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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
The Honorable Jessica A. Salvini, Circuit Court Judge

Appellate Case No. 2025-001404
Circuit Court Case No. 2024-CP-39-00465

David Griffith and William Coleman, as Trustee of the William Coleman Revocable Trust, individually, and on behalf of all others similarly situated, Respondents,

v.

JMC Communities, Inc., JMC Homes of South Carolina, LLC, Patrick Square, LLC f/k/a Digital Development, LLC, Alpha Omega Construction Group, Inc., Gorze, Inc., Cothran Landscapes and Grading, LLC, Gentry Services, LLC a/k/a Gentry Brothers Services, LLC, Tiny Bill Swaney d/b/a Swaney Masonry, Solid Rock Construction Services, LLC, H&H Concrete, LLC, Maria Construction Inc., F&V Framing, LLC, Five Star Construction, Inc., Davis Framing, LLC, Ashley Cothran d/b/a Cothran Custom Homes, LLC, UFP Mid-Atlantic, LLC, Builder First Source, Inc. a/k/a Builders Firstsource Atlantic Group, LLC a/k/a Builders Firstsource Southeast Group, LLC, RC Johnson, LLC, Gunter Heating and Air Conditioning of SC, LLC, 84 Lumber Company, LP, Dogwood Exteriors, LLC, H&R Drywall, Inc., Cristobal and Painters, LLC, Willow Tree Landscaping, Inc., Harbin Lumber Company, Inc., Soto HVAC, LLC, Riverside Landscaping, LLC, International Construction Services, Inc., Palmetto Grading and Drainage, Inc., Jane Doe #1-10, and John Doe #27-50, Defendants,

of which JMC Communities, Inc., JMC Homes of South Carolina, LLC and Patrick Square, LLC are the Appellants.

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA | **JUDGMENT IN A CIVIL CASE**
COUNTY OF Pickens
IN THE COURT OF COMMON PLEAS | **CASE NO.** 2024CP3900465

David Griffith et al
PLAINTIFF(S)

Jmc Homes Of South Carolina, Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Statement of Judgment on the following page.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/08/2025 .

Palmetto Construction Services, Llc
Construction Resources, Llc
Riverside Landscaping LLC
Soto Hvac LLC
Gha Construction, Llc
Gsf Renovations, Llc
Merida Roofing
Barahona Construction, Llc
Torres Quality Construction, Inc.
Brothers Contractors, Inc.
G&D Restoration Services, Llc
C&A Contractors, Llp
Cristobal And Painters LLC
Dogwood Exteriors LLC
Carolina Bay Roofing, Llc
Clt Roofing, Llc
Coello Construction, Llc
Ga Roofing Construction Corporation
RC Johnson LLC
Builder First Source Inc
Davis Framing LLC
Me & Him Home Repaire
Maria Construction Inc
Rafael A Arevalo
Garys Trim
Jane Doe 1-10
John Doe 27-50
Gentry Brothers Service LLC
Gentry Services LLC
Kerley Construction Inc
Gorze Inc
Digital Development, Llc
B&J Brothers Construction, Llc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter was before the Court on May 7, 2025. Jesse Kitchner and Cater Massinghill appeared on behalf of Plaintiffs and Ryan Beaver appeared on behalf of Defendants JMC Communities, Inc.; JMC Homes of South Carolina, LLC; and Patrick Square, LLC. Defendants' Motion to Compel Arbitration and Dismiss or Stay this Action is denied for the following reasons: (1) the Court finds that the arbitration agreement is not enforceable under the FAA because the matter does not involve interstate commerce; (2) the Court finds the arbitration provision is not enforceable under the SCUAA because the contracts do not comply with SCUAA's notice requirements; and (3) the Court finds the arbitration provision, and its proposed severance from other provisions with the contracts, violates the law and public policy of South Carolina pursuant to Damico. The Court declines to address whether the Contracts are silent about class action arbitration because no class has been certified.

Plaintiff's counsel shall draft a more formal order within twenty (20) days.

IT IS SO ORDERED.

Pickens Common Pleas

Case Caption: David Griffith , plaintiff, et al VS Jmc Homes Of South Carolina, Llc , defendant, et al

Case Number: 2024CP3900465

Type: Order/Electronic Form 4

So Ordered

Jessica A. Salvini

Electronically signed on 2025-05-08 15:21:48 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Civil Action No. 2024-CP-39-00465

DAVID GRIFFITH, WILLIAM COLEMAN AS TRUSTEE OF THE WILLIAM COLEMAN REVOCABLE TRUST, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

vs.

JMC COMMUNITIES, INC., JMC HOMES OF SOUTH CAROLINA, LLC, PATRICK SQUARE, LLC, F/K/A DIGITAL DEVELOPMENT, LLC, ALPHA OMEGA CONSTRUCTION GROUP, INC., GORZE, INC., COTHRAN LANDSCAPES AND GRADING, LLC, GENTRY SERVICES, LLC A/K/A GENTRY BROTHERS SERVICES, LLC, TINY BILL SWANEY D/B/A SWANEY MASONRY, SOLID ROCK CONSTRUCTION SERVICES LLC, H & H CONCRETE, LLC, MARIA CONSTRUCTION INC., F & V FRAMING, LLC, FIVE STAR CONSTRUCTION, INC., DAVIS FRAMING, LLC, ASHLEY COTHRAN D/B/A COTHRAN CUSTOM HOMES, LLC, UFP MID-ATLANTIC, LLC, BUILDER FIRST SOURCE, INC. A/K/A BUILDERS FIRSTSOURCE ATLANTIC GROUP, LLC, A/K/A BUILDERS FIRSTSOURCE SOUTHEAST GROUP, LLC, RC JOHNSON, LLC, GUNTER HEATING AND AIR CONDITIONING OF SC, LLC, 84 LUMBER COMPANY, LP, DOGWOOD EXTERIORS, LLC, H & R DRYWALL, INC., CRISTOBAL AND PAINTERS, LLC, WILLOW TREE LANDSCAPING, INC., HARBIN LUMBER COMPANY, INC., SOTO HVAC, LLC, RIVERSIDE LANDSCAPING, LLC, INTERNATIONAL CONSTRUCTION SERVICES, INC., PALMETTO GRADING AND DRAINAGE, INC., JANE DOE #1-10, AND JOHN DOE #**27**-50,

Defendants.

ORDER DENYING MOTION TO COMPEL ARBITRATION AND DISMISS OR STAY THIS ACTION FILED BY JMC COMMUNITIES, INC., JMC HOMES OF SOUTH CAROLINA, AND PATRICK SQUARE, LLC

This matter is before the Court on Defendants JMC Communities, Inc., JMC Homes of South Carolina, and Patrick Square, LLC's (collectively, "Developer Defendants") motion to dismiss the Complaint of Plaintiffs David Griffith, William Coleman as Trustee of the William Coleman Revocable Trust, individually, and on behalf of all others similarly situated (collectively, "Plaintiffs") and compel arbitration pursuant to Rules 12(b)(1), (3) and (6) of the South Carolina Rules of Civil Procedure, the South Carolina Uniform Arbitration Act, S.C. Code §15-48-10 *et seq*., and 9 U.S.C. §1, *et seq*., of the Federal Arbitration Act ("Motion").

A hearing on the Motion was held on May 7, 2025. After careful consideration of the parties' respective briefs, oral arguments, the applicable law, and, for the reasons herein, I find that Developer Defendants' Motion should be denied.

BACKGROUND

This matter arises from construction throughout a single neighborhood known as Patrick Square Subdivision ("Patrick Square") in Clemson, South Carolina. Patrick Square contains approximately 300 single-family homes that were constructed by Developer Defendants and their subcontractors and were designed, developed, and sold by Developer Defendants.

JMC Homes of South Carolina ("JMC SC") is the contractor of record who pulled all of the construction permits. Patrick Square, LLC sold the homes in the subdivision and was also the Declarant in the Restrictive Covenants for the neighborhood.

Plaintiffs filed this action on behalf of themselves and a proposed class[1] of other Patrick Square homeowners in the Pickens County Court of Common Pleas on April 23, 2024. On January 28, 2025, Developer Defendants filed this Motion.

[1] The proposed class is defined as follows:

Plaintiffs' Builder Agreements

Mr. and Mrs. Coleman executed a builder agreement for their home on November 4, 2016. Mr. David Griffith executed a builder agreement for his home on December 19, 2018. *See* Plaintiffs' Opp. Memo, Ex. A – "Coleman Builder Agreement" and Ex. B – "Griffith Builder Agreement." *See id*. The Coleman Builder Agreement contains three provisions that are entitled: "Limited Warranty," which attempts to disclaim all implied warranties and relieve Developer Defendants of responsibility for "incidental or consequential damages."; at Paragraph 19, "Defaults and Disputes," which describes the procedure for resolving conflict if that conflict arises out of contract, at Paragraph 22; and Paragraph 24, entitled "Binding Arbitration," provides:

> 24. **Binding Arbitration**. All parties to this Agreement acknowledge that, in the event any issue in law or equity arises after execution of this Agreement, same shall be resolved through binding arbitration. If the claim relates to the warranty provided by Builder and/or other claims, then the arbitration will be provided through Construction Arbitration Services, Inc. ("CAS"). The CAS arbitration will be conducted in accordance with their rules in effect at the time of the request for arbitration and the Federal Arbitration Act. All parties by entering into this agreement acknowledge that arbitration shall be the only manner of settling any issue arising after execution of this Agreement and that the results of the arbitration decision shall be binding on the parties to this Agreement. All parties to the Agreement agree to arbitrate the matter while continuing to comply with the other terms of this Agreement including proceeding to Closing, unless the parties mutually consent to a stay of further compliance with the terms of the Agreement during the period the issue is being arbitrated. In the event that an arbitration decision requires repairs or adjustments to be made by the Builder, these repairs or adjustments shall be made in accordance with the standards as outlined in the Warranty, or which are customary to generally accepted local area building industry criteria and standards in the event the Warranty is silent as to an applicable standard.

> All persons and entities that own, in whole or in part, a home within Patrick Square development located in Pickens County, South Carolina.

Excluded from the Class are: (a) any Judge presiding over this action and members of his/her families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants, and Defendants' current employees, investors, members, or officers; (c) any homeowners who has released all the claims set forth herein; and (d) all persons who properly executed and file a timely request for exclusion from the Class.

> The provisions of this paragraph shall survive Closing and delivery of the limited warranty deed to the Owner.

Ex. A, Coleman Builder Agreement.

However, Paragraph 24 is absent from numerous agreements. Of the four Builder Agreements of potential class members, only one has the Paragraph 24, entitled "Binding Arbitration." *See* Plaintiffs' Opp. Memo, Ex. A, Ex. B, Ex. C – "Rozendale Builder Agreement," and Ex. D. – "Donahue Builder Agreement." The Colemans' and Mr. Griffith's deeds, received on December 1, 2016, and January 24, 2019, respectively, do not contain an arbitration provision. *See id.*, Ex. E, Deeds.

APPLICABLE LAW

When deciding a motion to compel arbitration, "a court is not to rule on the potential of the underlying claims." *See Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 108, 739 S.E.2d 209, 213 (2013) (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)). Rather, the court should look to the state law that ordinarily governs the formation and construction of contracts. *See Landers*, 402 S.C. at 108, 739 S.E.2d at 213 (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995) ("When deciding whether the parties agreed to arbitrate a certain matter … courts generally … should apply ordinary state-law principles that govern the formation of contracts.")).

In South Carolina, contract defenses such as fraud, duress and unconscionability apply to a court's evaluation of the enforceability of an arbitration clause governed under either the SCUAA or the FAA. 9 U.S.C. § 2 (providing written arbitration agreements may be invalid, revocable and unenforceable based upon "such grounds as exist at law or in equity for the revocation of any contract."); S.C. Code § 15-48-10(a) (containing similar language to that of the FAA). Thus, if this Court finds an arbitration clause unconscionable, it may refuse to enforce the clause or otherwise limit its application so "as to avoid any unconscionable result." S.C. Code § 36-2-302(1). Unconscionability is "defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them no fair and honest person would accept them. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007). The test for unconscionability is simply whether the arbitration clause creates a fair and impartial forum or instead is used and intended to give one party an unfair advantage. *See, e.g., Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 49, 790 S.E.2d 1, 4 (2016) (quoting *Simpson*, 373 S.C. at 25, 644 S.E.2d at 668-69).

Upon finding that an arbitration provision is unconscionable, a trial court will typically not sever the provision from the rest of the contract because it has "implications that may substantially affect the substantive outcome of the resolution," (quoting *Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 131–32, 678 S.E.2d 435, 439 (2009)) and severing the provision would be "materially rewriting the contract." *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 619-20, 879 S.E.2d 746, 758 (2022). Courts will give special considerations to adhesion contracts when making severability determinations, as they "are subject to considerable skepticism upon review, due to the disparity in bargaining positions of the parties. *Id.* at 437 S.C. at 620, 879 S.E.2d at 760 (quoting *Simpson*, 373 S.C. at 26, 644 S.E.2d at 669). Courts will also give additional consideration to consumer transactions because "South Carolina has a deeply-rooted and long-standing policy of protecting new home buyers." *Id.* at 437 S.C. at 621, 879 S.E.2d at 760.

For the FAA to govern an arbitration provision, the sale agreement must involve "interstate commerce." If a sale agreement in South Carolina does not involve sufficient elements of interstate commerce, the SCUAA will govern an arbitration provision. S.C. Code Ann. § 15-48-10(a) states that an arbitration provision in a written contract must "be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration." *See Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 588-99, 553 S.E.2d 110, 114 ("T]he terms of section 15-48-10(a) are clear, and those terms must be applied according to their literal meaning… [n]o other variation is acceptable.").

DISCUSSION

Developer Defendants' Motion to Compel Arbitration and Dismiss or Stay this action is denied for the following reasons: (1) the Court finds that the arbitration agreement is not enforceable under the FAA because the matter does not involve interstate commerce; (2) the Court finds the arbitration provision is not enforceable under the SCUAA because the contracts do not comply with SCUAA's notice requirements; (3) the Court finds that Plaintiff William Coleman as Trustee of the William Coleman Revocable Trust has no agreement whatsoever with JMC or any Developer Defendants in this action; and (4) the Court finds the arbitration provision, and its proposed severance from other provisions with the contracts, violates the law and public policy of South Carolina pursuant to *Damico.*

i. The Arbitration Agreement is Not Enforceable Under the FAA Because the Matter Does Not Involve Interstate Commerce

Plaintiffs assert that the FAA is inapplicable here because Developer Defendants have not sufficiently established that the sale agreements involve "interstate commerce." Defendant Developers have filed an affidavit claiming that out-of-state materials and vendors were used at Patrick Square. However, the Supreme Court of South Carolina has found that affidavits attesting that "out-of-state materials, suppliers, and subcontractors were used for the construction of the residence" do not "negate the intrastate nature of the sale and purchase of residential real estate." *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 458, 730 S.E.2d 312, 318 (2012).

The contract between Plaintiffs and Developer Defendants is a sale contract as opposed to a construction contract. The interstate nature of the construction materials does not have a significant impact on the sale contract and does not meet the threshold to establish the interstate commerce showing necessary for the arbitration provision to be governed by the FAA. The sale of a completed home in South Carolina involves purely intrastate commerce.

ii. The Arbitration Provision Is Not Enforceable Under the SCUAA Because the Contracts Do Not Comply with SCUAA's Notice Requirements

Plaintiffs contend that the arbitration and dispute resolutions in the sales contract do not comply with the notice standard set forth in S.C. Code Ann. § 15-48-10(a). Paragraph 22 of the sale contract, which addresses dispute resolution and is included in the contracts of all Plaintiffs, is not a conspicuous notice requiring arbitration, is not underlined in all capital letters, and is not included in the agreements until page 5. Paragraph 24 of the contract, which addresses binding arbitration and is only included in the Coleman contract, is also not underlined in all capital letters and is not found until page 6 of the agreement. Therefore, both Paragraph 22 and Paragraph 24, regardless of which is found within the majority of the class members' agreements, fail to comply with the notice requirements for arbitration provisions in written contracts under South Carolina law and are thus both unenforceable.

iii. The Arbitration Provision, and Its Proposed Severance from Other Provisions with the Contract, Violates the Law and Public Policy of South Carolina Pursuant to Damico

Plaintiffs contend that Developer Defendants' arbitration provision is unenforceable because it is contained within an adhesion contract and because the provision itself contains oppressive and unconscionable terms that are not severable. Here, Plaintiffs are lay person homebuyers whereas Developer Defendants are experienced developers. Plaintiffs also had absolutely no ability to negotiate the sale contracts and were not given any options to make modifications to the same.

(*See* Plaintiffs Opp. Memo, Ex. G, David Griffith Aff., and H, William Coleman Aff.). Because of this, Plaintiffs did not have a meaningful choice, or any choice for that matter, in their ability to negotiate the arbitration clause in their agreements. The sales contracts were so one sided that every provision contained within, including the warranty waivers and the arbitration provision, Paragraphs 19, 22, and 24 can be seen as unconscionable and oppressive.

Plaintiffs cite *Damico* to assert that severance of the terms of Paragraphs 19, 22, and 24 is against public policy. Although the builder agreements contain a general severability provision in Paragraph 32, Plaintiffs contend that the severely unconscionable and oppressive terms of the Paragraphs, contained within an adhesive sales contract where homebuyers had absolutely no bargaining power, are still so intertwined that they cannot be severed from each other. Under *Damico,* a seller who furnishes "a grossly one-sided contract and arbitration provision, hoping a court would rescue the one-sided contract through a severability clause" should not be rewarded for this conduct by honoring the clause. *Damico* at 437 S.C. 624, 844 S.E.2d at 762. Severing the terms would also "substantially affect the substantive outcome" of this resolution and would amount to a material rewriting of the agreement.

iv. There is No Binding Builders Agreement Between Developer Defendants and William A. Coleman as Trustee for the William Coleman Revocable Trust.

