we talked about this earlier,
16 I wrote down Sea Pines, Calibogue --
17 MR. IMHOFF: How do you say that?
18 MR. SHELTON: Calibogue.
19 BY MR. IMHOFF:
20 Q Calibogue, but that may be the same
21 thing as Sea Pines, right?
22 A Only rich people can say that.
23 Q That is fine.
24 So during Cypress Ridge Kenneth Scott
25 Builders had a whole bunch of customers and



1 sites he was working on, right?

2 A Correct.

3 Q And he would have you take your dump
4 truck to those sites to bring or haul things
5 off, right?

6 A Correct.

7 Q And on the day of the accident he had
8 you bring dirt to 1223 May River Road, right?

9 A May River Road, yeah.

10 Q For Kenneth Scott Builders?

11 A For Kenneth Scott Builders.

12 Q For his contract and the work he was
13 doing at 1223 May River Road, right?

14 A Yes, sir.

15 Q Now, at the same time he had you going
16 out to different suppliers like you just said,
17 right?

18 A Uh-huh.

19 Q You went to Ulmer Brothers?

20 A Ulmer Brothers, that is a big
21 application for them, yes.

22 Q Kenneth Scott Builders had you go to
23 Conrad's?

24 A Conrad, yes. Yilington Conrad. Nobody
25 knows about that, but Conrad and if you look



1 them up it comes out as Yilington Y-i-l-i--
2 something Y-i-l-i-n-g-t-o-n.

3 (Whereupon, an off-the-record
4 discussion was held.)

5 BY MR. IMHOFF:

6 Q He had you go to Ulmer Brothers?

7 A Ulmer Brothers, yes.

8 Q Another supplier, right?

9 A Yes.

10 Q There is trucks in and out of all those
11 sites every day, right?

12 A I am sorry?

13 Q Out of Ulmer Brothers, Conrad's, there
14 is trucks coming out in and out?

15 A Yes, there is.

16 Q All day?

17 A All day long.

18 Q He had you go to a nursery, is that
19 right?

20 A A nursery, yes, sir.

21 Q He had you go to Southeast Ready Mix?

22 A Yes, sir.

23 Q He had you go to Okatie Construction
24 that we just talked about?

25 A Yes. Yeah, that is their pit.



1 Q Do you have any idea why -- strike
2 that.

3 Did you ever do any work for anyone
4 else from 2016 to 2018, even if it was one trip
5 or just for a day?

6 A No. That is one thing that they kept
7 asking. I don't know but yeah, we stayed pretty
8 much working all day.

9 Q Could you have if you wanted to?

10 A Probably like anybody else is free to
11 go.

12 Q Free to go or free to work with any
13 company you want to?

14 A Oh yeah. Yeah. If I wanted to quit,
15 yeah.

16 Q Say that one more time.

17 A If I wanted to quit, probably I could
18 have go.

19 Q Quit?

20 A Yes.

21 Q Did Ken say if you work for anybody
22 else you are fired?

23 A Oh, no. No, no, never.

24 Q Do you think he would have a problem if
25 you worked for somebody else when he did not



1 have work for you?

2 A I don't know.

3 Q Or did he just keep you busy all the
4 time?

5 A He kept me busy all the time, yeah.

6 Q You worked full time? 40 hours?

7 A Yes. Yes, sir.

8 Q When we looked at a couple of trip
9 tickets they had truck 701, I was working on
10 this one?

11 A Yes.

12 Q And then truck 702.

13 A Yes, that was 2, but I didn't write
14 those numbers on top.

15 Q It said Jacob AU Trucking.

16 A No, on the top of the thing they say
17 702 and 701. One of the, yes, it says 701.

18 The other one 702, I was bringing a
19 truck in, but I don't know if they classify it
20 as 702.

21 Q What does that mean, you were bringing
22 a truck in? Separate from the one that was in
23 the accident?

24 A Yes, yeah, yeah.

25 Q Where did you get it?



1 A A friend of mine has a truck and I told
2 him if you want work sometimes, we got work; and
3 I brought him in.

4 Q Did you invoice Kenneth Scott Builders
5 for him?

6 A I can't recall that, but I probably
7 did.

8 Q Did you do that regularly?

9 A No, it was just like -- it was like
10 right before the accident, so we didn't really
11 have much time after that.

12 Q How do we know out of all your trip
13 tickets if it was you in your truck driving, or if
14 it was someone else?

15 A If it was on my tickets more likely
16 sometimes it could have been me. But sometimes
17 I did make tickets for people that was working
18 there, because I was kind of a person they
19 trust, so they know if I say that they know;
20 instead of people just coming in and taking
21 material out.