Named Plaintiff William Coleman as Trustee for the William Coleman Revocable Trust has no binding builder's agreement, nor any agreement, with JMC or any Developer Defendant. The Builder Agreement (Exhibit A) was entered into by Deborah C. Coleman and William Coleman in their personal capacities. The deed to 413 Pershing Ave., Clemson, SC 29631 was transferred to William Coleman as Trustee of the William Coleman Revocable Trust on October 8, 2021. The Trust is a subsequent owner of the property and, therefore, no agreement made by the original purchaser with the Developer Defendants is binding on William Coleman as Trustee of the William Coleman Revocable Trust.

CONCLUSION

Given that the dispute between Plaintiffs and Defendant Developers involves an arbitration provision that is not enforceable under both the FAA and the SCUAA and that is not severable under the law and public policy of South Carolina, IT IS HERE BY ORDERED Developer Defendants' Motion is hereby denied.

IT IS SO ORDERED!

[JUDICIAL SIGNATURE PAGE TO FOLLOW]

Pickens Common Pleas

Case Caption:	David Griffith , plaintiff, et al VS Jmc Homes Of South Carolina, Llc , defendant, et al
Case Number:	2024CP3900465
Type:	Order/Compel

So Ordered

Jessica A. Salvini

Electronically signed on 2025-06-30 14:59:07   page 10 of 10

STATE OF SOUTH CAROLINA COUNTY OF PICKENS	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT Civil Action No. 2024-CP-39-00465
DAVID GRIFFITH, **WILLIAM COLEMAN AS TRUSTEE OF THE WILLIAM COLEMAN REVOCABLE TRUST,** INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiffs, vs. JMC COMMUNITIES, INC., JMC HOMES OF SOUTH CAROLINA, LLC, PATRICK SQUARE, LLC, F/K/A DIGITAL DEVELOPMENT, LLC, **ALPHA OMEGA CONSTRUCTION GROUP, INC., GORZE, INC., COTHRAN LANDSCAPES AND GRADING, LLC, GENTRY SERVICES, LLC A/K/A GENTRY BROTHERS SERVICES, LLC, TINY BILL SWANEY D/B/A SWANEY MASONRY, SOLID ROCK CONSTRUCTION SERVICES LLC, H & H CONCRETE, LLC, MARIA CONSTRUCTION INC., F & V FRAMING, LLC, FIVE STAR CONSTRUCTION, INC., DAVIS FRAMING, LLC, ASHLEY COTHRAN D/B/A COTHRAN CUSTOM HOMES, LLC, UFP MID-ATLANTIC, LLC, BUILDER FIRST SOURCE, INC. A/K/A BUILDERS FIRSTSOURCE ATLANTIC GROUP, LLC, A/K/A BUILDERS FIRSTSOURCE SOUTHEAST GROUP, LLC, RC JOHNSON, LLC, GUNTER HEATING AND AIR CONDITIONING OF SC, LLC, 84 LUMBER COMPANY, LP, DOGWOOD EXTERIORS, LLC, H & R DRYWALL, INC., CRISTOBAL AND PAINTERS, LLC, WILLOW TREE LANDSCAPING, INC., HARBIN LUMBER COMPANY, INC., SOTO HVAC, LLC, RIVERSIDE LANDSCAPING, LLC, INTERNATIONAL CONSTRUCTION SERVICES, INC., PALMETTO GRADING AND DRAINAGE, INC.,** JANE DOE #1-10, AND JOHN DOE #**27**-50, Defendants.	**FIRST AMENDED SUMMONS** **(Defective Construction)** **(Class Action)** **(Jury Trial Demanded)**

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONDED and required to answer the Plaintiffs' First Amended Complaint ("Complaint") in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon the subscriber, Jesse A. Kirchner, at his office located at 15 Middle Atlantic Wharf, Charleston, South Carolina, 29401, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiffs will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you.

[Signature on Following Page]

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.

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Attorneys for Plaintiffs

September 24, 2024
Charleston, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	Civil Action No. 2024-CP-39-00465
DAVID GRIFFITH, **WILLIAM COLEMAN AS TRUSTEE OF THE WILLIAM COLEMAN REVOCABLE TRUST,** INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiffs, vs. JMC COMMUNITIES, INC., JMC HOMES OF SOUTH CAROLINA, LLC, PATRICK SQUARE, LLC, F/K/A DIGITAL DEVELOPMENT, LLC, **ALPHA OMEGA CONSTRUCTION GROUP, INC., GORZE, INC., COTHRAN LANDSCAPES AND GRADING, LLC, GENTRY SERVICES, LLC A/K/A GENTRY BROTHERS SERVICES, LLC, TINY BILL SWANEY D/B/A SWANEY MASONRY, SOLID ROCK CONSTRUCTION SERVICES LLC, H & H CONCRETE, LLC, MARIA CONSTRUCTION INC., F & V FRAMING, LLC, FIVE STAR CONSTRUCTION, INC., DAVIS FRAMING, LLC, ASHLEY COTHRAN D/B/A COTHRAN CUSTOM HOMES, LLC, UFP MID-ATLANTIC, LLC, BUILDER FIRST SOURCE, INC. A/K/A BUILDERS FIRSTSOURCE ATLANTIC GROUP, LLC, A/K/A BUILDERS FIRSTSOURCE SOUTHEAST GROUP, LLC, RC JOHNSON, LLC, GUNTER HEATING AND AIR CONDITIONING OF SC, LLC, 84 LUMBER COMPANY, LP, DOGWOOD EXTERIORS, LLC, H & R DRYWALL, INC., CRISTOBAL AND PAINTERS, LLC, WILLOW TREE LANDSCAPING, INC., HARBIN LUMBER COMPANY, INC., SOTO HVAC, LLC, RIVERSIDE LANDSCAPING, LLC, INTERNATIONAL CONSTRUCTION SERVICES, INC., PALMETTO GRADING AND DRAINAGE, INC.**, JANE DOE #1-10, AND JOHN DOE #**27**-50, Defendants.	**FIRST AMENDED COMPLAINT** **(Defective Construction)** **(Class Action)** **(Jury Trial Demanded)** **(Amendments in Bold)**

Plaintiffs David Griffith, **William Coleman as Trustee of the William Coleman Revocable Trust**, individually, and on behalf of all others similarly situated, complaining of the above-named Defendants **by way of a First Amended Complaint pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, and** would respectfully allege and show the Court as follows:

PARTIES AND JURISDICTIONAL STATEMENT

1. The Patrick Square subdivision ("Patrick Square") is a neighborhood of approximately 300 single-family homes (the "Residences") located in Pickens County, South Carolina.

2. Plaintiff David Griffith is a citizen and resident of Pickens County, South Carolina.

3. Mr. Griffith owns a home within Patrick Square that is located at 221 Pershing Avenue, Clemson, South Carolina.

4. Mr. Griffith purchased his home on or about January 24, 2019, from the **Developer** Defendants.

5. Plaintiff William Coleman is a citizen and resident of Pickens County, South Carolina.

6. Mr. Coleman owns a home within Patrick Square that is located at 413 Pershing Avenue, Clemson, South Carolina.

7. Mr. Coleman purchased this home on or about December 1, 2016, from the Developer Defendants.

8. Plaintiffs bring this action on behalf of themselves and a proposed Class of other similarly situated Patrick Square homeowners (collectively, "Plaintiffs and the Class").

Developer and General Contractor Defendants

9. Defendant JMC Communities, Inc. ("JMC Communities") is, on information and belief, a corporation organized and existing pursuant to the laws of the State of Florida, doing business in Pickens County, South Carolina.

10. Defendant JMC Homes of South Carolina, LLC ("JMC Homes") is, on information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, doing business in Pickens County, South Carolina.

11. Defendant Patrick Square, LLC f/k/a Digital Development, LLC ("Patrick Square, LLC") is, on information and belief, a limited liability company organized and existing pursuant to the laws of the state of South Carolina, doing business in Pickens County, South Carolina.

12. Upon information and belief, JMC Communities, JMC Homes, and Patrick Square, LLC, (together the "Developer Defendants"), share owners.

13. Upon information and belief, Developer Defendants share organizers, directors, officers, and managers.

14. Upon information and belief, Developer Defendants all operate from an office owned by JMC Communities and located at 578 Issaqueena Trail, Clemson, SC 29631.

15. Upon Information and belief, Developer Defendants all operated using the employees and assets of one another.

16. Upon information and belief, Developer Defendants communicated with others in a manner treating the entities as one and the same.

17. Developer Defendants are and were each an instrumentality or alter ego of each other.

18. Developer Defendants functioned as one and the same entity.

19. Developer Defendants functioned as a single business enterprise such that the actions, obligations, and liabilities of one apply to the others.

20. Upon information and belief, the Developer Defendants designed, developed, constructed, marketed and sold the Plaintiffs' Residences and the other homes at issue in the Patrick Square neighborhood.

Jane Doe Defendants

21. Defendants Jane Doe #1-10, whose true names are unknown ("Jane Doe Defendants"), are other entities or individuals which are actual or *de facto* joint venturers and/or partners, control persons, and/or agents of JMC Communities and/or JMC Homes and/or each other connection with the design, construction, and repairs of the Residences.

22. The address and identity of each Jane Doe Defendant is unknown to the Plaintiffs at this time but are likely known to one or more of the Defendants.

23. At all times relevant hereto, Jane Doe Defendants were conducting business in Pickens County, South Carolina.

24. Upon information and belief, JMC Communities, JMC Homes, Patrick Square, LLC f/k/a Digital Development, LLC, Jane Doe Defendants and their officers, members, managers, directors, and/or shareholders (collectively "Developers"), operated a joint enterprise for the common, for-profit purpose of designing, developing, marketing, constructing and selling the Residences to Plaintiffs and the Class.

25. Upon information and belief, Developers collectively designed, developed and constructed the Residences, marketed the Residences to the public, sold and/or otherwise placed the Residences into the stream of commerce, and/or attempted repairs to some Residences.

26. Upon information and belief, Developers failed to observe corporate formalities; acted as agents of each other; and/or, comingled and combined their resources in designing, developing, constructing, marketing, selling, and/or repairing the Residences.

27. Upon in formation and belief, the legal distinctions between Developers are blurred and they are, in effect, one and the same, operating as a single business enterprise, and their interests are amalgamated such that the actions and liabilities of one should apply to the others.

Contractors and John Doe Defendants

28. Defendant Alpha Omega Construction Group, Inc. ("Alpha") is a corporation organized and existing pursuant to the laws of the State of North Carolina with a registered agent in South Carolina and doing business in Pickens County. Alpha is hereby substituted for Defendant John Doe 1.

29. Defendant Gorze, Inc. ("Gorze") was a corporation which was organized and existed pursuant to the laws of the State of South Carolina with its principal place of business in Greenville County. Gorze is hereby substituted for Defendant John Doe 2.

30. Cothran Landscapes and Grading, LLC ("Cothran Landscapes") is a limited liability company organized and existing pursuant to the laws of South Carolina with its principal place of business in Oconee County. Cothran Landscapes is hereby substituted for Defendant John Doe 3.

31. Solid Rock Construction Services, LLC ("Solid Rock") is a limited liability company organized and existing pursuant to the laws of South Carolina with its principal place of business in Laurens County. Solid Rock is hereby substituted for Defendant John Doe 4.

32. H&H Concrete, LLC ("H&H") is a limited liability company organized and existing pursuant to the laws of South Carolina with its principal place of business in Greenville County. H&H is hereby substituted for Defendant John Doe 5.

33. Maria Construction Inc. ("Maria Construction") is a corporation organized and existing pursuant to the laws of South Carolina with its principal place of business in Berkeley County. Maria Construction is hereby substituted for Defendant John Doe 6.

34. F&V Framing, LLC ("F&V") is a limited liability company organized and existing pursuant to the laws of South Carolina with its principal place of business in Greenville County. F&V is hereby substituted for Defendant John Doe 7.

35. Five Star Construction, Inc. ("Five Star") is a corporation organized and existing pursuant to the laws of South Carolina with its principal place of business in Greenville County. Five Star is hereby substituted for Defendant John Doe 8.

36. Davis Framing, LLC ("Davis Framing") is a limited liability company organized and existing pursuant to the laws of South Carolina with its principal place of business in Greenville County. Dravis Framing is hereby substituted for Defendant John Doe 9.

37. Ashley Cothran d/b/a Cothran Custom Homes, LLC ("Cothran Custom") is a limited liability company organized and existing pursuant to the laws of South Carolina with its principal place of business in Oconee County. Cothran Custom is hereby substituted for Defendant John Doe 10.

38. RC Johnson, LLC ("RC") is a limited liability company organized and existing pursuant to the laws of South Carolina with its principal place of business in Oconee County. RC is hereby substituted for Defendant John Doe 11.

39. Willow Tree Landscaping, Inc. ("Willow") is a corporation organized and existing pursuant to the laws of South Carolina with its principal place of business in Anderson County. Willow is hereby substituted for Defendant John Doe 12.

40. Harbin Lumber Company, Inc. ("Harbin Lumber") is a corporation organized and existing pursuant to the laws of Georgia with a registered agent in South Carolina and doing business in Pickens County. Hardin Lumber is hereby substituted for Defendant John Does 13.

41. Soto HVAC LLC, ("Soto") is a limited liability company organized and existing pursuant to the laws of South Carolina with a principal place of business in Greenville County. Soto is hereby substituted for Defendant John Doe 14.

42. Riverside Landscaping LLC, ("Riverside") is a limited liability company organized and existing pursuant to the laws of South Carolina with a principal place of business in Greenville County. Riverside is hereby substituted for Defendant John Doe 15.

43. Dogwood Exteriors, LLC ("Dogwood") is a limited liability company organized and existing pursuant to the laws of the State of North Carolina and conducted business in Pickens County, South Carolina. Dogwood is hereby substituted for Defendant John Doe 16.

44. H&R Drywall Inc. ("H&R") is a corporation organized and existing pursuant to the laws of South Carolina with a principal place of business in Greenville County. H&R is hereby substituted for John Doe 17.

45. Cristobal and Painters, LLC ("Cristobal") is a limited liability company organized and existing pursuant to the laws of South Carolina with a principal place of business in Greenville County. Cristoball is hereby substituted for John Doe 18.

46. 84 Lumber Company, LP ("84 Lumber") is a limited partnership incorporated and existing pursuant to the laws of Pennsylvania with a registered agent in the state of South Carolina and doing business in Pickens County. 84 Lumber is hereby substituted for Defendant John Doe 19.

47. Gunter Heating & Air Conditioning of SC, LLC ("Gunter") is a limited liability company organized and existing pursuant to the laws of South Carolina with a principal place of business in Greenville County. Gunter is hereby substituted for Defendant John Doe 20.

48. Builders First Source, Inc. AKA Builders FirstSource Atlantic Group, LLC, aka Builders FirstSource Southeast Group, ("Builders First Source") is a corporation organized and existing pursuant to the laws of Delaware with a principal place of business in South Carolina located at 2 Office Park Court, Suite 103 Columbia, South Carolina 29223, and doing business in Pickens County. Builders First Source is hereby substituted for Defendant John Doe 21.

49. UFP Mid-Atlantic, LLC ("UFP") is a limited liability corporation with a principal place of business in North Carolina located at 5631 S NC Hwy 62 B and conducting business in Pickens County. Universal is hereby substituted for Defendant John Doe 22.

50. Gentry Services, LLC a/k/a Gentry Brothers Services, LLC ("Gentry") is a limited liability company which, upon information and belief, is organized and existing pursuant to the laws of South Carolina and has a principal place of business in Greenville County. Gentry is hereby substituted for Defendant John Doe 23.

51. Tiny Bill Swaney is a citizen and resident of South Carolina doing business as Swaney Masonry ("Swaney Masonry") with a principal place of business located at 1107

Whitetail Trial, Anderson, South Carolina 29625. Swaney Masonry is hereby substituted for Defendant John Doe 24.

52. International Construction Services, Inc. ("International") is a corporation organized and existing pursuant to the laws of South Carolina with a principal place of business in Richland County. International is hereby substituted for Defendant John Doe 25.

53. Palmetto Grading and Drainage Inc. ("Palmetto") is a corporation organized and existing pursuant to the laws of South Carolina with a principal place of business in Spartanburg County. Palmetto is hereby substituted for Defendant John Doe 26.

54. Defendants John Doe #**27**-50 ("John Doe Defendants") are persons or entities who participated in the design, development, marketing, construction, repair, and/or sale of the Residences as contractors, subcontractors, manufacturers, material suppliers, consultants, architects, engineers, real estate agents, managers, marketers, laborers, and the like.

55. The address and identity of the John Doe Defendants are unknown to the Plaintiffs at this time but are likely known to one or more of the Defendants.

56. All at times relevant hereto, John Doe Defendants were conducting business in Pickens County, South Carolina and were providing materials or services to the Residences as set forth above.

57. This Honorable Court has jurisdiction over all parties hereto and over all subject matter alleged herein.

58. Venue is proper in Pickens County as the most substantial part of Plaintiffs' and the Class's alleged injuries and Defendants' alleged acts or omissions took place in Pickens County.

59. Plaintiffs are informed and believe that well over two-thirds of the Class are citizens of Pickens County, South Carolina.

60. Plaintiffs are informed and believe that all or nearly all of the Class are citizens of South Carolina.

FACTUAL ALLEGATIONS

61. **Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated here.**

62. This matter arises out of the design, development, construction, marketing, sale and/or attempted repair of the Residences.