22 Q So how can we tell if from those
23 tickets if it was you or somebody else?

24 A I don't know.

25 Q You don't know?



1 A No.

2 Q You just don't remember? It was six
3 years ago.

4 A I understand your question. But I
5 don't know how to tell you, oh yeah, that was
6 me. But I do identify that is my handwriting.

7 Q Yeah.

8 I guess can we rely on those trip
9 tickets or do we need some other information,
10 like who was driving and that kind of thing?

11 A Yeah. I mean I pretty much did a lot
12 of work in there.

13 Q Okay.

14 But it could possibly be some other
15 driver?

16 A Yeah, because sometimes like I was
17 telling you guys earlier, sometimes he will have
18 on the same jobs, he would be like hey, I need
19 this many loads of dirt by this date.

20 He didn't have the knowledge maybe of
21 knowing people around, and I would be like hey,
22 I know this guy we can call him in and he can
23 come in and work for you. Okay, like I know
24 another one. Like it was J&A, Yami or whatever,
25 and that is how sometimes he got work done too.



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1 Q Okay.
2 (Whereupon, an off-the-record
3 discussion was held.)
4 BY MR. IMHOFF:
5 Q I missed this one earlier.
6 A Oh, yes.
7 Q Zelaya?
8 A Oh, yes. He did work for him. I know
9 them.
10 Q They worked for KSB?
11 A For Ken Scott, yes, sir.
12 Q Where?
13 A On Cypress Ridge as well.
14 Q At Cypress Ridge as well?
15 A Yes, sir. Now that you mention.
16 Q Are those friend of yours or those
17 people?
18 A Yes, I know them. Yes, I know them.
19 They are not my friends, but I do know who they
20 are.
21 Q So there were multiple companies out
22 there?
23 A Yes. Like I say from time to time --
24 in Cypress Ridge sometimes they will do work on
25 the houses in the back too that they were



1 already built. I guess they needed material
2 like that fast. One truck is not going to make
3 it. So that is when I guess that is when the
4 help came in.

5 Q You understand why we are here today,
6 right?

7 A Yes, sir.

8 Q You understand Mr. McGilton was
9 terribly hurt?

10 A Yes, sir. I completely understand
11 that.

12 Q It may have ruined his career. He may
13 not have been able to work for the rest of his
14 life.

15 A Yes.

16 Q Who was at fault for the accident?

17 A Oh man, like from the beginning like I
18 say from day one when everything happen I try to
19 look for you. I know he was -- I was always
20 like, you know, seeing where you were, but I
21 couldn't reach -- going to the hospital because
22 your lawyers when they reach out to me and they
23 send the investigators and all of that, I talked
24 to them and they told me it wasn't okay for me
25 to be there; because your family was pretty I



1 understand mad. They thought it was not okay
2 for me to jump. But like I told them beside
3 anything it is not like I woke up and went and
4 said I want to hurt somebody or I want to do
5 this to somebody. And that is the main thing
6 that I wanted to tell you that I always wanted
7 to apologize because I couldn't live with it,
8 you know. It has been so long and I still think
9 about it. It still haunts me to the day, and
10 this is the first time I actually see you in
11 person.

12 Q So are you taking responsibility for
13 the accident?

14 A I mean it was an accident, so I will
15 say that.

16 Q I understand it was an accident.

17 A Yeah.

18 Q D.R. Horton has been sued --

19 A Yes, sir.

20 Q -- for causing or contributing to the
21 accident. That is why I am asking my question.

22 Do you accept responsibility for
23 causing the accident?

24 A I mean I would have to talk to a lawyer
25 then.



1 Q Okay, all right.

2 Right before the accident were you
3 looking down?

4 A No, I was looking straight ahead.

5 Q You were looking straight ahead?

6 A Yes, sir.

7 Q You weren't distracted at all?

8 A No.

9 Q When you say this car stopped in front
10 of you --

11 A Yes.

12 Q -- was there an emergency? Did a cat
13 run across the road or a car accident?

14 A Right before where we had the accident,
15 if you go back to that site there is an entrance
16 to your left, I don't know if you recall it. I
17 don't know if I saw -- I was driving and it is a
18 narrow road, it is very small. I was driving
19 and I saw the first car stop. It was not just
20 one. There was a little line, and I remember
21 seeing the white van, a family van that was
22 stopped. That was the one in front of me, so
23 that is when I started like, you know. And I
24 see the other car, I think it went in. He just
25 probably -- maybe he stopped because he was



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1 passing his turn or whatever, and that is when
2 everything -- yeah, that is how I recall that it
3 happened.

4 Q And did you hit your brakes?

5 A Oh, yeah.

6 Q And try to turn at the same time?

7 A I hit my brakes and I tried to go on
8 the -- you know, when I see that I wasn't
9 stopping in time, I tried to go on the
10 right-hand side, which it was like the trees
11 and -- yes, sir.

12 Q There are no skid marks that I saw that
13 indicate that you braked and went right?

14 A Okay.

15 Q They go left.

16 Do you remember seeing that?

17 A Yeah, I saw those. Yeah.

18 Q Are you sure you turned right?

19 A I did. And that is why -- you know,
20 sometimes I say I don't know, maybe it happened
21 for a reason; because to be honest if I would
22 have go to the right there was this big old tree
23 and I wouldn't be here talking at the moment, be
24 in here right now. I don't know if something
25 saved me or whatever. I am a true believer of



1 God so.

2 Q Do you have any explanation how the
3 truck went left?

4 A Instead of going right?

5 Q And there are tire marks going left,
6 but you say you went right?

7 A I did, because every time even on
8 smaller cars, I guess that is in you that you
9 try to go the safer way, which is like -- now
10 every time if I drive if I am driving on 278 or
11 something, I am always on the right side where
12 you can just get off.

13 Q Go like that?

14 A Yeah.

15 Q Can you explain how you went left?
16 What caused you to go left? What happened?

17 A I don't know. That is something I
18 can't explain. Like I said and I always -- even
19 I don't know if there is a report, a police
20 report, and I believe they were asking me and I
21 did -- I did confirm that I was -- my thinking
22 was always going to the right.

23 Q You were trying to avoid the cars in
24 front of you?

25 A Oh, of course, obviously.



1 Q You were trying to avoid the cars in
2 front of you?

3 A Of course.

4 Q The dump truck is empty?

5 A Yes.

6 Q You dropped off the dirt?

7 A The location on May River Road.

8 Q So you immediately hit your brakes and
9 turned right?

10 A That is what I am thinking, yeah.

11 No, when I saw the cars stopping I
12 tried to stop and gear down. Obviously going
13 when I saw them coming in that was supposedly my
14 turn going that way to my right, if I am going
15 this way. That is what I because --

16 Q Saw which cars?

17 A The cars that are stopping in front of
18 me, the one's that cause me to do what happened.

19 Q Sure.

20 A Yes.

21 Q Okay. All right.

22 And so when you turned right and it
23 goes left, what are you thinking?

24 A No, I wasn't even thinking. I lost
25 memory -- not memory, but I lost kind of sense



1 because when I kind of -- when everything
2 happened like so fast I mean there is not such a
3 thing where I can say oh, I remember exactly;
4 and it has been years.

5 But all I remember was that, that I
6 wanted to get out that way. For some reason the
7 truck went that way, I struck him; and the next
8 thing I know when I kind of came back to senses,
9 I am on the floor seat on the passenger side
10 trying to get up, you know. And when I get up
11 there is nothing but smoke coming out, you know,
12 and I couldn't get out of the truck. I had to
13 like kick the windows out or trying to open the
14 windows, I don't remember like that.