63. Upon information and belief, Alpha performed work associated with construction of the roof on the Residences.

64. Upon information and belief, Gorze performed site work on the Residences.

65. Upon information and belief, Cothran Landscapes performed site work and final grading work on the Residences.

66. Upon information and belief, Solid Rock performed work associated with foundation construction on the Residences.

67. Upon information and belief, H&H performed work associated with foundation construction on the Residences.

68. Upon information and belief, Maria Construction performed work associated with framing and siding on the Residences.

69. Upon information and belief, F&V performed work associated with framing on the Residences.

70. Upon information and belief, Five Star performed work associated with framing on the Residences.

71. Upon information and belief, Davis Framing performed work associated with framing on the Residences.

72. Upon information and belief, Cothran Custom performed work associated with framing and siding on the Residences.

73. Upon information and belief, RC performed window installation on the Residences.

74. Upon information and belief, Willow performed grading work on the Residences.

75. Upon information and belief, Harbin Lumber performed work associated with the truss systems of the Residences.

76. Upon information and belief, Soto performed work associated with HVAC on the Residences.

77. Upon information and belief, Riverside performed grading work on the Residences.

78. Upon information and belief, Dogwood performed work associated with siding on the Residences.

79. Upon information and belief, H&R performed work associated with Painting at the Residences.

80. Upon information and belief, Cristobal performed work associated with painting at the Residences.

81. Upon information and belief, 84 Lumber performed work associated with siding on the Residences.

82. Upon information and belief, Gunter performed work associated with the HVAC of the Residences.

83. Upon information and belief, Builders First Source performed work associated with the truss systems and siding at the Residences.

84. Upon information and belief, UFP performed work associated with the truss systems of the Residences.

85. Upon information and belief, Gentry performed grading site work and final grade work on the Residences.

86. Upon information and belief, Tiny Bill performed work associated with the foundation of the Residences.

87. Upon information and belief, International performed work associated with construction of the roof on the Residences.

88. Upon information and belief, Palmetto performed work associated with final grading of the Residences.

89. At the time the Certificates of Occupancy were issued, the Residences contained building code violations, latent building defects, including defective or substandard site work and drainage infrastructure, and inadequate water intrusion protection.

90. Defendants should have known of the existence of the latent defects for many reasons, including their post-construction repair efforts, which have failed.

91. As a result of the above, the Residences suffer from numerous defects, including, but not limited to, failure in exterior cladding systems, inadequate framing, inadequate shingle

installation, inadequate brick installation, water intrusion into and through windows, doors, roofs and the exterior building envelope, as well as, flooding and insufficient drainage capabilities in the yards and spaces adjacent to the homes.

92. The foregoing acts and omissions by Defendants, in combination with fortuitous events, weather, repeated water intrusion, and continuous or repeated moisture/vapor seepage, intrusion, condensation, deteriorating materials and components and/or other similar events, have resulted in consequential damage to the Residences and to Plaintiffs' personal property.

93. The foregoing has caused Plaintiffs to suffer diminution of value to their homes.

94. Plaintiffs have previously put one or more of the Defendants on notice of one or more of the deficiencies, many of which Defendants have conceded exist.

95. However, the Defendants' various repair attempts have been inadequate or unsuccessful.

96. Defendants had a duty to develop, construct, and repair the Residences in a workmanlike manner with suitable materials, free from all defects, and in accordance with the applicable building code, approved plans, good workmanship, and construction industry and engineering standards.

97. The aforementioned deficiencies and resulting damages show that Defendants breached their duties to Plaintiffs.

98. Defendants' acts and omissions have resulted in loss of use and enjoyment of the Residences, their yards and appurtenances.

99. Remedying the above deficiencies will result in additional consequential damage and loss of use.

100. As a direct and proximate result of Defendants' violation of their legal duties, Plaintiffs will be required to incur expense for the retention of experts to determine the cause of the damage, the scope of work required for the remediation of the Residences, and the repair of the damage.

101. The foregoing failures and resulting consequential damages commenced shortly after completion and have occurred and have been occurring continuously each and every year since commencement and constitute "occurrences" and "property damage" under the standard and/or typical commercial general liability policies.

CLASS ACTION ALLEGATIONS

102. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiffs bring this action, both individually, and on behalf of a Class of similarly situated claimants. The Class is more particularly defined as follows:

> All persons and entities that own, in whole or in part, a home within the Patrick Square development located in Pickens County, South Carolina (collectively the "Class").
>
> Excluded from the Class are: (a) any Judge presiding over this action and members of his/her families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants, and Defendants' current employees, investors, members, or officers; (c) any homeowner who has released all the claims set forth herein; and, (d) all persons who properly execute and file a timely request for exclusion from the Class.

103. *Numerosity*: Upon information and belief, to date the Class contains three hundred (300) or more Residences, owned by various people and entities, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of five hundred (500) members.

104. *Commonality*: Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include the following:

a. Whether The Residences contain similar construction defects;

b. Whether Defendants negligently designed, constructed and/or repaired The Residences;

c. Whether Defendants breached their implied warranties in connection with The Residences;

d. Whether Defendants knew or should have known of the latent defects;

e. Whether Defendants failed to disclose the cause of the defective conditions and/or unsuccessful repairs;

f. Whether Plaintiffs are entitled to recover (i) the estimated cost to repair (ii) compensation for the loss/replacement of other property; (iii) temporary repairs; and (iv) compensation for loss of use; and,

g. Whether Defendant's conduct was reckless, willful, wanton, or the like, entitling Plaintiffs to punitive damages.

105. *Typicality*: Plaintiffs' claims are typical of the claims of the Class, as all such claims arise out of Defendants' wrongful conduct in designing, constructing, supplying, installing, and/or repairing The Residences, and Plaintiffs' ownership of these Residences that contain latent defects.

106. *Adequate Representation*: Plaintiffs will fairly and adequately protect the interests of the Class and have no interests antagonistic to those of the Class. Plaintiffs have retained counsel experienced in the prosecution of construction defect claims and complex litigation, including consumer class actions involving product liability and product design defects.

107. *Predominance and Superiority*: This Class Action is appropriate for certification because questions of law and fact common to the Class predominate over questions affecting only individual members, and a class action is superior to other available methods for the fair and

efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this Class Action presents far fewer management difficulties while providing unitary adjudication, economies of scale, and comprehensive supervision by a single Court.

108. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice. All Class members have the same legal right to and interest in redress for damages associated with the defective conditions existing within their Residences.

109. Plaintiffs and the Class envision no unusual difficulty in the management of this action as a Class Action.

110. Each Class member has an interest of more than one hundred dollars ($100.00).

111. The amount of money at stake for each Class member is not sufficient for each member to hire their own counsel and engineers and bring their own action.

ESTOPPEL FROM PLEADING NOTICE OF OPPORTUNITY TO CURE

112. The Defendants are estopped from relying on South Carolina's Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. § 40-59-810, *et. seq*., to stay the progression of Plaintiffs' claims.

113. Developer Defendants have been, in fact, on notice of the Residences' defective conditions within any statutory period prescribed by the Act.

114. Developer Defendants, through their representatives, have repeatedly conceded that the Residences contain latent building defects which caused and are continuing to cause consequential damage to the Residences.

115. In addition, Developer Defendants were repeatedly given access to the Residences and provided opportunities to cure many of the Residences' defective conditions but failed to adequately and properly do so such that the Residences still contain latent defects that continue to cause damage.

ESTOPPEL FROM PLEADING AND TOLLING OF APPLICABLE STATUTES OF LIMITATIONS

116. Defendants are estopped from relying on any statutes of limitations or repose by virtue of their acts. Upon information and belief, Defendants should have known the Residences were defectively constructed and failed to alert Plaintiffs and the Class of the Residences' defective condition.

117. Defendants had a duty to inform Plaintiffs and the Class of the defects described herein, which they should have known. Notwithstanding their duty, Defendants never disclosed the defects to Plaintiffs or the Class.

118. Despite exercising reasonable diligence, Plaintiffs and the Class could not have discovered the defective condition of Residences.

119. Given Defendants' failure to disclose this non-public information about the defective nature of the Residences – information over which they had exclusive control – and because Plaintiffs and the Class could not reasonably have known of the Residences' defective nature, Defendants are estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

120. Defendants are further estopped from relying upon any statute of limitations as they have repeatedly represented to Plaintiffs and the Class that they had or were correcting the work.

121. The equitable tolling doctrine further precludes Defendants from relying on a statute of limitations defense.

FIRST CAUSE OF ACTION
(Negligence and Gross Negligence/Recklessness as to all Defendants)

122. Plaintiffs and Class repeat and re-allege the above paragraphs as if fully set forth verbatim.

123. Defendants owed duties to Plaintiffs and Class in connection with the work they performed and caused to be performed for and at the Residences.

124. Defendants had a duty to properly design and construct the Residences and cause the work to be performed at the Residences in accordance with applicable building codes, approved plans and specifications, industry standards, and in a careful, diligent and workmanlike manner, with suitable materials, and free from defects.

125. The Plaintiffs and Class were at all times the foreseeable end users of the materials and services provided by Defendant.

126. Defendants breached their duties in a manner that was negligent and careless in the following particulars:

a. In failing to properly plan for the construction of the Residences;

b. In failing to account for site-specific conditions and environmental conditions;

c. In failing to procure and provide adequate civil, structural, and architectural plans for the construction of the Residences;

d. In failing to construct the Residences in accordance with the applicable building codes, good design, standard building practices, approved and permitted plans, and accepted construction industry standards and practices;

e. In implementing/approving design changes without adequately considering the ramifications of the design changes;

f. In failing to properly supervise the work performed at the Residences;

g. In failing to properly coordinate the subcontractors;

h. In failing to properly design and construct an adequate exterior building envelope, foundations, exterior cladding systems, windows, doors, roofs, framing and/or other building components of the residences;

i. In failing to properly manage air and moisture infiltration;

j. In failing to warn all owners of the known issues with the Residences;

k. In failing to make proper repairs;

l. In covering up their own defective work and the defective work of others;

m. In failing to act as a reasonable person would in the circumstances then and there prevailing; and

n. Other deficiencies or failures as will be proven during discovery and at trial.

127. Plaintiffs and the Class have been damaged as a direct and proximate result of the negligence and carelessness of the Defendants.

128. The violation of applicable building codes constitutes negligence *per se* and is evidence of gross negligence.

129. If it is shown that said failures were committed with gross negligence and/or recklessness, willfulness, or wantonness, Plaintiffs and the Class are entitled to an award of punitive damages against the Defendants.

130. As a result of the foregoing, Plaintiffs and the Class are entitled to a judgment against Defendants for all actual, direct, indirect, resulting, consequential, and punitive damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(Breach of Implied Warranty as to all Defendants)

131. Plaintiffs and Class repeat and re-allege the above paragraphs as if fully set forth verbatim.

132. Upon information and belief, Defendants collectively developed the Residences, marketed the Residences to the public, placed the Residences into the stream of commerce and sold the Residences; and therefore; by operation of law, Defendants impliedly warranted that the Residences would be developed in a careful, diligent, and workmanlike manner, with suitable materials and components that complied with applicable building codes, industry standards, and industry practice.

133. By operation of law, Defendants impliedly warranted that the Residences would be merchantable, free from latent defects, and fit for the particular purpose.

134. By virtue of selling or otherwise placing the Residences into the stream of commerce, Defendants impliedly warranted that the Residences would be habitable.

135. Defendants breached their implied warranties by designing, developing, construction and selling the Residences in a defective manner as set forth above.

136. Any such provisions inserted by the Defendants into their contracts with the Plaintiffs and the Class purporting to waive implied warranties and other forms of relief are void pursuant to public policy and South Carolina law. The Defendants acknowledge as much in certain contracts by stating, "[t]he foregoing limitations on implied warranties and relief may be unenforceable in certain states."

137. Any such provision purporting to waive implied warranties was not specifically bargained for and there was no separate consideration for any such purported waiver.

138. As a result, the Defendants can neither enforce nor rely on the purported warranty disclaimers.

139. As a direct and proximate result of Defendants' breach of their implied warranties, Plaintiffs and the Class have been damaged and are entitled to a judgment against Defendants for all actual, direct, indirect, resulting, and consequential damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs and Class pray this Honorable Court inquire into the matters set forth herein and award judgment in favor of them against the Defendants, jointly and severally, as follows:

a. For all actual, direct, indirect, special and consequential damages against the Defendants, jointly and severally, in an amount to be shown at trial;
b. For all statutory damages in an amount to be determined by the trier of fact;
c. For all punitive damages in an amount to be determined by the trier of fact;
d. For prejudgment and post judgment interest;
e. For all attorneys' fees and costs associated with investigating and prosecuting this action; and
f. For all other relief this Honorable Court deems just and proper.

[Signature on Following Page]

Respectfully submitted,

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Attorneys for Plaintiffs

September 24, 2024
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2024-CP-39-00465

DAVID GRIFFITH, WILLIAM COLEMAN AS TRUSTEE OF THE WILLIAM COLEMAN REVOCABLE TRUST, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

vs.

JMC COMMUNITIES, INC., JMC HOMES OF SOUTH CAROLINA, LLC, PATRICK SQUARE, LLC, F/K/A DIGITAL DEVELOPMENT, LLC, ALPHA OMEGA CONSTRUCTION GROUP, INC., GORZE, INC., COTHRAN LANDSCAPES AND GRADING, LLC, GENTRY SERVICES, LLC A/K/A GENTRY BROTHERS SERVICES, LLC, TINY BILL SWANEY D/B/A SWANEY MASONRY, SOLID ROCK CONSTRUCTION SERVICES LLC, H & H CONCRETE, LLC, MARIA CONSTRUCTION INC., F & V FRAMING, LLC, FIVE STAR CONSTRUCTION, INC., DAVIS FRAMING, LLC, ASHLEY COTHRAN D/B/A COTHRAN CUSTOM HOMES, LLC, UFP MID-ATLANTIC, LLC, BUILDER FIRST SOURCE, INC. A/K/A BUILDERS FIRST SOURCE ATLANTIC GROUP, LLC, A/K/A BUILDERS FIRST SOURCE SOUTHEAST GROUP, LLC, RC JOHNSON, LLC, GUNTER HEATING AND AIR CONDITIONING OF SC, LLC, 84 LUMBER COMPANY, LP, DOGWOOD EXTERIORS, LLC, H & R DRYWALL, INC., CRISTOBAL AND PAINTERS, LLC, WILLOW TREE LANDSCAPING, INC., HARBIN LUMBER COMPANY, INC., SOTO HVAC, LLC, RIVERSIDE LANDSCAPING, LLC, INTERNATIONAL CONSTRUCTION SERVICES, INC., PALMETTO GRADING AND DRAINAGE, INC., JANE DOE #1-10, AND JOHN DOE #27-50,

DEFENDANTS, JMC COMMUNITIES, INC., JMC HOMES OF SOUTH CAROLINA, LLC, AND PATRICK SQUARE, LLC'S MOTION TO COMPEL ARBITRATION AND DISMISS OR STAY THIS ACTION

Defendants.

Defendants, JMC COMMUNITIES, INC., JMC HOMES OF SOUTH CAROLINA, LLC, and PATRICK SQUARE, LLC (collectively, "Defendants"), by and through undersigned counsel, submit this Motion to Compel Arbitration and Dismiss or alternatively, Stay this Action. As demonstrated in the accompanying Memorandum, which is incorporated herein by reference, the Plaintiffs expressly agreed to arbitrate claims against Defendants. This Court should enforce the parties' agreement to arbitrate and dismiss this action without prejudice or alternatively, stay this action pending the outcome of said arbitration.

Dated: January 28, 2025

Respectfully submitted,

/s/ Ryan L. Beaver

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Motion to Compel Arbitration and Dismiss or Stay this Action** has been served via the Court's electronic case filing system on all those parties receiving electronic notice in the above-referenced case.

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Attorneys for Plaintiffs

Dated this January 28, 2025.

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Attorney for Defendants, JMC Communities, Inc., JMC Homes of South Carolina, LLC, and Patrick Square, LLC

STATE OF SOUTH CAROLINA COUNTY OF PICKENS	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT Civil Action No.: 2024-CP-39-00465
DAVID GRIFFITH, WILLIAM COLEMAN AS TRUSTEE OF THE WILLIAM COLEMAN REVOCABLE TRUST, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiffs, vs. JMC COMMUNITIES, INC., JMC HOMES OF SOUTH CAROLINA, LLC, PATRICK SQUARE, LLC, F/K/A DIGITAL DEVELOPMENT, LLC, ALPHA OMEGA CONSTRUCTION GROUP, INC., GORZE, INC., COTHRAN LANDSCAPES AND GRADING, LLC, GENTRY SERVICES, LLC A/K/A GENTRY BROTHERS SERVICES, LLC, TINY BILL SWANEY D/B/A SWANEY MASONRY, SOLID ROCK CONSTRUCTION SERVICES LLC, H & H CONCRETE, LLC, MARIA CONSTRUCTION INC., F & V FRAMING, LLC, FIVE STAR CONSTRUCTION, INC., DAVIS FRAMING, LLC, ASHLEY COTHRAN D/B/A COTHRAN CUSTOM HOMES, LLC, UFP MID-ATLANTIC, LLC, BUILDER FIRST SOURCE, INC. A/K/A BUILDERS FIRST SOURCE ATLANTIC GROUP, LLC, A/K/A BUILDERS FIRST SOURCE SOUTHEAST GROUP, LLC, RC JOHNSON, LLC, GUNTER HEATING AND AIR CONDITIONING OF SC, LLC, 84 LUMBER COMPANY, LP, DOGWOOD EXTERIORS, LLC, H & R DRYWALL, INC., CRISTOBAL AND PAINTERS, LLC, WILLOW TREE LANDSCAPING, INC., HARBIN LUMBER COMPANY, INC., SOTO HVAC, LLC, RIVERSIDE LANDSCAPING, LLC, INTERNATIONAL CONSTRUCTION SERVICES, INC., PALMETTO GRADING AND DRAINAGE, INC., JANE DOE #1-10, AND JOHN DOE #27-50,	**DEFENDANTS, JMC COMMUNITIES, INC., JMC HOMES OF SOUTH CAROLINA, LLC, AND PATRICK SQUARE, LLC'S MEMORANDUM BRIEF IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND DISMISS OR STAY THIS ACTION**

Defendants.

Defendants, JMC COMMUNITIES, INC. ("JMCC"), JMC HOMES OF SOUTH CAROLINA, LLC ("JMC Homes of SC"), and PATRICK SQUARE, LLC ("PSL") (JMCC, JMC Homes of SC, and PSL are hereinafter collectively referred to as "Developer Defendants"), by and through undersigned counsel, file this Memorandum Brief in Support of the Motion to Compel Arbitration and Dismiss or Stay this Action (the "Motion").