15 Q Do you think the truck itself caused
16 the accident?

17 A Well, I don't know.

18 Q Well, you said you turned right and hit
19 the brakes, but you went left?

20 A I did.

21 Q So my question is do you think that --

22 A How can I -- how can I explain that?

23 Like I say, I don't know. I can't explain it,
24 but it was in my thinking of me, myself,
25 thinking how can I explain it, because if I



1 would have gone right I would be dead. There is
2 like, you know I would have hit a bigger tree
3 that is big there almost in the middle of the
4 road.

5 If I would have hit that I probably
6 would have been dead. I don't know, maybe
7 something saved me, a higher power I believe.
8 Something abnormal saved me. And I thank God
9 that he is still alive, that is another thing.

10 And my life changed a lot and obviously
11 yours did too, you know. But I can't explain it
12 exactly. I can't say oh, I am going -- I am
13 going to cause this accident. Oh, I am going to
14 go right, left, hit this car, I can't say that.

15 Q You are the owner of the company,
16 right?

17 A Correct.

18 Q You are the owner of the truck?

19 A Yes, sir.

20 Q You did the maintenance on the truck?

21 A Yes, sir.

22 Q Do you think that the maintenance
23 contributed to the accident? The truck
24 contributed to the cause of the accident or was
25 it you?



1 A What caused the accident was people in
2 front of me, that is what really caused the
3 accident. That is what really caused the
4 accident. People just don't know how to drive
5 maybe, I don't know; and they just pull in front
6 of you thinking you got something that is just
7 going to stop out of nowhere. That is what I
8 think, but I can't blame it on people.

9 Q Do you have a Department of
10 Transportation number?

11 A No.

12 Q I don't know anything about dump
13 trucks, okay? I apologize if I say something
14 that doesn't make sense.

15 A No, you are fine.

16 Q Is there a dual axle or a tandem axle?

17 A A dual axle?

18 Q One that you can take up or down?

19 A Right here in South Carolina they call
20 it drop axles.

21 Q Drop axle.

22 Did you have a drop axle on your truck?

23 A I did at that moment.

24 Q And is it up or down?

25 A It has to be up if you are empty.



1 Q Because you are empty?

2 A Yes, sir.

3 Q I just want to make sure, so it was up?

4 A Yes.

5 Q And you hadn't done an annual
6 inspection?

7 A I think he had it done by us, by me;
8 but not -- I can't recall if it was there. The
9 sticker should have been there.

10 Q That was one of my other questions, did
11 you have an inspection sticker on your truck?

12 A I think -- I don't know to be honest.
13 I can't remember.

14 Q What kind of truck did you have at the
15 time? Pickup truck?

16 A A Toyota Tacoma.

17 Q Do you still have it?

18 A It is sitting there, yes.

19 Q But that is the truck you would drive?

20 A From?

21 Q From your house to the site?

22 A From my house to the site, that was the
23 truck at the moment, yes, sir.

24 Q Again you own the company.

25 Were you the person in charge of making



1 sure you had correct insurance?

2 A What do you mean, I am sorry?

3 Q Was anyone else responsible for getting
4 insurance for your company?

5 A No, sir.

6 Q Or your truck?

7 A No, sir. No, it is me.

8 Q And were you responsible for getting
9 your truck inspected and making sure it was up
10 to date?

11 A That is correct.

12 Q And complying with all laws and safety
13 regulations?

14 A Yes.

15 Q So all of it was you, right?

16 A Yes, I am the only one that was doing
17 it.

18 Q Okay, sir. I don't have any more
19 questions for you. I appreciate that.

20 A Okay, sir.

21 CROSS-EXAMINATION

22 BY MR. CONNER:

23 Q Mr. Alfredo, my name is Ryan Corner. I
24 represent Kenneth Scott Builders.

25 A Okay.



1 Q So I will be fairly brief here for you.
2 I just have a couple of questions.
3 But you say you are the owner of Jacob
4 AU?

5 A Yes.

6 Q Is that correct?

7 A That is correct.

8 Q Does Kenneth Tosky or Kenneth Scott
9 Builders have any ownership interest in Jacob AU
10 Trucking?

11 A No.

12 Q Okay.

13 You own that solely, correct?

14 A Yes.

15 Q And did Kenneth Scott Builders ever
16 provide you with any kind of benefits?

17 A Benefits as of -- honestly I kept
18 saying he was good to me because I was going
19 through bad spots; and he did lend me money.
20 And if that is what you call a benefit, yeah.

21 Q So when I say benefits, did he pay for
22 your health insurance?

23 A Oh, no, no, no. I don't think. No.

24 No.

25 Q Okay.



1 You were responsible for your own
2 health insurance?

3 A Yes. To this day.

4 Q Okay.

5 And Kenneth Scott Builders didn't have
6 any ownership interest in the dump truck that
7 was involved?

8 A Not that I know, sir.

9 Q What do you mean not that you know?

10 A Well, no, I guess no.

11 Q You either know or you don't, right?

12 A No, I don't. I don't think so. I am
13 the worker.

14 Q You are the hundred percent owner of
15 that truck, correct?

16 A Yes.

17 Q And you didn't drive any other dump
18 truck while you were working with Kenneth Scott
19 Builders?

20 A No, sir.

21 Q Okay.

22 It was just the dump truck that was
23 involved in the accident?

24 A Yes, that is correct.

25 Q So you were paid different hourly



1 rates, is that correct?

2 A Yes, sir.

3 Q Who determined those hourly rates?

4 A He did.

5 Q When you say "he", Kenneth Tosky?

6 A Yes, Mr. Ken Scott, I am sorry, sir.

7 He is the one who would tell me. This is how
8 much he pay me to -- this is how much he would
9 pay you for this or this or do this or do that.
10 Go here, go there. Start at this time and end
11 at this time.

12 Q Okay.

13 So if you didn't want to work for that
14 price, did you have the option to say I can't do
15 it for that price?

16 A Me?

17 Q Yes.

18 A Yeah, I believe so. Yes, sir.

19 Q You could have told Ken?

20 A I don't want to.

21 Q Okay.

22 And you were issued a 1099 for your
23 taxes, is that correct?

24 A It looks like it, but I can't recall it
25 to be honest.



1 Q When you filed your taxes?

2 A They probably should be there.

3 Q But what I am asking is when you filed
4 your taxes you weren't issued a W-2, is that
5 right?

6 A No, it is called a 1099, right? Okay.
7 That is the actual name, okay, 1099. Yes, sir.

8 Q And do you know is what you were
9 issued?

10 A Yes. That is what he gave me, yes.

11 Q Did Kenneth Scott Builders pay for your
12 gas?

13 A No, sir.

14 Q You were responsible for filling up the
15 truck with gas?

16 A Yes, sir.

17 Q And you paid that out of your own
18 business account?

19 A Yes, sir.

20 Q And that was the business account for
21 Jacob AU?

22 A Correct, sir.

23 Q Would you have to drive the truck off
24 of the Cypress Ridge site to go fill up with
25 gas?



1 A Yes, sir.

2 Q How often would you normally have to
3 fill up with gas?

4 A That is a tough question.

5 When we working in there probably like
6 I will say one or two times out of the week,
7 because the gas station is so close by, and then
8 you barely use fuel.

9 Q Now, on the day of the accident you
10 said you picked up a load of dirt, and you
11 delivered it to the 1223 May River site, is that
12 right?

13 A The address I am not -- yes, that is
14 what the address. But it is right there on May
15 River, the same complex as the Bluffton Deli.

16 Q When did you know that you had to go
17 drop dirt off to that May River site?

18 A When did I know?

19 Q Correct. So were you told --

20 A Maybe a day before I talked to him.

21 Q Did you talk to --

22 A Mr. Ken Scott Builders. We talk and he
23 told me tomorrow I need you to do this.

24 Q And that was in person he told you?

25 A I believe so, that it was in person.



1 Q And so did he tell you I need you to
2 drop a load off to the May River Road site for a
3 project over there? Did he tell you what else
4 you needed to do after that?

5 A Like I was -- yes, like I was trying to
6 explain I don't know if I had already dropped
7 one more or not. But I believe it was, if I am
8 not mistaken, if it was two loads to be dropped
9 there, I can't recall if it was my second or my
10 first one, but I had to go.