1. INTRODUCTION

Developer Defendants bring this Motion pursuant to S.C. R. Civ. P. 12(b)(1) and the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq*, and is based upon the arbitration clauses contained in the construction agreements signed by the Plaintiffs-homeowners in this action. The arbitration clauses are valid and enforceable contracts under the FAA, and they must be placed on equal footing as any other contract and enforced according to their terms. By bringing joint litigation against Developer Defendants, Plaintiffs are in direct violation of their respective contractual agreements to resolve all construction defect related disputes exclusively through arbitration. As a result of Plaintiffs' breach of contract, the parties are now engaged in the procedurally formal and extremely expensive litigation that the arbitration clauses sought to avoid. This outcome is inconsistent with the unambiguous contractual language of the construction agreements. Therefore, Developer Defendants request that this Court compel all Plaintiffs to submit to binding arbitration and dismiss this action or alternatively, stay the proceedings pending completion of arbitration.

2. FACTUAL BACKGROUND[1]

[1] On a motion to compel, "the court is not limited to considering only those transactions expressly authorized on the face of the contract but may also look to affidavits." *Circle S. Enterprises, Inc. v. Stanley Smith & Sons*, 343 S.E.2d 45, 47 (S.C. App. 1986); *see also Blanton v. Stathos*, 570 S.E.2d 565, 569 (S.C. App. 2002) (analyzing affidavit in

This matter arises out of a construction project, more specifically, the construction of a neighborhood of approximately 371 dwelling units, consisting of single-family homes, paired homes, and townhomes, located in the Patrick Square Subdivision in Pickens County, South Carolina (the "Project"). *See* Amended Complaint, ¶ 1; *see also* Jim Baar Aff., ¶ 4. JMCC provided administrative and management support services for the Project. Jim Baar Aff., ¶ 6. JMC Homes of SC acted as general contractor and builder for 236 out of the approximately 371 dwelling units on the Project. Jim Baar Aff., ¶ 7. PSL acted as seller for the homes built by JMC Homes of SC on the Project. Jim Baar Aff., ¶ 8. Plaintiffs allege that for the purposes of the Amended Complaint, "Developer Defendants functioned as a single business enterprise such that the actions, obligations, and liabilities of one apply to the others." Amended Complaint, ¶ 20.

During the time in which these homes were constructed, it was standard procedure for Developer Defendants to request that homeowners agree to resolve any disputes arising from the construction of the homes exclusively through the use of binding arbitration. The arbitration agreements were included as clauses in each of the homeowners' construction agreement. Jim Baar Aff., ¶ 9.

On or about October 28, 2016, JMC Homes of SC entered into a builder agreement with William A. Coleman ("Coleman"), whereby Coleman agreed to pay JMC Homes of SC Three Hundred Fifty-Four Thousand One Hundred Ninety dollars ($354,190.00), for the construction of a single-family home on Lot No. 0235 of the Project (the "Coleman Construction Agreement"). Jim Baar Aff., ¶ 10. A true and correct copy of the Coleman Construction Agreement is attached hereto as **Exhibit 1**.

support of motion to compel arbitration and determining that the nature of the construction project and the affidavit were sufficient to determine "that the contract evidence a transaction involving interstate commerce").

Paragraph 22.A. of the Coleman Construction Agreement provides that "[i]f [JMC Homes of SC] materially breaches its obligations under [the Coleman Construction Agreement], [Coleman] shall be entitled, after giving [JMC Homes of SC] written notice of such breach and a ten (10) day period in which to substantially cure the breach, to demand arbitration." The Coleman Construction Agreement further provides that:

> [a]ll parties to [the Coleman Construction Agreement] acknowledge that, in the event any issue in law or equity arises after execution of [the Coleman Construction Agreement], same shall be resolved through <u>**binding arbitration**</u>. . . . All parties by entering to [the Coleman Construction Agreement] acknowledge that <u>**arbitration shall be the only manner of settling any issue**</u> arising after execution of [the Coleman Construction Agreement] and that the results of the arbitration decision shall be <u>**binding**</u> on the parties to [the Coleman Construction Agreement].

Coleman Construction Agreement, ¶ 24 (emphasis added). The Coleman Construction agreement further provides that the arbitration shall be conducted in accordance with the FAA. Coleman Construction Agreement, ¶ 24.

On or about December 20, 2018, JMC Homes of SC entered into a builder agreement with David Griffith ("Griffith"), whereby Griffith agreed to pay JMC Homes of SC Three Hundred Seventy-Five Thousand Five Hundred Sixty dollars ($375,560.00), for the construction of a single-family home on Lot No. 0277 of the Project (the "Griffith Construction Agreement"). Jim Baar Aff., ¶ 11. A true and correct copy of the Griffith Construction Agreement is attached hereto as <u>**Exhibit 2**</u>. Paragraph 22.A. of the Griffith Construction Agreement provides that "[i]f [JMC Homes of SC] materially breaches its obligations under [the Griffith Construction Agreement], [Plaintiff] shall be entitled, after giving [JMC Homes of SC] written notice of such breach and a ten (10) day period in which to substantially cure the breach, to demand arbitration."

JMC Homes of SC entered substantially similar construction agreements with the other proposed Plaintiffs in the class for which JMC Homes of SC acted as builder (the "Construction Agreements"). Jim Baar Aff., ¶ 12. The Construction Agreements contain substantially similar arbitration provisions to the Coleman Construction Agreement and the Griffith Construction Agreement. Jim Baar Aff., ¶ 13. On September 24, 2024, Plaintiffs filed an Amended Complaint, alleging two causes of action: (i) negligence, and (ii) breach of implied warranty. Because the Plaintiffs' causes of action arise from the respective Construction Agreements, and because those respective Construction Agreements contain valid and enforceable broad arbitration provisions, Developer Defendants respectfully request this court enter an Order compelling Plaintiffs to arbitrate this dispute in accordance with the respective Construction Agreements and dismissing or staying this proceeding until the conclusion of said arbitration.

3. **LEGAL ARGUMENT**

   a. **The Federal Arbitration Act applies to this dispute and requires enforcement of the arbitration provisions in the respective Construction Agreements.**

Where a matter involves "commerce" among the states, the enforceability of an arbitration agreement is governed by the FAA. 9 U.S.C. § 1 *et seq*; *see also Circle S*, 343 S.E.2d at 46. The "Federal Arbitration Act declares a liberal policy favoring arbitration . . a contract evidenc[ing] a transaction involving [interstate] commerce must be broadly construed to promote arbitration." *Circle S.*, 343 S.E. 2d at 46. "To ascertain whether a transaction involves commerce within the meaning of the FAA, the court must examine the agreement, the complaint, and the surrounding facts." *Blanton v. Stathos*, 570 S.E.2d 565, 568 (S.C. App. 2002). As clearly stated by Section 2 of the FAA, there are only two requirements for an arbitration agreement to be enforceable under the FAA: (i) the arbitration agreement must be in writing, and (ii) the matters at issue involve interstate commerce. *See also Swane Co. v. Berkeley Cnty. S.C.*, 2:15-CV-02586, 2015 WL 6688072, at *2 (D.S.C. Oct. 30, 2015).

Both Coleman and Griffith admit to being in direct privity with Developer Defendants and purchasing the respective residences. Amended Complaint, ¶¶ 4, 7. As shown above, the Construction Agreements at issue here contain a written arbitration clause which acknowledges that any dispute arising out of the Construction Agreements is subject to arbitration in accordance with the FAA. *See Carolina Care Plan, Inc. v. United HealthCare Services, Inc.*, 606 S.E.2d 752, 755 (S.C. 2004) ("unless the Court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered")*; see also Am. Home Assur. Co. v. Vecco Concrete Const. Co., Inc. of Virginia*, 629 F.2d 961, 963 (4th Cir. 1980) (finding that contract containing an arbitration stating "if any question of fact shall arise under this contract . . . then either party hereto may demand an arbitration" was a valid binding arbitration provision enforceable under the FAA).

Additionally, as Plaintiffs note in the Amended Complaint, several of the parties are from different states. *See also* Jim Baar Aff., ¶ 14 (stating that some of the subcontractors on the Project were from different states other than South Carolina). In similar fashion, some of the materials incorporated into the Project originated from outside of South Carolina and were transported across state lines. Jim Baar Aff., ¶ 15. Accordingly, the written arbitration agreement between Plaintiffs and Developer Defendants satisfies both requirements mandated by the FAA, and the agreement to arbitrate must be enforced. *Circle S.*, 343 S.E.2d at 46-47 (holding FAA applied and arbitration agreement must be enforced because the contract documents and affidavits showed that some materials were furnished from outside of South Carolina, some subcontractors were from outside of South Carolina, and the nature of the construction project have notice that materials, equipment, and supplies from outside of South Carolina would be required); *see also Low Country Rural Health Education Consortium, Inc. v. Greenway Med. Tech., Inc.*, No. 9:14-cv-00874-DCN, 2014 WL 5771850, at *5 (D.S.C. Nov. 5, 2014) (FAA applied because the transaction involved commerce; parties were from different states and performance would require crossing of state lines).

Further, it is clear that the written arbitration agreements are applicable here because the United States Supreme Court has recognized that the federal policy underlying the FAA requires courts to require arbitration of a dispute if any reasonable interpretation of the arbitration clause would cover the dispute. *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983); *see also Circle S.*, 343 S.E.2d at 46; *St. Andrews*, 2010 WL 985736, at *3 (compelling arbitration under the FAA for claims related to the "development, construction, design, oversight, and supervision" of townhouse units in a subdivision because the agreement to arbitrate was broad and these types of allegations "fall within the scope of" a broad arbitration agreement). "To ascertain whether a transaction involves commerce within the meaning of the FAA, the court must examine the agreement, the complaint, and the surrounding facts." *Zabinski v. Bright Acres Associates*, 553 S.E.2d 110, 117 (S.C. 2001); *see also Episcopal Hous. Corp. v. Fed. Ins. Co.*, 239 S.E.2d 647, 652 (S.C. 1977) (compelling arbitration under the FAA for a construction project in South Carolina and stating "It would be virtually impossible to construct an eighteen (18) story apartment building between 1971 and 1973 with materials, equipment and supplies all produced and manufactured solely within the State of South Carolina").

Plaintiffs allege that for the purposes of the Amended Complaint, "Developer Defendants functioned as a single business enterprise such that the actions, obligations, and liabilities of one apply to the others." Amended Complaint, ¶ 20. The Construction Agreements provide that if

Developer Defendants breach any of their respective obligations related to the Construction Agreements, Plaintiffs can demand arbitration after providing Developer Defendants with ten-day notice of the breach. Construction Agreements, ¶ 22.A. Further, the Coleman Construction Agreement provides that if any issue in law or equity arises related to the Coleman Residence, the parties agree that binding "arbitration shall be the only manner of settling" such issues and that the FAA applies to said arbitration. Coleman Construction Agreement, ¶ 24. Further, the Amended Complaint plainly states that the "matter arises out of the design, development, construction, marketing, sale and/or attempted repair of the Residences." Amended Complaint, ¶ 62. The Amended Complaint further cites the "Certificates of Occupancy" for each residence, states that "Developer Defendants had a duty to develop, construct, and repair the Residences," and alleges that Developer Defendants breached those duties, all of which are duties that would arise from the Construction Agreements governing the construction and sale of the respective residences. Amended Complaint, ¶¶ 89, 40. In sum, the written arbitration agreement between Plaintiffs and Developer Defendants satisfies the FAA and must be enforced.

b. Plaintiffs' claims fall within the broad scope of the arbitration provision.

As it relates to the first cause of action alleged by Plaintiffs, negligence, the Amended Complaint states "Developer Defendants had a duty to properly **design and construct** the Residences and cause the work to be performed at the Residences in accordance with . . . **approved plans and specifications**." Amended Complaint, ¶ 124 (emphasis added). The approved plans and specifications are a part of the respective Construction Agreements. *See* Coleman Construction Agreement ¶ 1, Griffith Construction Agreement ¶ 1. Further, Plaintiffs allege that Developer Defendants breached many alleged duties, most of which exclusively arise from the respective Construction Agreements. *See* Amended Complaint, ¶ 126 (alleging for example that Developer

Defendants breached an alleged duty to plan the work, an alleged duty to coordinate the work, and an alleged duty to supervise the work). Finally, the negligence cause of action incorporates by reference all preceding paragraphs, which provide that all of Plaintiffs' claims allegedly "arise out of Defendant's wrongful conduct in designing, constructing, supplying, installing, and/or repairing The Residences." Amended Complaint, ¶ 105.

Similarly, as it relates to the second cause of action alleged by Plaintiffs, breach of implied warranty, South Carolina has held as a matter of law that claims for breach of implied warranties arise from contract and are therefore subject to arbitration. *Dixon v. Pattee*, 898 S.E.2d 158, 171 (S.C. App. 2023) (holding that claims for breach of implied warranty related to the merchantability and habitability of a residence "expressly rely on the [contract]" and were subject to arbitration); *see also Osborne*, 2009 WL 3152044, at *4 (compelling arbitration for claims of breach of implied warranty). Here, the Amended Complaint generally alleges that Developer Defendants breached the implied warranty of merchantability and the implied warranty of habitability as it relates to the Residences. Amended Complaint, ¶¶ 77, 78. Accordingly, the second cause of action alleged by Plaintiffs plainly arises from the Construction Agreements and is also subject to arbitration. Because the Construction Agreements contain broad arbitration provisions, and both causes of action alleged in the Amended Complaint relate to the Construction Agreements, this Court should issue an order compelling Plaintiffs to participate in the arbitration of this dispute.

c. Since the FAA applies and the parties' arbitration agreement must be enforced, this action should be either dismissed or alternatively, stayed until the arbitration of this dispute has concluded.

Under the FAA, Congress provides that courts are to stay actions properly referable to arbitration:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an

> agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 3. This language mandates at a minimum, a stay of Plaintiffs' claims pending completion of arbitration.

"However, despite the terms of [9 U.S.C. § 3], dismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable." *Small v. Credit Acceptance Corp.*, 9:16-CV-01954-DCN, 2017 WL 11316417, at *7 (D.S.C. Sept. 25, 2017) (compelling arbitration and dismissing complaint without prejudice because all of plaintiff's claims were subject to arbitration); *St. Andrews*, 2010 WL 985736, at *4 (same); *Carolina Care*, 606 S.E.2d at 760 (affirming dismissal of complaint due to a valid and binding arbitration provision and stating "[a]ny claims related to the making of the contract or the arbitration clause may be pursued in arbitration"). Because all of Plaintiffs' claims are subject to arbitration, dismissal of this action to pursue arbitration is appropriate. At a minimum, this matter should be stayed pending completion of the arbitration proceedings.

4. CONCLUSION

As explained above, Plaintiffs and Developer Defendants entered into a valid and enforceable arbitration agreement. Under the FAA, arbitration must proceed and this cause of action should be dismissed without prejudice because all of Plaintiffs' claims are subject to arbitration. Alternatively, this cause of action should be stayed until such arbitration has concluded. For the reasons set forth herein, Developer Defendants respectfully request that its Motion to compel Arbitration and Dismiss or Stay this Action be granted.

Dated: January 28, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Memorandum Brief in Support of Motion to Compel Arbitration and Dismiss or Stay this Action** has been served via the Court's electronic case filing system on all those parties receiving electronic notice in the above-referenced case.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	Civil Action No. 2024-CP-39-00465
DAVID GRIFFITH, WILLIAM COLEMAN AS TRUSTEE OF THE WILLIAM COLEMAN REVOCABLE TRUST, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,	)	**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO JMC COMMUNITIES, INC., JMC HOMES OF SOUTH CAROLINA, LLC, AND PATRICK SQUARE, LLC'S MOTION TO COMPEL ARBITRATION AND DISMISS OR STAY THIS ACTION**
Plaintiffs,	)	
vs.	)	
JMC COMMUNITIES, INC., JMC HOMES OF SOUTH CAROLINA, LLC, PATRICK SQUARE, LLC, F/K/A DIGITAL DEVELOPMENT, LLC, ALPHA OMEGA CONSTRUCTION GROUP, INC., GORZE, INC., COTHRAN LANDSCAPES AND GRADING, LLC, GENTRY SERVICES, LLC A/K/A GENTRY BROTHERS SERVICES, LLC, TINY BILL SWANEY D/B/A SWANEY MASONRY, SOLID ROCK CONSTRUCTION SERVICES LLC, H & H CONCRETE, LLC, MARIA CONSTRUCTION INC., F & V FRAMING, LLC, FIVE STAR CONSTRUCTION, INC., DAVIS FRAMING, LLC, ASHLEY COTHRAN D/B/A COTHRAN CUSTOM HOMES, LLC, UFP MID-ATLANTIC, LLC, BUILDER FIRST SOURCE, INC. A/K/A BUILDERS FIRSTSOURCE ATLANTIC GROUP, LLC, A/K/A BUILDERS FIRSTSOURCE SOUTHEAST GROUP, LLC, RC JOHNSON, LLC, GUNTER HEATING AND AIR CONDITIONING OF SC, LLC, 84 LUMBER COMPANY, LP, DOGWOOD EXTERIORS, LLC, H & R DRYWALL, INC., CRISTOBAL AND PAINTERS, LLC, WILLOW TREE LANDSCAPING, INC., HARBIN LUMBER COMPANY, INC., SOTO HVAC, LLC, RIVERSIDE LANDSCAPING, LLC, INTERNATIONAL CONSTRUCTION SERVICES, INC., PALMETTO GRADING AND DRAINAGE, INC., JANE DOE #1-10, AND JOHN DOE #**27**-50,	)	
Defendants.	)	

Plaintiffs David Griffith, William Coleman as Trustee of the William Coleman Revocable Trust, individually, and on behalf of all others similarly situated (collectively, "Plaintiffs"), by and through their undersigned counsel, hereby file this Memo in Opposition to JMC Communities, Inc., JMC Homes of South Carolina, and Patrick Square, LLC's (collectively, "Developer Defendants") Motion to Compel Arbitration and Dismiss or Stay this Action (the "Motion"), and state as follows:

SUMMARY OF ARGUMENT

To the extent Plaintiffs' purchase contracts even contain arbitration provisions, such provisions are nonetheless unenforceable for at least seven independent reasons:

1. The contract is silent on class action arbitration and therefore the class cannot be compelled to arbitrate its claims;
2. The purported arbitration provisions that Developer Defendants purport to be included in the contracts of each class member are, in fact, absent from many of these agreements (indeed the purported "arbitration" provision is absent from 75% of the agreements in the record before the Court);
3. The arbitration provision is unconscionable because the agreements are adhesion contracts;
4. The arbitration provision, and its proposed severance from other oppressive provisions with the contracts, violates the law and public policy of South Carolina, pursuant to *Damico*;
5. The arbitration "agreement" is not enforceable under the FAA because the matter does not involve interstate commerce;
6. The arbitration provision is not enforceable under the SCUAA because the notice fails to comply with the SCUAA; and
7. The arbitration provision fails because Developer Defendants cannot compel arbitration against downstream purchasers, with whom they have no agreement at all, much less an arbitration agreement.