11 Q Sure, but you knew you had to drop two
12 loads off that day, right?

13 A Yes, sir.

14 Q Did you know what you were supposed do
15 after?

16 A Oh yes, come back to Cypress Ridge.

17 Q Okay. And do you know what you were
18 supposed to do?

19 A After that?

20 Q At Cypress Ridge?

21 A Like I say, then I am not -- either I
22 was going to grab one more load and bring it
23 back to the same location, or I was just going
24 to stay and work in Cypress Ridge.

25 Q And what I am asking is if you were



1 done with the May River project?

2 A Yes, sir. Oh, yeah, definitely if it
3 was already done I still had to go and work on
4 Cypress Ridge.

5 Q Do you know what you were supposed to
6 do that day on Cypress Ridge?

7 A Oh no, I did not know. Maybe just
8 hauling on site or do something else, but more
9 likely do --

10 Q How would you know what you are
11 supposed to do?

12 A He would tell me. Ken Scott would tell
13 me what to do.

14 Q Would you call him?

15 A I would call him and probably see him
16 on the job site; and he would tell me what to
17 do.

18 Q Okay.

19 A If he was in there.

20 Q Do you know where Ken Tosky was that
21 day?

22 A At that time, no, sir. Well, I believe
23 he was in Cypress Ridge, yeah. And if it wasn't
24 him any of his supervisors would tell me what to
25 do after if I would have get there.



1 Q Okay.

2 So you had testified earlier that after
3 the accident you broke your gear shift or broke
4 the gear shift with your ribs, is that correct?

5 A Yes.

6 Q And hit your head against the
7 windshield, correct?

8 A I think that was, because I was
9 bleeding through here. And I think I saw the
10 window and I was probably I hit myself here.

11 Q And then you had to leave the scene by
12 ambulance?

13 A That is correct.

14 Q Did you file a Worker's Compensation
15 claim?

16 A I did not.

17 Q Okay.

18 Why?

19 A I don't know. I never thought about
20 it. I never -- I don't know. I am not -- I am
21 not the type of person that is going to do stuff
22 like that. I don't know. I am not good with
23 that. I am not looking to do things like that,
24 you know. I know it was an accident. To me it
25 was an accident and it just happened to be me.



1 Q Okay.

2 That is the only reason?

3 A Yeah, that is the only reason.

4 Q Okay.

5 A And plus I was able to work. I was
6 able to work. I got out of the hospital. I was
7 more worried about the person that couldn't
8 actually do what I was doing. And I guess that
9 is something you keep in mind I guess, a bunch
10 of things going through. So if I trying to
11 explain to you, it is more than is in your head
12 or deep in you that you got to be grateful.

13 Q Did Jacob AU Trucking, did the business
14 pay for Workers' Compensation insurance?

15 A No, I don't think so. No.

16 Q So you probably didn't even have the
17 opportunity?

18 A No.

19 Q Or Workers' Compensation to file a
20 claim?

21 A I thought you were meaning if I filed
22 through -- against Mr. Ken Scott Builders.
23 Because the main reason I am saying that because
24 I feel like the first -- what is it called --
25 the lawyers that Mr. Mark had, they told me I



1 could have do it. And I said no. And they were
2 asking for me to comply more; and I said no, I
3 can't do it.

4 Q So who asked you to file a Worker's
5 Compensation?

6 A They told me I could have filed
7 there -- I don't know what it is called --
8 Talberts -- the first lawyers. I don't know.

9 Q You are talking about Vaux?

10 A Vaux, yes, because when I went in and
11 they interviewed. Yeah, but kind of mentioned
12 something like that, but that is what I thought
13 you was asking.

14 Q Got you.

15 So I guess my question on that is do
16 you think you had the right or the ability to
17 file a claim against Kenneth Scott Builders for
18 Workers' Compensation?