Any one of these reasons is independently sufficient to deny Developer Defendants' Motion.

BACKGROUND

Plaintiffs' claims arise from extensive construction deficiencies and failures throughout a single neighborhood known as Patrick Square Subdivision ("Patrick Square") in Clemson, South Carolina. Patrick Square contains approximately 300 single-family homes that were constructed by Developer Defendants and their subcontractors and were designed, developed, and sold by Developer Defendants.

JMC Homes of South Carolina ("JMC SC") is the contractor of record who pulled all of the construction permits. Patrick Square, LLC sold the homes in the subdivision and was also the Declarant in the Restrictive Covenants for the neighborhood.

Plaintiffs filed this action on behalf of themselves and a proposed class[1] of other Patrick Square homeowners in the Pickens County Court of Common Pleas on April 23, 2024. JMC SC was served on April 29, 2024, and JMC Communities, Inc. and Patrick Square, LLC accepted service on May 16, 2024. Six months after local defendant JMC SC was served with Plaintiffs' state court Summons and Complaint, Developer Defendants removed the case on October 24,

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[1] The proposed class is defined as follows:

> All persons and entities that own, in whole or in part, a home within Patrick Square development located in Pickens County, South Carolina.
>
> Excluded from the Class are: (a) any Judge presiding over this action and members of his/her families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants, and Defendants' current employees, investors, members, or officers; (c) any homeowners who has released all the claims set forth herein; and (d) all persons who properly executed and file a timely request for exclusion from the Class.

2024. This matter was subsequently remanded back to this Court on January 14, 2025. On January 28, 2025, Developer Defendants filed the instant Motion.

Plaintiffs' Builder Agreements

Mr. and Mrs. Coleman executed a builder agreement for their home on November 4, 2016. Mr. David Griffith executed a builder agreement for his home on December 19, 2018. *See* Ex. A – "Coleman Builder Agreement" and Ex. B – "Griffith Builder Agreement." These were boilerplate forms offered by Developer Defendants on a take-it-or-leave-it basis. *See id*. The Coleman Builder Agreement contains three provisions which attempt to insulate the Developer Defendants. Paragraph 19, entitled "Limited Warranty," attempts to disclaim all implied warranties and relieve Developer Defendants of responsibility for "incidental or consequential damages." Paragraph 22, entitled "Defaults and Dispute," and Paragraph 24, entitled "Binding Arbitration," contain the following language:

> 19. **Limited Warranty**. The Builder warrants the Residence to the Owner upon completion and final payment against defects in the original materials and workmanship for a period of one (1) year from the date of Issuance of the Certificate of Occupancy for the Residence. This limited warranty is not transferable by Owner. This limited warranty does not cover lawns and landscaping or items which can be corrected by Owner as normal maintenance. Appliances, air conditioning and heating equipment, plumbing and electrical fixtures. hot water heaters, and all other consumer products installed in the Residence are warranted by the respective manufacturer. The term consumer products shall have the definition set forth in the Magnuson-Moss Warranty Act, 15 USC §2301 et seq. This warranty does not include defects caused by Owner modifications, abuse, improper maintenance, improper operation or latent defects inherent in the type or quality of materials requested or accepted by Owner which are not known or discoverable by Builder with the exercise of reasonable diligence. Any warranty or guarantee from any manufacturer of a consumer product shall be deemed to have been obtained for the benefit of Owner. Builder's liability shall be limited to repair or replacement of defective work which is reported in writing by Owner to Builder within the warranty period. In no event shall Builder be liable to Owner for incidental or consequential damages. THIS WARRANTY IS GIVEN TO OWNER IN LIEU OF ANY AND ALL OTHER REMEDIES AS MAY BE PROVIDED BY LAW INCLUDING ANY IMPLIED OR EXPRESS WARRANTY INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR

> FITNESS FOR PURPOSES NOT SPECIFICALLY CONTAINED IN THIS LIMITED WARRANTY. The foregoing limitations on implied warranties and relief may be unenforceable in certain states. This warranty gives you specific legal rights and you may also have other legal rights which vary from state to state.
>
> 22. Defaults and Disputes.
> **A. Owner's Rights:** If Builder materially breaches its obligations under this Agreement, Owner shall be entitled, after giving Builder written notice of such breach and a ten (10) day period in which to substantially cure the breach, to demand arbitration or to terminate this Agreement in writing.
>
> **B. Builder's Rights:** If Owner fails to timely make any payment required under this Agreement or other breach, then Builder shall be entitled after giving Owner written notice of such breach and a ten (10) day period to cure, to immediately terminate this Agreement by providing written notice to Owner of such termination or to demand arbitration. As an interim step, Builder shall also be entitled to suspend its obligations under this Agreement pending the curing of any breach by Owner. If Builder decides to suspend its obligations, it shall provide notice to Owner of such decision.

Paragraph 22 describes the procedure for resolving conflict if that conflict arises out of contract, not construction defect (which is a tort). Paragraph 24 provides:

> 24. **Binding Arbitration**. All parties to this Agreement acknowledge that, in the event any issue in law or equity arises after execution of this Agreement, same shall be resolved through binding arbitration. If the claim relates to the warranty provided by Builder and/or other claims, then the arbitration will be provided through Construction Arbitration Services, Inc. ("CAS"). The CAS arbitration will be conducted in accordance with their rules in effect at the time of the request for arbitration and the Federal Arbitration Act. All parties by entering into this agreement acknowledge that arbitration shall be the only manner of settling any issue arising after execution of this Agreement and that the results of the arbitration decision shall be binding on the parties to this Agreement. All parties to the Agreement agree to arbitrate the matter while continuing to comply with the other terms of this Agreement including proceeding to Closing, unless the parties mutually consent to a stay of further compliance with the terms of the Agreement during the period the issue is being arbitrated. In the event that an arbitration decision requires repairs or adjustments to be made by the Builder, these repairs or adjustments shall be made in accordance with the standards as outlined in the Warranty, or which are customary to generally accepted local area building industry criteria and standards in the event the Warranty is silent as to an applicable standard. The provisions of this paragraph shall survive Closing and delivery of the limited warranty deed to the Owner.

Ex. A, Coleman Builder Agreement.

According to Developer Defendants, Paragraph 24 is purported to be in all Plaintiffs' Builder Agreements. *See* Defs.' Mem. Supp. Mot. Compel Arbitration, p. 3 ("The arbitration agreements were included as clauses in each of the homeowners' construction agreement.") & p. 5 ("JMC Homes of SC entered substantially similar construction agreements with the other proposed Plaintiffs in the class ... [and] [t]he Construction Agreements contain substantially similar arbitration provisions to the Coleman Construction Agreement and the Griffith Construction Agreement.") (citing Jim Baar Aff.). This Paragraph, however, is absent from numerous agreements presently in possession of Plaintiffs' counsel. In fact, of the four Builder Agreements of potential class members in the possession of Plaintiffs' counsel, only one has the Paragraph 24, entitled "Binding Arbitration." *See* Ex. A, Ex. B, Ex. C – "Rozendale Builder Agreement," and Ex. D – "Donahue Builder Agreement."

After executing their Builder Agreements, the Colemans and Mr. Griffith received their deeds when they closed on December 1, 2016 and January 24, 2019, respectively. *See* Ex. E, Deeds. The Colemans' and Mr. Griffith's deeds do not contain an arbitration provision. *Id*.

ARGUMENT

I. The Arbitration Language in the Builder Agreements Does Not Contemplate a Class Action Arbitration and Therefore the Class Cannot Be Compelled to Arbitrate Its Claims.

The language outlined above from the Coleman Builder Agreement encompasses the entirety of the possible arbitration provisions found in the builder agreements and Developer Defendants cite to no others in their Motion. For reasons stated in more detail below, Plaintiffs contend that Paragraph 24 is not found in all putative class member agreements and therefore cannot be enforced against the class. Notwithstanding that argument, none of the language above contemplates class arbitration and therefore there is no agreement between the parties to arbitrate the class claims.

Generally, class arbitration is effectively prohibited unless (a) it is clearly and unmistakably permitted by an arbitration agreement, or (b) some governing rule of law or decision under which the parties are arbitrating creates a default rule permitting it. *See Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 567-78 (2013). The Supreme Court of the United States has stated that "a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 684 (2010) (emphasis in original). The Court went on to say that it "think[s] that the differences between bilateral and class-action arbitration are too great for arbitrators to presume, consistent with their limited powers under the FAA, that the parties' mere silence on the issue of class-action arbitration constitutes consent to resolve their disputes in class proceedings." *Id*. at 687.

The builder agreements of the putative class members lack even a single sentence that could be construed as clear and unmistakable evidence that the parties ever contemplated, much less agreed to, class-action arbitration. Accordingly, class arbitration is not clearly and unmistakably permitted by the purported arbitration agreement and—for that reason alone—this Court should deny Developer Defendants' Motion.

II. Paragraph 24, Entitled "Binding Arbitration," Is Not Present in All of the Builder Agreements of the Putative Class.

Developer Defendants rely on Paragraph 24, found in only some of the builder agreements, to argue that this Court should compel the entire putative class to arbitrate its claims. *See* Defs.' Mem. Supp. Mot. Compel Arbitration, p. 3-5. Developer Defendants make the conclusory allegation, curiously supported by an affidavit instead of the builder agreements themselves, "that

JMC SC entered "substantially similar" Builder Agreements with the other proposed Plaintiffs in the class for which JMC SC acted as builder. However, Paragraph 24, as contained within the Coleman Builder Agreement (Ex. A), is omitted from a number of JMC SC builder agreements with proposed Plaintiffs. In fact, in their memorandum in support of their Motion, Developer Defendants cite to the Griffith Builder Agreement (Ex. B), which does not include the supposed "Binding Arbitration" provision of Paragraph 24 quoted by Developer Defendants earlier in their memorandum. *See* Defs.' Mem. Supp. Mot. Compel Arbitration, p. 4. Therefore, Developer Defendants' own memorandum sinks—and highlights the conclusory nature of—their contention that such an arbitration provision exists within the contracts between JMC SC ***and all class members***. It is long-standing well-settled law that a party cannot be compelled to arbitrate unless it has agreed to submit its claims to arbitration. *See Simmons v. Lucas & Stubbs Assocs., Ltd.*, 283 S.C. 326, 333, 322 S.E.2d 467, 470 (Ct. App 1984). Here, Plaintiffs cannot be compelled to arbitrate their claims when they have not agreed to do so as evidenced by the absence of the very language relied upon by Developer Defendants to support their Motion.

Of the four Builder Agreements currently in the possession of Plaintiffs' counsel, only the Coleman Builder Agreement (25% of the agreements in the record before the Court) contains the Paragraph 24 in question, entitled "Binding Arbitration." Ex. A, Coleman Builder Agreement; *contra* Exs. B, C, & D. These four builder agreements only contain the following Paragraph referencing arbitration:

> 22. **Defaults and Disputes.**
> **A. Owner's Rights:** If Builder materially breaches its obligations under this Agreement, Owner shall be entitled, after giving Builder written notice of such breach and a ten (10) day period in which to substantially cure the breach, to demand arbitration or to terminate this Agreement in writing.
>
> **B. Builder's Rights: If** Owner fails to timely make any payment required under this Agreement or other breach, then Builder shall be entitled after giving Owner

> written notice of such breach and a ten (10) day period to cure, to immediately terminate this Agreement by providing written notice to Owner of such termination or to demand arbitration. As an interim step, Builder shall also be entitled to suspend its obligations under this Agreement pending the curing of any breach by Owner. If Builder decides to suspend its obligations, it shall provide notice to Owner of such decision.

This provision is critically distinct from the Paragraph 24 language cited in Developer Defendants' Motion. *See* Defs.' Mem. Supp. Mot. Compel Arbitration, p. 4. It does not contemplate ***construction defects***, and the remedies related thereto. As noted above, the language gives owners the right to "demand arbitration **OR** to terminate this Agreement in writing." Ex. A. "Rescission is an equitable remedy that attempts to undo a contract from the beginning as if the contract had never existed." *ZAN, LLC v. Ripley Cove, LLC*, 406 S.C. 404, 413, 751 S.E.2d 664, 668 (Ct. App 2013) (quoting *Mortgage Elec. Sys., Inc. v. White*, 384 S.C. 606, 615, 682 S.E.2d 498, 502 (Ct. App. 2009)). "Generally, equitable relief is available only where there is no adequate remedy at law. 'An adequate remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity.'" *ZAN*, 406 S.C. at 413-14, 751 S.E.2d at 669 (quoting *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)).

The possible termination/rescission of the builder agreements is not, and could not be, a logical or adequate remedy for construction defects, for which this action seeks relief. Termination would be an adequate remedy if a contractual breach occurred prior to a purchaser taking ownership of the home. Terminating after the sales contract has been ostensibly performed, however, would provide no adequate relief to the homeowner for the construction defects and would not "attain the ends of justice." *See ZAN*, 406 S.C. at 413-14, 751 S.E.2d at 669 (quoting *Santee Cooper Resort*, 298 S.C. at 185, 379 S.E.2d at 123). This Paragraph, which clearly was intended to apply to only to pre-sale disputes, cannot be reasonably construed to mandate arbitration of latent defective conditions discovered years later. Because the class in this case seeks relief for construction defects discovered long after the class members purchased their homes, it would not make sense for this Court to compel the class to arbitrate its claims based on the permissive language in Paragraph 22.

Additionally, even if Paragraph 22 alone was determined to be a valid arbitration provision on its face, it is nonetheless unenforceable under the merger doctrine because the provision merged with the homeowner deeds, which do not include any arbitration language. Under the merger doctrine, "[t]he execution, delivery, and acceptance of a deed varying from the terms of the antecedent contract indicates an amendment of the original contract, and generally the rights of the parties are fixed by their expressions as contained in the deed." *Wilson v. Landstrom*, 281 S.C. 260, 264, 315 S.E.2d 130, 132-33 (Ct. App. 1984) (quoting *Charleston & W. Carolina Ry. Co. v. Joyce*, 231 S.C. 493, 504-05, 99 S.E.2d 187, 193 (1957)). "A deed executed subsequent to the making of an executory contract for the sale of land supersedes that contract…" *Wilson*, 281 S.C. at 264, 315 S.E.2d at 133 (quoting *Charleston & W. Carolina Ry. Co.*, 231 S.C. at 504-05, 99 S.E.2d at 193). Paragraph 22 is the only Paragraph with consistent language regarding dispute resolution contained within all known builder agreements, but it lacks any type of survival clause. Furthermore, the arbitration language found in this Paragraph 22 is absent in the deeds of the homeowners, making it unenforceable under the merger doctrine. *See Wilson*, 281 S.C. at 264, 315 S.E.2d at 133 (quoting *Charleston & W. Carolina Ry. Co.*, 231 S.C. at 504-05, 99 S.E.2d at 193).

III. The Arbitration Provision Is Unenforceable Because It Is Unconscionable.

The purported arbitration provision relied upon by Developer Defendants in their Memorandum is unenforceable because it contains oppressive terms that give Developer Defendants an unfair advantage over unsophisticated homebuyers, such as Plaintiffs.

A. Arbitrability and Unconscionability

Trial courts decide whether claims should be resolved through arbitration. *See, e.g., Oxford Health Plans*, 569 U.S. at 569 n.2 (noting questions of arbitrability are presumptively left for the court to decide); *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 491, 689 S.E.2d 602, 603 (2010) ("The question of arbitrability of a claim is an issue for judicial determination unless the parties provide otherwise."). This judicial determination involves a two-step inquiry: (1) whether a valid arbitration agreement exists; and (2) whether the specific dispute falls within the substantive scope of the arbitration agreement. *See Simpson v. MSA of Myrtle Beach, Inc.,* 373 S.C. 14, 22-24, 644 S.E.2d 663, 667-68 (2007).

When deciding a motion to compel arbitration, "a court is not to rule on the potential merits of the underlying claims." *See Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 108, 739 S.E.2d 209, 213 (2013) (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)). Rather, a court should look to the state law that ordinarily governs the formation and construction of contracts. *See Landers*, 402 S.C. at 108, 739 S.E.2d at 213 (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995) ("When deciding whether the parties agreed to arbitrate a certain matter ... courts generally ... should apply ordinary state-law principles that govern the formation of contracts.")).

In South Carolina, contract defenses such as fraud, duress and unconscionability apply to a court's evaluation of the enforceability of an arbitration clause governed under either the SCUAA or the FAA. 9 U.S.C. § 2 (providing written arbitration agreements may be invalid, revocable and unenforceable based upon "such grounds as exist at law or in equity for the revocation of any contract."); S.C. Code § 15-48-10(a) (containing similar language to that of the FAA). Thus, if this Court finds an arbitration clause unconscionable, it may refuse to enforce the clause or otherwise limit its application so "as to avoid any unconscionable result." S.C. Code § 36-2-302(1). The test for unconscionability is simply whether the arbitration clause creates a fair and impartial forum or instead is used and intended to give one party an unfair advantage. *See Simpson,* 373 S.C. at 25, 644 S.E.2d at 668-69.

B. The Arbitration Provision in Plaintiffs' Builder Agreements Contains the Same Oppressive Terms Already Found Unconscionable by Many Courts.

This Court should find that Developer Defendants' arbitration provision is unenforceable because it is contained within an adhesion contract and because the provision itself contains oppressive and unconscionable terms that are not severable. *See, e.g., Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 49, 790 S.E.2d 1, 4 (2016) ("[U]nconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.") (quoting *Simpson*, 373 S.C. at 24-25, 644 S.E.2d at 668).

Here, like in *Smith*, there is no evidence that Plaintiffs "enjoyed a substantially stronger bargaining position against [Developer Defendants] than the average homebuyer" or that Plaintiffs "were represented by independent counsel." 417 S.C. at 50, 790 S.E.2d at 4-5. Plaintiffs are unsophisticated homebuyers whereas Developer Defendants are sophisticated developers that have constructed numerous homes throughout South Carolina and Florida across at least three different Developments. *See* Ex. F, Developer Defendants' Website. Thus, like in *Smith*, Plaintiffs are "not a substantial business concern of" Developer Defendants because Plaintiffs do not "comprise a large portion of [Developer Defendants'] clientele." 417 S.C. at 50, 790 S.E.2d at 5. Plaintiffs had no ability to negotiate the contracts and were not given the option to make modifications to the same. *See* Ex. G, David Griffith Aff., and Ex. H, William Coleman Aff. As such, this Court must find Plaintiffs "lacked a meaningful choice in their ability to negotiate the arbitration clause" in their agreements and hold that the agreements are unenforceable adhesion contracts with an unconscionable arbitration provision. *Smith*, 417 S.C. at 50, 790 S.E.2d at 5.

Also, like in *Smith*, Paragraph 24 references language from Paragraph 19 (which describes the Warranties and includes Developer Defendants' disclaimers of any and all implied or express warranties and incidental or consequential damages), "intertwining" these paragraphs "so as to constitute a single arbitration provision." *Id.* at 48, 790 S.E.2d at 4 (emphasis added). As stated by Judge Cordell Maddox:

> [T]his Court finds the agreement's arbitration provision contains oppressive terms that disclaim all implied warranties and waive Horton's liability 'for monetary damages of any kind.' The arbitration provision consists of Paragraphs 14 and 15 because, like *Smith*, cross-references 'intertwine' these provisions.

Ex. I, Foxbank Order Denying Arbitration Motion; *see also* Ex. A, Coleman Builder Agreement. Likewise, in this case, the arbitration provision (Paragraph 24) in the Builder Agreements references those unconscionable provisions of Paragraph 19. Thus, Paragraph 19 and its unconscionable provisions are "intertwined" with the arbitration provision of Paragraph 24 "so as to constitute a single arbitration provision," making both Paragraphs unenforceable. *See Smith*, 417 S.C. at 48, 790 S.E.2d at 4.

Developer Defendants may argue that the location of these provisions within the builder agreements and their separate nature make it so they are not intertwined and may rely on *Prima Paint*'s holding. However, the location of the provisions does not negate *Smith's* applicability. The *Smith* court found that *Prima Paint* does not preclude courts from considering provisions that are "referenced by" an express arbitration provision.[2] The arbitration provision provides that "[a]ll

[2] *Prima Paint* stands for the proposition that a party cannot avoid arbitration through rescission of the entire contract when there is no independent challenge to the arbitration clause. *See Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 406-07 (1967). So long as there is a challenge to the arbitration provision, like here, then courts can decide the "arbitrability" issue and,

parties … agree to arbitrate the matter while continuing to comply with the other terms of this Agreement." *See* Ex. A. It further states that any repairs or adjustments determined to be necessary by an arbitrator be done "in accordance with the … Warranty." *Id*. Developer Defendants cite as much to the waiver of warranty in their Memo in Support of their Motion to Strike and Dismiss the Amended Complaint and the motion itself.

This Court should follow the clear directive of the South Carolina Supreme Court in *Smith* because this case involves the same disclaimers not literally "within" the same arbitration provision. Any argument by Developer Defendants to the contrary is merely placing form over substance, i.e., Developer Defendants *numerically* separated Paragraph 19 and Paragraph 24, and is without merit because the cross-references "intertwine" these Paragraphs "so as to constitute a single arbitration provision." *See Smith*, 417 S.C. at 48, 790 S.E.2d at 4.

IV. Severance Is Improper and Against Public Policy.

Paragraphs 19, 22, and 24 (where it is included, which is only in one of the agreements presently in possession of Plaintiffs' counsel) are not severable from one another because, as in *Smith*, the cross-references between the contents of these Paragraphs "intertwine" them into one

in doing so, can also consider both the arbitration provision and its affiliated provisions. As Justice Toal aptly explained during the oral arguments for *Smith*, *Prima Paint* "simply says you have to look at the arbitration provision" and "does not stand for the proposition that one can cherry pick out" certain language of a provision one drafted and which includes express references to other provisions. Additionally, since *Prima Paint*, South Carolina courts have looked beyond arbitration provisions "themselves" to assess their enforceability. *See, e.g., Smith,* 417 S.C. at 48-49, 790 S.E.2d at 4; *Davis v. KB Home of S.C., Inc.*, 394 S.C. 116, 126 n.3, 713 S.E.2d 799, 804 n.3 (Ct. App. 2011) ("Appellants contended this court is bound to reviewing the terms of the arbitration clause itself in determining its validity. We disagree. The South Carolina Supreme Court has looked outside the language of the arbitration clause to determine its enforceability.") (citing *Simpson*, 373 S.C. at 27, 644 S.E.2d at 670), *partially vacated on other grounds*, 292 S.C. 634, 636, 842 S.E.2d 653, 654 (2014) ("We. . .vacate part II of the Court of Appeals' opinion addressing the issue of waiver"); *see also Brady v. Brady*, 222 S.C. 242, 246, 72 S.E.2d 193, 195 (1952) ("[I]t is proper to read together the different provisions therein dealing with the same subject matter. . .").

arbitration provision. *Smith,* 417 S.C. at 48, 790 S.E.2d at 4 (finding "cross-references" "intertwined" defendant's arbitration and liability limitations paragraphs "so as to constitute a single arbitration provision"). Notably, the Court of Appeals in *Smith* acknowledged, as Developer Defendants may argue here, that "an arbitration clause is separable from the contract in which it is embedded"; however, the court did **not** sever the arbitration and liability limitations paragraphs for the same reasons that this Court should not sever the same types of paragraphs here. *See Smith v. D.R. Horton, Inc.,* 403 S.C. 10, 16, 742 S.E.2d 37, 41 (Ct. App. 2013), *aff'd,* 417 S.C. 42, 790 S.E.2d 1 (2016) ("We conclude the arbitration clause in this case should not be severed from the numerous unconscionable provisions and particularly Horton's attempt to waive any seller liability for 'monetary damages of any kind, including secondary, consequential, punitive, general, special or indirect damages.'"); *see also Simpson*, 373 S.C. at 34, 644 S.E.2d at 673 (recognizing that "severability is not always an appropriate remedy for an unconscionable provision. . .'[i]f illegality pervades the agreement such that only a disintegrated fragment would remain after hacking away the unenforceable parts. . .'") (quoting *Booker v. Robert Half Int'l, Inc.*, 413 F.3d 77, 84-85 (D.C. Cir. 2005)). The provisions of Paragraphs 19, 22, and 24 are intertwined together, and with other provisions of the agreements, and are so inseverable that even Developer Defendants rely on multiple provisions, including the warranties provision, in their Motion to Strike or Dismiss and their Memo in Support of the same.

Although Plaintiffs' builder agreements contain a general severability provision in Paragraph 32, the unconscionable and oppressive terms of Paragraphs 19, 22 and 24, contained within an adhesive home sales contract, are still so intertwined **that they cannot be severed from each other** because the severability provision is unenforceable as a matter of public policy. This is precisely what Justice Kittredge made clear in the South Carolina Supreme Court's recent decision in *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 619-22, 879 S.E.2d 746, 759-60 (2022) (emphasis added):

> We first note the unconscionable portion of the agreement Lennar presumably wishes us to sever from the remainder of paragraph 4 deals with the proper, "agreed upon" parties to the arbitration proceeding. **We decline to blue-pencil that provision.**
>
> It goes without saying that the clause of a contract that names the persons or entities that may properly be joined as parties to proceedings arising from any dispute involving that contract is a material term of the agreement. *Cf. Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 131–32, 678 S.E.2d 435, 439 (2009) (discussing when a term is integral to a contract, as compared to an "ancillary logistical concern," and explaining courts must look to the "essence" of the arbitration agreement; **"[w]here [a particular term] has implications *that may substantially affect the substantive outcome of the resolution*, we believe that it is neither 'logistical' nor 'ancillary.'** " (emphasis added)). **Were we to sever such a clause from the arbitration agreement here, it would be the opposite of excising an "ancillary logistical concern." Rather, we would be materially rewriting the contract by controlling who will—or will not—participate in arbitration.**
>
> Blue-pencilling an agreement is, of course, within the Court's discretion. **Here, we decline to excise a material term of the arbitration agreement and enforce the remaining, fragmented agreement.** *See Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014) ("A valid and enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement." (citation omitted)); *cf. id.* at 579, 762 S.E.2d at 701 (noting even when parties manifest an intent to be bound, an indefinite material term may invalidate the agreement (quoting 1 Corbin on Contracts § 2.8 (Rev. ed. 1993))); *Shotts v. OP Winter Haven, Inc.*, 86 So. 3d 456, 478 (Fla. 2011) ("Further, if the [unconscionable] provision were severed, the trial court would be hard pressed to conclude with reasonable certainty that, with the illegal provision gone, there still remains of the contract valid legal promises on one side which are wholly supported by valid legal promises on the other—particularly[ ] when those legal promises are viewed through the eyes of the contracting parties." (internal quotation marks omitted) (internal citation omitted)). Succinctly stated, once we sever the unconscionable terms in the arbitration provision, there is essentially nothing left.
>
> **There are two additional, important considerations in this case that bear on severability.** The first of these two considerations is that this arbitration agreement—and, indeed, the purchase and sale agreement as a whole—is a contract of adhesion. **As mentioned above, adhesion contracts "are subject to considerable skepticism upon review, due to the disparity in bargaining**

positions of the parties." *Simpson*, 373 S.C. at 26, 644 S.E.2d at 669 (citation omitted); *see also* 17A Am. Jur. 2d Contracts § 274; 17 C.J.S. *Contracts* § 9. **In particular, when a contract of adhesion is at issue, "there arises considerable doubt that any true agreement ever existed to submit disputes to arbitration."** *Simpson*, 373 S.C. at 26, 644 S.E.2d at 669 (citation omitted). Similarly, given the adhesive nature of the contract here, we find it "considerably doubtful" any true agreement ever existed to sever any oppressive provisions from the arbitration agreement, particularly given that the less sophisticated and less powerful party(s) (Petitioners) had no hand in drafting or negotiating any of the language of the arbitration agreement. *See Doe*, 430 S.C. at 615, 846 S.E.2d at 880 (explaining that when exercising its discretion to sever portions of the agreement, a court must be guided by the parties' intent).

The second additional consideration of which we take note is that this contract involves a consumer transaction. *See Simpson*, 373 S.C. at 36, 644 S.E.2d at 674 (placing emphasis on the need for a case-by-case analysis in cases involving consumer transactions so as to address the unique circumstances inherent in those types of contacts). **More specifically, this contract involves the purchase of a new home. South Carolina has a deeply-rooted and long-standing policy of protecting new home buyers.** *Kennedy*, 299 S.C. at 341–44, 384 S.E.2d at 734–36 (rejecting a result in which "a builder who constructs defective housing escapes liability while a group of innocent new home purchasers are denied relief because of the imposition of traditional and technical legal distinctions"; and explaining that in the past, when the Court is confronted with a new scenario "not properly disposed of by our present set of rules," it "[o]nce more[ ] respond[s] by expanding our rules to provide the innocent buyer with protection" (citing *Lane v. Trenholm Building Co.*, 267 S.C. 497, 229 S.E.2d 728 (1976))). **As we stated over thirty years ago, it is "intolerable to allow builders to place defective and inferior construction into the stream of commerce**." *Id.* at 344, 384 S.E.2d at 736 (citing *Rogers v. Scyphers*, 251 S.C. 128, 135–36, 161 S.E.2d 81, 84 (1968)). Thus, the fact that the arbitration agreement contained within the purchase and sale agreement involves the construction and sale of a new home is relevant to our analysis of this consumer transaction.

Generally, courts will not enforce contracts that violate public policy. *Carolina Care Plan, Inc.*, 361 S.C. at 555, 606 S.E.2d at 758 (citation omitted).

A refusal to enforce a contract on the grounds of public policy is distinguished from a finding of unconscionability; rather than focusing on the relationship between the parties and the effect of the agreement upon them, public policy analysis requires the court to consider the impact of such arrangements upon society as a whole.17A Am. Jur. 2d *Contracts* § 238 (Supp. 2021) (citation omitted). Public policy may be expressed in constitutional or statutory authority or in judicial decisions. *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004); *see also* 17A Am. Jur. 2d *Contracts* § 238 (2016) (explaining courts may consider, *inter alia*, the subject matter of the contract, the strength of the public policy, and the

> likelihood that refusal to enforce the challenged term in the contract will further public policy).
>
> <u>**Given the pervasive presence of oppressive terms in the arbitration provision, we find the severability clause here, in an unconscionable, adhesive home construction contract, is unenforceable as a matter of public policy. We are specifically concerned that honoring the severability clause here creates an incentive for Lennar and other home builders to overreach, knowing that if the contract is found unconscionable, a narrower version will be substituted and enforced against an innocent, inexperienced homebuyer.**</u>

Just as in *Damico*, Developer Defendants inserted a severability clause in a separate paragraph at the end of the contracts in hopes that a court will sever any unconscionable terms should any homebuyer contest them. As Justice Kittredge made clear in *Damico:* "<u>**[Seller] furnished a grossly one-sided contract and arbitration provision, hoping a court would rescue the one-sided contract through a severability clause.**</u> We refuse to reward such misconduct, particularly in a home construction setting." *Id.* at 624, 844 S.E.2d at 762 (emphasis added).

This Court should follow the reasoning and direction of the South Carolina Supreme Court in *Damico* and decline to rescue Developer Defendants from their oppressive, grossly one-sided, and unconscionable contract drafting tactics because severing unconscionable provisions from the arbitration provision would be against South Carolina's "deeply-rooted and long-standing policy of protecting new home buyers." *See Damico*, 437 S.C. at 621, 879 S.E.2d at 760.

V. Alternatively, the Arbitration "Agreement" Is Not Enforceable Under the FAA.

Even if this Court rules that Developer Defendants' arbitration "agreement" is fair, the FAA should not govern any arbitration compelled for two reasons. The FAA is inapplicable here because Developer Defendants have not sufficiently established that the sale agreements involve "interstate commerce." Developer Defendants have filed an affidavit of Jim Baar, claiming that out-of-state materials and vendors were used at Patrick Square. However, the Supreme Court of

South Carolina has found that such affidavits attesting that "out-of-state materials, suppliers, and subcontractors were used for the construction of the residence" do not "negate the intrastate nature of the sale and purchase of residential real estate." *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 458, 730 S.E.2d 312, 318 (2012).

For example, in *Bradley* and *Foxbank*, two South Carolina Courts considered similar sales contracts and developer affidavits attesting that out-of-state materials were used during construction. Nevertheless, these courts both held that the contracts were for the sale of a completed house, not to construct a house, and therefore only involved intrastate commerce and the FAA did not apply. *Bradley*, 398 S.C. at 459, 730 S.E.2d at 459 ("[W]e conclude that Brentwood Homes failed to offer sufficient evidence that the transaction involved interstate commerce to subject the Agreement to the FAA."); *see also Dickerson v. Dan Ryan Builders, Inc.*, Case No. 2014-CP-08-854 (S.C. Com. Pl.) (Judge Maddox Jan. 23, 2015 Order Denying Dan Ryan's Arbitration Motion) (Dorchester County) (Ex. I, p. 3) ("Foxbank Order") (finding purchase agreement contemplated the sale of a completed home).

These courts acknowledged the difference between "construction contracts" and sale contracts, like here, where homeowners are contracting to purchase a completed home. In the latter instance, the homeowner enters a contract to purchase a cookie-cutter, pre-designed model; they have no say or control over the construction process and the only input they have is selecting certain options like ceiling fans or counter tops that are installed in the home after construction is completed. The homeowners have no say as to who the subcontractors are, where they are from, or where the materials used in construction come from. They have no rights until after construction is completed and the sale contract is not fully consummated until after construction is completed. The clear purpose of these types of contracts, therefore, is the sale of a completed home. This case involves this type of sales contract, as the Builder Agreements specifically state in Paragraph 14, Subcontractors, that "Builder is entitled to select subcontractors, employees, and suppliers who will work on or provide material to the Home." Exs. A & B. There is no evidence indicating that Plaintiffs had any control over the sourcing of materials or subcontractors. This case has exactly zero national importance. It involves the sale of homes constructed in a single neighborhood in Clemson, Pickens County, South Carolina and the purely localized harm to the homeowners in that neighborhood. It does not present a scenario where "interstate commerce" will conceivably be affected and, to the contrary, interstate commerce was never contemplated given that JMC SC's Builder Agreement relies solely on the laws of South Carolina. *See* Ex. C, ¶30, and Ex. B, ¶30.