19 A I never thought about it.

20 It never crossed my mind.

21 Q But the only time it was brought up to
22 you was when you were being interviewed by
23 Mr. McGilton's lawyers?

24 A Yes.

25 Q Okay.



1 I don't have any other questions.

2 REDIRECT EXAMINATION

3 BY MR. SHELTON:

4 Q I got a couple of very brief
5 follow-up's. I found that document that I was
6 talking about.

7 So first I wanted to ask you, you
8 mentioned that this trucking company that you
9 may have written a ticket for, we have these two
10 trucks, that it was towards the end -- or near
11 or towards the time of the accident, correct?

12 A Correct.

13 Q So if you look at this truck number
14 702, this is on February 27, 2018.

15 Do you see that?

16 A Uh-huh.

17 Q And 702 -- your truck was 701, we
18 established that through the pictures, right?

19 A Yes, sir. Correct, through the
20 pictures.

21 Q So hauling on-site hauling dirt, this
22 truck started late. I was fixing it.

23 If you scroll down you see truck # 701.

24 It is the same day --

25 A Correct.



1 Q -- February 27, 2018. It says hauled
2 on site moving dirt at Cypress Ridge?

3 A Uh-huh.

4 Q Okay.

5 So is that an instance where you would
6 have made two tickets, because you had two
7 trucks on the same day?

8 A Like I say at one point I brought
9 somebody in that he had a truck that he was
10 looking to get work, and I probably brought it
11 in. I don't know if it was -- I helped him out,
12 because like I said I can't say -- because on
13 the top you see 702. I don't know which truck
14 was the one that it was actually getting -- I
15 was working on, which it could have been
16 probably mine, 701; but I never put no stickers
17 on 702 or whatever. They just probably follow
18 it as 702.

19 Q Did you ever do any work other than on
20 your truck?

21 A No, no.

22 Q So the truck you were working on would
23 have been your truck?

24 A Yes. Yes.

25 Q And looking through all those invoices



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1 do you recall seeing any other invoice that had
2 two invoices for the same date?

3 A Two invoices maybe when you had other
4 people working with us. But not at the moment I
5 don't recall seeing two invoices with the same
6 date. I do not recall.

7 Q And now I am going to go to these
8 exhibits one second. And find -- this will be
9 Exhibit Number 38. I am sorry, one second.
10 This will be Exhibit Number 39. Exhibit Number
11 39 I will submit to you was provided by Kenneth
12 Scott Builders. (Reporter's note: Exhibit 39
13 is corrected to Exhibit 38.)

14 A Okay.

15 Q And it shows, this is a range of
16 hauling tickets from February 1, 2018 through
17 April 1, 2018?

18 A Yeah.

19 Q And you see here, Genesis and J.

20 A Okay.

21 Q 3 each trucks, dirt hauling. So they
22 have the date of it. So that was on 3/27 of
23 2018.

24 You see that?

25 A Yes, 3 each.



1 Q Do you recall hauling on-site or
2 hauling for Kenneth Scott maybe one time after
3 the accident?

4 A I do not recall it. But probably if it
5 is marked there. But to be honest I do not
6 recall it.

7 Q And then you see Jacob AU Trucking
8 between February 3rd through March 15th and that
9 is 46 each.

10 There are no invoices, no sheets for
11 the last two days you worked --

12 A Okay.

13 Q -- That were produced.

14 Do you know whether you gave Ken Tosky
15 sheets for those last two days?

16 A I do not remember that. But if it was
17 not there -- the last two days, you mean the day
18 of the accident and the day --

19 Q The 12 and the 14th?

20 A Obviously the date of the accident
21 there is no -- there can't be no ticket. I mean
22 it was not even done.

23 (Whereupon, an off-the-record
24 discussion was held.)

25 BY MR. SHELTON:



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1 Q Look up here. I will show you some of
2 these other names.
3 A Okay.
4 Q See Yami Trucking?
5 A Yes, sir.
6 Q See that was from March 9, 2018 through
7 March 27, 2018?
8 A Huh.
9 Q And 16 each.
10 Now March 9th, was that the date you
11 went to Mexico?
12 A No, I went before that. Before to
13 Mexico, I was already there.
14 Q Do you know when you were in Mexico?
15 A No, I don't have the exact dates.
16 Q Okay.
17 And then Zelaya?
18 A Zelaya.
19 Q Zelaya?
20 A Yeah.
21 Q And so this is from February 3, 2018
22 through March --
23 A 27. They probably called him in and
24 covered while that accident happened. I was not
25 working for a couple of weeks.