A comparison of the contracts and affidavits at issue in the *Bradley* and *Foxbank* cases to Plaintiffs' contracts in this case should lead to the same conclusion here:

BRADLEY K	FOXBANK K	PLAINTIFFS' K
Sales Agreement Language: "It is understood that purchaser is buying a completed dwelling and that Seller is not acting as a contractor for purchase in construction of a dwelling."	*Sales Agreement Language:* "You are purchasing a completed dwelling constructed on the Property, and we are not acting as a contractor, employee, agent or fiduciary for you in the construction of the dwelling."	*Sales Agreement Language:* "Builder agrees to furnish all of the materials and labor to perform all the work necessary for the construction through completion and delivery of a sing family residential home. . .
Sales Contract Captioned: "Agreement to Purchase Completed Dwelling"	*Sales Contract Captioned:* "Agreement of Sale"	*Sales Contract Captioned:* "Owner/Builder Agreement"
Sales contract refers to Bradley as Purchaser and Brentwood as Seller.	Sales contract refers to Dickerson and Richardson as Purchasers and Dan Ryan Builders of South Carolina, LLC as Seller.	Sales contract refers to Coleman/Griffith as Owner and Developer Defendants as Builder.
Affidavit states home was constructed using out-of-state materials, subcontractors, and suppliers	Affidavit states home was constructed using out-of-state materials, subcontractors, and suppliers	Affidavit states homes were constructed using out-of-state materials and subcontractors.

The foregoing comparison demonstrates that, like in *Bradley* and *Foxbank*, Plaintiffs' "Purchase" Agreement "by its own terms [is] a contract for the sale of a finished home and not [a] construction contract." *See* Ex. I, Foxbank Order, p. 3. This conclusion is further supported by other terms in Plaintiffs' Agreements, such as:

- Paragraph 2 which indicates that "Owner" will pay the "Builder" the agreed upon sum, essentially a purchase price of a completed home.

- Paragraph 11. Occupancy. "Builder shall have the exclusive right to occupy the Lot until the completion of the Residence…"

- Paragraph 17. Wood Infestation Report. Upon substantial completion, "Builder" shall provide "Owner a current Wood Infestation Report.

- Paragraph 22. Default & Disputes. A. "Owner's" Rights: If "Builder" materially Breaches is obligation under this Agreement, … "Owner" shall be entitled to demand arbitration or terminate this Agreement.

VI. If the FAA Does Not Apply, the Notice of the Arbitration Provision Fails to Conform with SCUAA and Is Unenforceable Under South Carolina Law.

S.C. Code Ann. § 15-48-10(a) is clear that for an arbitration provision in a written contract to be enforceable, it must "be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration." *See also Zabinski*, 346 S.C. at 588-99, 553 S.E.2d at 114 ("T]he terms of section 15-48-10(a) are clear, and those terms must be applied according to their literal meaning… [n]o other variation is acceptable.").

At issue in this matter, the only provision related to dispute resolution present in all of the builder agreements is a provision titled "**Defaults and Dispute**," which can be seen below.

22. **Defaults & Dispute.**

A. **Owner's Rights:** If Builder materially breaches its obligations under this Agreement, Owner shall be entitled, after giving Builder written notice of such breach and a ten (10) day period in which to substantially cure the breach, to demand arbitration or to terminate this Agreement in writing.

B. **Builder's Rights:** If Owner fails to timely make any payment required under this Agreement or other breach, then Builder shall be entitled after giving Owner written notice of such breach and a ten (10) day period to cure, to immediately terminate this Agreement by providing written notice to Owner of such termination or to demand arbitration. As an interim step, Builder shall also be entitled to suspend its obligations under this Agreement pending the curing of any breach by Owner. If Builder decides to suspend its obligations, it shall provide notice to Owner of such decision.

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Owner(s) Initials
Builder's Initials

Ex. B, p. 5. This provision is not a conspicuous notice requiring arbitration, is not underlined in all capital letters, and is not included in the Agreement until page 5.

Developer Defendants have posited another arbitration provision, found in only one builder agreement to date, is controlling for purposes of their Motion, which can be seen below.

24. **Binding Arbitration.** All parties to this Agreement acknowledge that, in the event any issue in law or equity arises after execution of this Agreement, same shall be resolved through binding arbitration. If the claim relates to the warranty provided by Builder and/or other claims, then the arbitration will be provided through Construction Arbitration Services, Inc. ("CAS"). The CAS arbitration will be conducted in accordance with their rules in effect at the time of the request for arbitration and the Federal Arbitration Act. All parties by entering into this agreement acknowledge that arbitration shall be the only manner of settling any issue arising after execution of this Agreement and that the results of the arbitration decision shall be binding on the parties to this Agreement. All parties to the Agreement agree to arbitrate the matter while continuing to comply with the other terms of this Agreement including proceeding to Closing, unless the parties mutually consent to a stay of further compliance with the terms of the Agreement during the period the issue is being arbitrated. In the event that an arbitration decision requires repairs or adjustments to be made by the Builder, these repairs or adjustments shall be made in accordance with the standards as outlined in the Warranty, or which are customary to generally accepted local area building industry criteria and standards in the event the Warranty is silent as to an applicable standard. The provisions of this paragraph shall survive Closing and delivery of the limited warranty deed to the Owner.

Ex. A, p. 6. Plaintiffs contend that this provision is not controlling at all as it is absent from all but one of the builder agreements currently in Plaintiffs' possession. Without waiving that argument, this arbitration provision is not enforceable under South Carolina law either because it fails to comply with the "clear" notice requirements of § 15-48-10 and "no other variation is acceptable."

See Zabinski, 346 S.C. at 588-99, 553 S.E.2d at 114. As discussed above, this arbitration provision is not underlined in all capital letters and is not found until page 6 of the agreement. Both Paragraph 22 and Paragraph 24, regardless of which is found within the majority of the class members' agreements, fail to comply with the notice requirements for arbitration provisions in written contracts under South Carolina law and therefore both are unenforceable and Developer Defendants' Motion to Compel Arbitration should be denied.

VII. Developer Defendants Cannot Compel Putative Class Members Who Are Downstream Purchasers to Arbitrate.

Developer Defendants do not have any contract at all with other putative class members who may be downstream purchasers. Developer Defendants therefore cannot compel arbitration, under either the FAA or the SCUAA, as to the claims of those downstream purchasers who are members of this putative class. "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012) (quoting *Int'l Paper Co. v. Schwabedissen Maschinen & Analgen GMBH*, 206 F.3d 411, 416 (4th Cir. 2000)). Downstream purchasers have no agreement with the Developer Defendants whatsoever, much less an agreement to submit their claims to arbitration.

<u>CONCLUSION</u>

This Court should deny Developer Defendants' Motion to Compel Arbitration and find that the arbitration provision in Plaintiffs' contracts is unenforceable for the following independent reasons:

1. The lack of class-arbitration language in the agreements makes arbitration against the class unenforceable;

2. The purported arbitration provision relied upon by Developer Defendants for their arguments is not found in all but one (75% of the agreements in the record before the Court) of the known builder agreements;

3. The purported arbitration provision is unconscionable because the purchase agreement is an adhesion contract and its arbitration provision contains similar references to the same oppressive terms that "intertwine" these related provisions into a single arbitration provision which the Court has previously ruled make it inseverable;

4. The purported arbitration provision, and its severance from other oppressive provisions, violates South Carolina public policy.

5. The purported arbitration provision is not subject to the FAA because Plaintiffs' sales contracts for South Carolina homes does not implicate interstate commerce.

6. The purported arbitration provision is not enforceable under SCUAA because it fails to conform with the notice requirements of the SCUAA.

7. The Motion to Compel Arbitration fails because Developer Defendants cannot compel downstream purchasers to arbitrate who have no agreement with the Developer Defendants, much less an agreement to submit their claims to arbitration.

Alternatively, this Court should find that neither FAA nor SCUAA applies and that downstream purchasers are not subject to either arbitration or a discovery stay, and the case should proceed at least in that regard.

[Signatures on following page]

Respectfully submitted,

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Attorneys for Plaintiffs

May 2, 2025
Charleston, South Carolina

EXHIBIT A

JMC HOMES OF SC, LLC
OWNER/BUILDER AGREEMENT

This Agreement is made and entered into this day, 10/28/2016, by and between JMC Homes of South Carolina, LLC, a South Carolina limited liability company ("Builder"), and the following named "Owner(s)":

Name: Deborah C. Coleman, William A. Coleman

Address:6 Thornwood Lane, , Greenville, SC 29605

Phone: 864-313-8080
Email: dc_coleman@bellsouth.net

In consideration of the mutual covenants and agreements set forth herein, Owner and Builder agree as follows:

1. **Scope of Work**. The Builder agrees to furnish all of the materials and labor to perform all of the work necessary for the construction through completion and delivery of a single family residential home (the "Residence") in accordance with the Plans and Specifications described on the attached Exhibit "A", as herein below defined, said Residence to be constructed on land owned by Owner and having an address of-, and being more particularly described as follows: Lot 0235, Patrick Square, as per plat thereof, recorded in Pickens County, South Carolina (the "Lot").

2. **Contract Price and Method of Payment**. Owner agrees to pay or cause to be paid to Builder the sum of $354,190.00 in installments as defined on the attached Exhibit "B.

Type of Financing:

[X] **A. Owner Financing:** Owner shall pay the entire Contract Price to Builder in cash or its equivalent solely from personal funds and does not intend to obtain a loan to finance the construction. Prior to the closing on acquisition by Owner of the Lot, Owner shall provide to Builder evidence of Owner's ability to pay the Contract Price. Upon request by Builder at any time prior to final payment, Builder shall be provided reasonable evidence of Owner's continuing ability to pay the balance due under this Agreement.

[ ] **B. Lender Financing.** See Financing Contingency Addendum attached to and made part of the Patrick Square Lot Purchase Agreement.

All payments shall be due and payable on or before ten (10) days after receipt by Owner of an application for payment from Builder. In the event Owner obtains a construction loan, the draw schedule used by the construction lender shall be used provided it is acceptable to Builder in its discretion. If the Owner should fail to pay the Builder at the time the payment of any amount becomes due, then the Builder may, at any time thereafter, upon serving written notice that it will stop work within ten (10) days after receipt of the notice by the Owner, and after such ten (10) day period, stop the work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last address known to it or by personally giving a copy to Owner. Time is of the essence as to all payments due Builder. Payments due but unpaid shall bear interest at the annual rate of eighteen percent (18%) per annum.

Owner(s) Initials: DCC /WAC
Builder's Initials:

3. **Construction Schedule**. Following execution of this Agreement or the date of closing on Owner's acquisition of the Lot, whichever is later, Builder shall use its best effort to deliver the completed residence specified herein on or about 150 days from start of construction. Start of construction is defined as the date on which footings are poured. If commencement of construction is delayed beyond that month due to any act or failure to act of Owner or applicable governmental authority, by any law or regulation of any governmental authority, or by any other cause which is not the fault of Builder, then the price of the Residence may be increased by Builder to the current price for the month of actual start. If Builder is prevented by any act or failure to act of Owner from commencing construction of the Residence within 180 days following the closing of Owner's purchase of the Lot, Owner shall be deemed in default of this Agreement. Upon such default, and notwithstanding any other provision of this Agreement to the contrary, this Agreement shall be terminated, and all sums paid to Builder as Installment 2(a) shall be retained by Builder as liquidated damages for such default in lieu of all other remedies. Owner and Builder agree that the damages to Builder which may result from such default are uncertain and unascertainable and that the liquidated damages provided for in this paragraph are a reasonable measure of such damages in light of the respective obligations of the parties under this Agreement and the detriment suffered by Builder as a result of such default. The completion date is not guaranteed and is not of the essence of this Agreement. Builder shall not be liable to Owner for any damages or inconvenience caused to Owner by delay in the completion of construction, regardless of the cause for the delay. If Builder is delayed by any act or neglect of Owner, Builder shall be compensated for all costs which it incurs as a result of such delay, and a change order will be issued therefore.

4. **Delays**. Builder shall have no liability if construction is delayed by acts of God; strikes or other labor disputes or shortages; governmental or court orders or edicts; civil commotion; war; war-like operations; sabotage; Builder's inability to obtain materials or labor; inclement weather; delays directly caused by Owner's change orders or selection of materials or untimely selections thereof; or any other cause beyond the reasonable or practical control of the Builder.

5. **Plans and Specifications**. The Residence will be constructed substantially in accordance with the floor plan, elevation, standard features, custom features, and other applicable drawings and specifications described in the Plans and Specifications subject to substitutions, modifications, and change orders authorized by this Agreement. Builder reserves the right to substitute materials or items of comparable quality and to make changes in the Residence's Plans and Specifications of a nonmaterial nature or as may be required by governmental authorities or necessitated by material availability or construction requirements in the field. Owner acknowledges that the Plans and Specifications for the Residence may not be consistent with the plans and specifications which are on file with applicable governmental authorities, and construction of the Residence need not be accomplished in accordance with the Plans and Specifications on file with such governmental authorities.

6. **Construction Standards.** Builder will construct the Residence utilizing the Plans in accordance with local industry standards and criteria, and South Carolina Residential Construction Standards (http://www.llr.state.sc.us/Pol/ResidentialBuilders/PDF%20files/Residential%20Construction%20Standards.pdf).

7. **Allowances**. The total price of the Residence includes allowances for certain items as set forth in the Special Stipulation section of this Agreement. If Owner's actual cost for the above items is greater or less than the Allowances amount, the total price of the Residence will be adjusted by the difference and a change order will be issued therefore.

Owner(s) Initials: [handwritten initials]
Builder's Initials: [handwritten initials]

8. **Selections & Change Orders**. Owner agrees to make all necessary selections for exterior colors, interior finishes, electrical outlet locations, and lighting locations within forty-five (45) days from the effective date of this agreement. Owner also agrees to make all decorative lighting fixture selections and to review and approve the landscaping design within seven (7) days after the rough-in electrical work is completed. Any and all upgrades or modifications to the standard plan and included finishes will also be made within 45 days of the effective date of this agreement and shall be payable to Builder at the time the change order is signed. Selections or changes or upgrades made by Owner shall be final unless the selected item or color becomes unavailable to Builder and Builder requests Owner to make an alternative selection. If Owner fails to make any selection within the timeframe specified herein, the Builder may, at Builder's option, make the selection on Owner's behalf without further notice. Builder makes no representation about any color selected by Owner, but will use best and reasonable efforts to install colors as close as possible to those selected.

If Owner and Builder agree to any change in the Plans and Specifications or standard selections following execution of this Agreement, such change, and its cost, shall be set forth in a written change order signed by Owner and Builder. The cost of each change shall be added to the total price of the Residence and shall be payable to Builder at the time the change order is signed. Owner understands that certain items and improvements are subject to design change by the manufacturer and subject to changes in color and gradations and may vary from any samples that may be shown or specified on the plans made available to Owner. No subcontractor or supplier is authorized to agree to a change on behalf of Builder.

9. **Completion**. The Residence is considered complete when the balance of the Price of the Residence is paid to Builder and a certificate of occupancy for the Residence is issued by City of Clemson.

10. **"Walk Through" Inspection**: At or near the time of Substantial Completion, Owner and Builder's representative shall "Walk Through" the Home and execute a "Walk Through List" specifying the items that remain to be completed in the Home. Owner acknowledges that Builder will make its best effort to complete all of the items specified in the agreed upon "Walk Through List" on a timely basis as soon as reasonably possible after final payment, but the fact that any repairs, touch ups or adjustments are incomplete shall not constitute a valid reason for failure to make final payment. Owner agrees that there shall be no withholding of any or all of final payment for any such "Walk Through Lists" of items that may remain to be completed. Owner acknowledges that the only criteria and standards that will be used in connection with inspections permitted by this Agreement, and in compiling the "Walk Through List", are those as set forth in the Warranty & Construction Performance Standards described herein and generally accepted local area building industry criteria and standards. Owner acknowledges that Builder is not required and will not perform any work which would exceed such criteria or standards and that the Builder is not responsible for addressing or correcting conditions or circumstances located outside the Lot even if affecting the Lot. In lieu of repairing any item specified on the "Walk Through List" or in previous written notification, if not waived, Builder shall have the option of replacing such item within said standards or paying reasonable sums to the Owner which to have those repairs made by the Owner or a third party. Any items outside of said warranty shall be addressed at Builder's sole discretion and shall not constitute a valid reason for failure to make the final payment.

Owner or representatives of the Owner, at Owner's expense and at reasonable times during normal business hours shall have the right to enter upon the Residence for the purpose of viewing progress of construction. Moreover, Owner hereby agrees to limit inspections of the residence to a reasonable period of time and to avoid conversations with workmen or in any way hinder their work. Notwithstanding the provisions of this paragraph, Builder may request that Owner inspect the Residence from time to time, to check colors, equipment, cabinets, or other items during any phase of construction. Finally, Owner agrees to assume all responsibility for the acts of himself, his family members, and representatives in exercising his rights under this paragraph and agrees to hold Builder, harmless for any damages or injuries resulting there from. If Owner becomes aware of any problem during any such inspection, he shall provide prompt notification of such problem to Builder.

Owner(s) Initials: DCC / WC K
Builder's Initials: [signature]

11. **Occupancy**. Builder shall have the exclusive right to occupy the Lot until completion of the Residence and payment to Builder in full of the price of the Residence; at which time occupancy of the Lot and the Residence will be given to Owner. This Agreement shall be considered a lease of the Residence in favor of Builder for a term ending upon final payment to Builder.

It is expressly understood and agreed that the owner shall in no event take possession of, or enter upon the Property prior to settlement, and should the Owner breach this provision, the owner consents that the Contractor shall have the right to dispossess them from the Property by summary proceedings. The Owner consents that the Contractor and its agents and employees are exempt from any and all liability for damages or injury sustained to the Property or by a third party brought on the Property by the Owner.

12. **Builder Deposit.** Any deposits paid by Owner to Builder are to be deposited in the General Account of the Builder and not in a separate escrow/trust bank account. This Builder Deposit is to be applied as partial payment towards the Contract Price at the time signing of this agreement of closing on the Lot, or otherwise disbursed as provided for herein. Builder shall deposit such funds as provided herein promptly after all parties have accepted this Agreement. Owner acknowledges and agrees that Builder shall have the right to use such funds for whatever purpose Builder sees fit including, but not limited to, payment for labor and materials with respect to the property pursuant to this Agreement, and such funds will not be segregated or set apart in any manner. It is understood and agreed that such funds would be refundable should Owner not be able to obtain financing as set forth in the Financing Contingency as outlined herein. However, upon removal of said contingency all of the above funds shall become non-refundable, except in the case of Builder default.