1 Q So those are the companies that you
2 recognized?

3 A Yes.

4 Q Do you recognize any other companies on
5 here?

6 A Yes, I see a bunch of them. I kind of
7 see them around too but --

8 Q But did you ever invoice Zelaya for
9 Kenneth Scott Builders?

10 A No, those probably got it like directly
11 with them.

12 Q What about Yami?

13 A That too. I know Yami I probably
14 brought it in. I brought Yami in, you know,
15 telling him to -- because that company was two
16 trucks, two brothers running the two personal
17 trucks I guess; and yeah, I brought them in,
18 introduced them to him.

19 Q And did Kenneth Scott invoice them
20 directly?

21 A I can't -- yeah probably. More likely,
22 yes, sir.

23 Q What about Scott Trucking, do you know
24 what that was?

25 A I don't know who that is.



1 I know who that is, but I never have
2 deal with him.

3 Q Those are all the follow-up questions I
4 have.

5 MADAM COURT REPORTER: Does the
6 witness want to read and sign?

7 Do you need an electronic copy?

8 (Whereupon, an off-the-record
9 discussion was held.)

10 THE WITNESS: Can you send it to
11 me.

12 MADAM COURT REPORTER: Do you need
13 an original and E copy?

14 MR. SHELTON: An original copy for
15 me. I can have a bundled copy.

16 MADAM COURT REPORTER: Mr. Imhoff,
17 do you need a copy?

18 MR. IMHOFF: I may need an
19 expedite.

20 MR. CONNER: I don't need a copy.

21 (RESERVED SIGNATURE.)

22 (Whereupon, the videotaped
23 deposition of

24 Alfredo Uriostegui

25 was concluded at



1 approximately 5:48 p.m.)
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

BEAUFORT COUNTY:

I, Ceil Weser, CSR and Notary

Public in and for the above county and state, do

hereby certify that the foregoing testimony was

taken before me at the time and place

herein before set forth; that the witness was by

me first duly sworn to testify to the truth, the

whole truth, and nothing but the truth, that

thereupon the foregoing testimony was later

reduced by computer transcription; and I certify

that this is a true and correct transcript of my

stenographic notes so taken.

I further certify that I am not of

counsel to either party, nor interested in the

event of this cause.

Ceil Weser

Ceil Weser, CCR

Notary Public

Beaufort, South Carolina



COASTAL COURT REPORTING & VIDEO SERVICES

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MARK W. McGILTON vs 1223 May River Road, LLC
2021-CP-27-00069 - ALFREDO URIOSTEGUI

338

1 ERRATA

2

3 CAPTION: MARK W. McGILTON -vs- 1223 MAY
4 RIVER ROAD, LLC

5 -----
6 223 MAY RIVER ROAD, LLC -vs-
7 KENNETH SCOTT BUILDERS, LLC

8

9 DECLARATION UNDER PENALTY OF PERJURY

10 I declare under penalty of perjury
11 that I have read the entire transcript
12 of my Deposition taken in the
13 above-captioned matter or the same
14 has been read to me and the same is
15 true and accurate, save and except for
16 changes and/or corrections, if any, as
17 indicated by me on the COASTAL COURT
18 REPORTING DEPOSITION ERRATA SHEET
19 hereof, with the understanding that I
20 offer these changes as if still under
21 oath. Signed on the _____ day of.

22 _____, 2024.

23

24 _____
25 ALFREDO URIOSTEGUI (Deponent)

26

27 SWORN TO and subscribed before me
28 THIS _____ day of _____, 2024

29

30

31 NOTARY PUBLIC: _____

32

33 My commission Expires: _____

34



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1 **DEPOSITION ERRATA**

2 Reason for

3 change:_____

4 Page No._____Line No._____Change to:_____

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6 Reason for

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10 Reason for

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18 Reason for

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24 Page No._____Line No._____Change to:_____

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SIGNATURE:_____DATE:_____

ALFREDO URIOSTEGUI



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	ALFREDO URIOSTEGUI