13. **Copyright**. The Plans and Specifications for the Residence are copyrighted by Builder and it agents. Owner's sole right to the Plans and Specifications for the Residence is limited to the construction of the Residence on the Lot by Builder. Owner shall not copy, duplicate, make available to others, or use for any other purpose the design, plans, and specifications for the Residence, or assist others in doing so, without the written consent of and acceptable compensation to Builder.

14. **Subcontractors.** Builder is entitled to select the subcontractors, employees, and suppliers who will work on or provide material to the Home. Owner agrees to not have any work performed on the Home by its own subcontractors, employees or suppliers until after Builder has completed all of its work on the Home or this Agreement has been terminated. Owner shall not direct, supervise, control, or interfere with the subcontractors, employees or suppliers of Builder.

15. **Insurance**. During the period of construction, Owner will furnish builder's risk insurance in the full amount of the price of the Residence, owner's public liability insurance with limits of not less than $300,000. Owner shall pay all deductibles and shall indemnify Builder as to all casualty losses not covered by such insurance. Each policy of insurance shall name Builder as a co-insured and must otherwise be in form and substance satisfactory to Builder. Owner shall furnish Builder with a copy of each insurance policy, or a certificate showing the insurance to be in effect, prior to commencement of construction. Builder will furnish worker's compensation and builder's public liability insurance.

16. **Fees**. The Builder shall pay impact fees in the amount currently assessed by governmental entities and utility providers. In the event such charges increase or additional impact fees, connection charges or similar fees or charges are imposed subsequent to the date of this Agreement, Owner shall pay all such increased or additional costs to Builder. At the completion of the Residence, the Builder shall remove from the Residence the Builder's tools, surplus materials, construction equipment, machinery, and waste materials.

17. **Wood Infestation Report**. Upon Substantial Completion, Builder shall provide Owner a current Wood Infestation Report. If any additional inspections and/or reports are requested by Owner or Owner's lender, the costs, if any, for such inspection(s) and/or report(s) shall be paid by Owner.

Owner(s) Initials: [signature]
Builder's Initials: [signature]

18. **Grading and Site Conditions:** The final grade of the lot at the time of Certificate of Occupancy will be determined by the original grade and type of residence being constructed, and any necessary modifications will be made at the sole discretion of the Builder, and/or its engineer in order to provide the most suitable location for the residence. Builder may encounter rock formations, springs, latent or subsurface conditions, or other conditions materially differing from those ordinarily encountered and generally recognized as inherent in the work of the type covered by this Agreement that substantially inhibit work or increase the Costs or time involved in performing the work. Soils tests, soils engineering, piling, utility service connections, and expenses caused by rock or adverse soil conditions, when applicable, shall be additional expenses paid by Owner.

19. **Limited Warranty.** The Builder warrants the Residence to the Owner upon completion and final payment against defects in the original materials and workmanship for a period of one (1) year from the date of Issuance of the Certificate of Occupancy for the Residence. This limited warranty is not transferable by Owner. This limited warranty does not cover lawns and landscaping or items which can be corrected by Owner as normal maintenance. Appliances, air conditioning and heating equipment, plumbing and electrical fixtures, hot water heaters, and all other consumer products installed in the Residence are warranted by the respective manufacturer. The term consumer products shall have the definition set forth in the Magnuson-Moss Warranty Act, 15 USC §2301 et seq. This warranty does not include defects caused by Owner modifications, abuse, improper maintenance, improper operation or latent defects inherent in the type or quality of materials requested or accepted by Owner which are not known or discoverable by Builder with the exercise of reasonable diligence. Any warranty or guarantee from any manufacturer of a consumer product shall be deemed to have been obtained for the benefit of Owner. Builder's liability shall be limited to repair or replacement of defective work which is reported in writing by Owner to Builder within the warranty period. In no event shall Builder be liable to Owner for incidental or consequential damages. THIS WARRANTY IS GIVEN TO OWNER IN LIEU OF ANY AND ALL OTHER REMEDIES AS MAY BE PROVIDED BY LAW INCLUDING ANY IMPLIED OR EXPRESS WARRANTY INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSES NOT SPECIFICALLY CONTAINED IN THIS LIMITED WARRANTY. The foregoing limitations on implied warranties and relief may be unenforceable in certain states. This warranty gives you specific legal rights and you may also have other legal rights which vary from state to state.

20. **Sufficient Funds.** The Owner shall furnish reasonable evidence satisfactory to the Builder, prior to signing this Agreement, or any time thereafter, prior to start of construction, that sufficient funds are available and committed for the entire Cost of the Residence. If the Builder elects to proceed with work without having received such evidence, it may stop work upon fifteen days notice if such evidence has not been furnished within a reasonable time after such request.

21. **Regulatory Changes.** The Builder shall be compensated for change in the plans or specifications necessitated by homeowner association, by municipality, governmental authority or by the enactment or revision of codes. The Builder shall be allowed additional time necessary to complete said work for each alteration of, deviation from, addition to or omission in said Agreement whether at the request of the Owner or other entity.

22. **Defaults & Dispute.**

A. Owner's Rights: If Builder materially breaches its obligations under this Agreement, Owner shall be entitled, after giving Builder written notice of such breach and a ten (10) day period in which to substantially cure the breach, to demand arbitration or to terminate this Agreement in writing.

B. Builder's Rights: If Owner fails to timely make any payment required under this Agreement or other breach, then Builder shall be entitled after giving Owner written notice of such breach and a ten (10) day period to cure, to immediately terminate this Agreement by providing written notice to Owner of such termination or to demand arbitration. As an interim step, Builder shall also be entitled to suspend its obligations under this Agreement pending the curing of any breach by Owner. If Builder decides to suspend its obligations, it shall provide notice to Owner of such decision.

Owner(s) Initials: [handwritten initials] / [handwritten initials]
Builder's Initials: [handwritten initials]

C. Payments Upon Termination after Commencement of Work: In the event of termination by Owner as a result of breach by Builder after Commencement of Work, Owner shall pay Builder any: (1) amounts due at that time pursuant to Paragraph V, this amount having already accounted for the Builder Deposit; (2) amounts to be paid pursuant to Paragraph XII; (3) amounts agreed upon in a Change Order or to which Builder is otherwise entitled under Paragraph XIII, in proportion to which the related work has been performed; and (4) all Costs incurred by Builder in connection with the Home that are not covered by other payments provided in/by this subparagraph. In the event of termination by Builder as a result of breach by Owner, Owner shall pay to Builder all of the amounts to be paid upon termination by Owner (as set forth above). As an alternative to termination, Builder may seek specific performance of the Agreement.

D. Timing of Payments: Notwithstanding any later date for payment specified in this Agreement, any Construction Draw Schedule, and any Change Order or otherwise, the payments required upon termination shall be paid within seven (7) days from the date of termination.

E. Interest: Payments due under this paragraph and unpaid for more than thirty (30) days shall bear interest at the rate of eighteen percent (18%) per annum.

23. **Successors and Assigns**. This Agreement shall be binding on the successors, assigns, and legal representatives of the Owner or Builder. Neither party shall assign, sublet or transfer an interest in the Agreement without written consent of the other.

24. **Binding Arbitration.** All parties to this Agreement acknowledge that, in the event any issue in law or equity arises after execution of this Agreement, same shall be resolved through binding arbitration. If the claim relates to the warranty provided by Builder and/or other claims, then the arbitration will be provided through Construction Arbitration Services, Inc. ("CAS"). The CAS arbitration will be conducted in accordance with their rules in effect at the time of the request for arbitration and the Federal Arbitration Act. All parties by entering into this agreement acknowledge that arbitration shall be the only manner of settling any issue arising after execution of this Agreement and that the results of the arbitration decision shall be binding on the parties to this Agreement. All parties to the Agreement agree to arbitrate the matter while continuing to comply with the other terms of this Agreement including proceeding to Closing, unless the parties mutually consent to a stay of further compliance with the terms of the Agreement during the period the issue is being arbitrated. In the event that an arbitration decision requires repairs or adjustments to be made by the Builder, these repairs or adjustments shall be made in accordance with the standards as outlined in the Warranty, or which are customary to generally accepted local area building industry criteria and standards in the event the Warranty is silent as to an applicable standard. The provisions of this paragraph shall survive Closing and delivery of the limited warranty deed to the Owner.

25. **Notices.** Except as may otherwise be provided for in this Agreement, all notices or demands required or permitted hereunder shall be delivered either (a) in person; (b) by overnight delivery service prepaid; (c) by facsimile (FAX) transmission; (d) by the United States Postal Service, postage prepaid, registered or certified, return receipt requested; or (e) E-mail with attachments. Such notices shall be deemed to have been given as of the date and time the same was delivered to the address and/or phone number for the receiving party by one of the methods set forth above.

26. **Photographs.** Owner grants Builder the right to obtain and use photographs of the Lot and/or Home for advertising, promotion and publication. This right shall survive Substantial Completion.

27. **Terminology and Captions.** All pronouns, singular or plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. The singular shall mean and include the plural and the plural shall mean and include the singular. The term "Agreement" as used herein, as well as the terms "herein", "hereof", "hereunder",

Owner(s) Initials: Odd / WC
Builder's Initials:

"hereinafter", and the like mean this Agreement in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings hereof are for reference and convenience only and do not enter into or become a part of the context.

28. **Multiple Owners.** In the event that there is more than one Owner, each Owner hereby authorizes and empowers any other Owner to act on his or her behalf in connection with matters relating to this Agreement, including but not limited to changes in the work and Change Orders, and each Owner authorizes Builder to rely on such action. This authorization shall not preclude Builder from requiring that each Owner agree to matters relating to the Agreement.

29. **Binding Effect.** The terms, covenants and conditions of this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns.

30. **Entire Agreement.** This Agreement constitutes the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties to this Agreement. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto, including, but not limited to: the terms and conditions of financing; the structural condition of the Lot; the operating condition of the electrical, heating, air-conditioning, plumbing, water heating systems, spa and appliances in the Home; the investment potential or resale value of the Lot containing the Home; or any other system or condition enumerated in the paragraphs above, or any other condition or circumstance which may adversely affect the Lot. Owner and Builder acknowledge that if such, or similar, matters have been of concern to them, they have sought and obtained independent advice relative thereto.

31. **Governing Law.** This agreement and all of its provisions, exhibits and attachments shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of South Carolina.

32. **Severability.** The provisions of this Agreement are intended to be independent. In the event a provision hereof should be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Agreement.

33. **Time is of the essence:** Time is of the essence of this Agreement.

This Owner/Builder Agreement may only be modified by Addendum attached hereto and made a part hereof.

OWNER(S):

Deborah C Coleman ✓ Date: 11/4/16

William A. Coleman ✓ Date: 11/4/16

BUILDER: JMC Homes of South Carolina, Inc.

By: Jim Anthony Date: 11/7/16

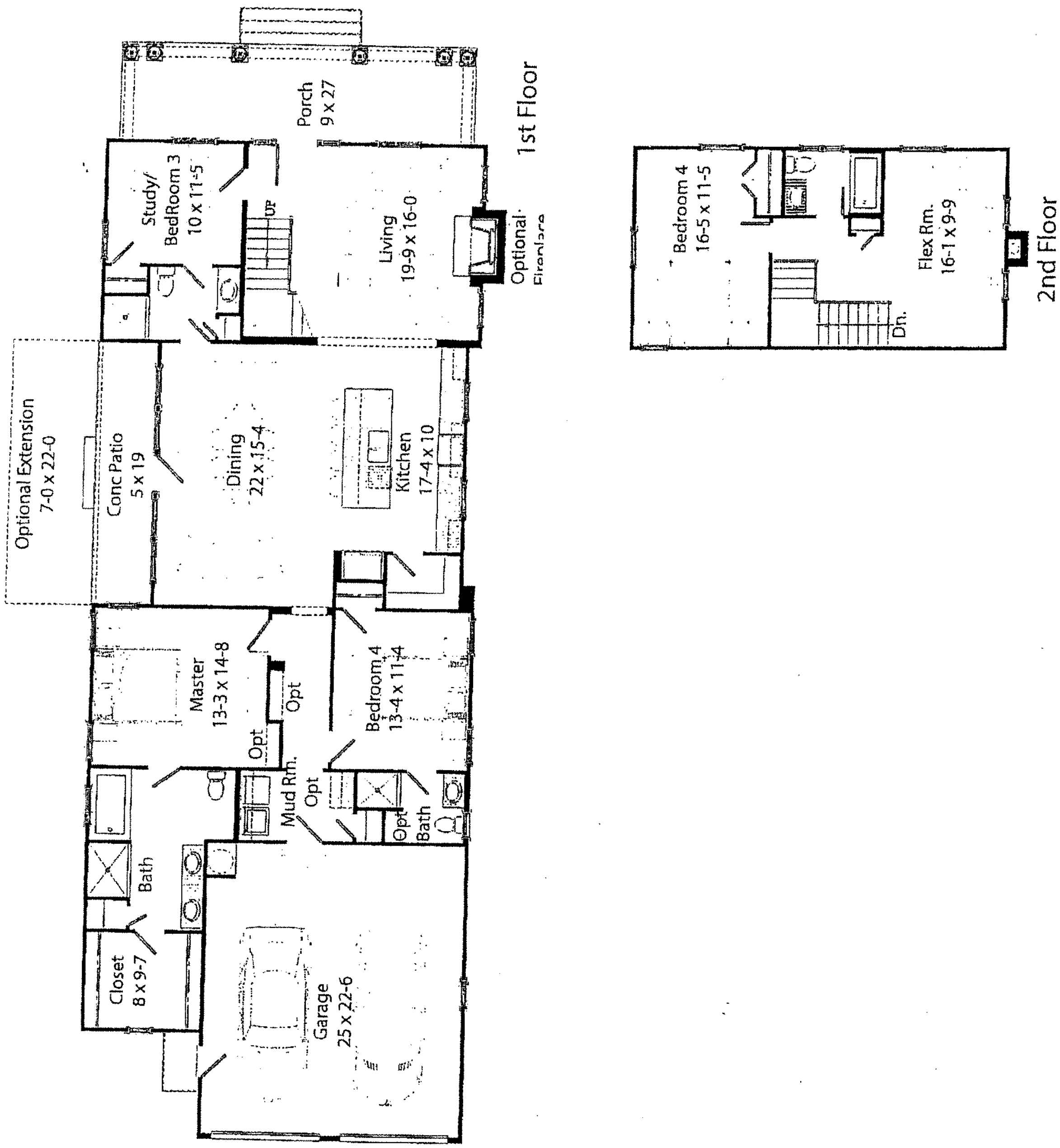
Title: PRES.

Owner(s) Initials: DCC / WAC
Builder's Initials: [signature]

EXHIBIT "A", PG. 1 OF 3

PLANS AND SPECIFICATIONS

Beaufort 2 "G", LOT 235 Patrick Square



Owner/Builder Agreement

Page 8 , A

Owner (s) Initials ____

Builder ____

EXHIBIT "A", PG. 2 OF 3

FRONT ELEVATION

Beaufort 2 "G", LOT 235, Patrick Square

Beaufort II "G"

Owner/Builder Agreement

Page 8 , A

Owner (s) Initials

Builder

EXHIBIT "A", PG. 3 OF 3

INCLUDED FEATURES

Beaufort 2 "G", LOT 235 **Patrick Square**

Patrick Square
PatrickSquare.com

Village Homes
Included Features
Fall 2016

Exteriors
- Insulated double hung tilt windows (most windows) with limited lifetime warranty
- Low "e" glass
- Deck, patio or porch (size per plan)
- HardiPlank ® fiber-cement siding with 30-yr warranty
- Irrigation system with rain sensor and controller
- Aluminum pre-finished seamless gutters per plan
- Insulated garage doors with opener(s)
- 30-yr CertainTeed ® roof shingles and ridge vents (standing seam metal roof or 30-yr pressure treated cedar shakes available as options)
- Spacious 2-car garages
- $8,000 landscaping allowance

Flooring
- Hardwood flooring in foyer, kitchen, living room, breakfast area, dining room, powder bath and main floor hallways
- Subflooring by AdvanTech ® with 50-yr warranty
- Ceramic tile - 12" X 12" on entire master bath floor, secondary bath floors, and laundry floors
- Hardwood solid steptreads (per plan)
- Level stain resistant carpet with 6 lb pad
- Engineered subfloor

Plumbing
- Gerber Blaze 24 ™ pedestal sink in powder bath
- MOEN "Brantford" ™ chrome faucets with limited lifetime warranty
- Undermount double bowl stainless kitchen sink
- MOEN "Intergra" ™ stainless pull-out sink faucet
- Acrylic 36 X 60 master garden tub
- One-piece tub/shower or shower stall in secondary baths
- Two exterior spigots
- Gerber Maxwell SE™ 1.28 gpf elongated toilets

Electrical
- Pre-wire for TV and computer/phone per plan
- All category 5e wiring "home run" to panel
- Six air-tight IC-rated recess cans
- Pre-wire for ceiling fans in living room and all bedrooms
- Two weatherproof exterior receptacles

Interiors
- 3 cm granite kitchen countertops
- Whirlpool ® appliances
- 30" free-standing gas range
- Tall tub dishwasher with stainless panel
- 1200 watt 1.7 cu ft built-in microwave
- 225 cfm range hood vented to exterior with halogen lighting
- Garbage disposal
- Ceramic tile master bath tub deck and apron
- 4" granite backsplash in kitchen
- Chrome framed/glass shower enclosure in master bath
- Framed mirrors above master bath vanity
- Cabinets custom built- choice of shaker or raised panel style, painted or stained maple
- European (hidden) hinges
- Painted bath vanities with cultured marble tops
- Ceiling height - 10' typical formal areas - 9' 2nd floor
- Lighting allowance - (per plan) $2200 minimum
- Ventilated shelving systems
- Low VOC Sherwin-Williams ® paints
- Carbon monoxide detectors on each level

High Performance Systems
- Energy efficient design
- "Right-sized" heating and cooling systems
- High efficiency 14 SEER cooling
- High efficiency 90%+ gas furnace
- MERV 8 air filters
- Sealed ductwork tested for air tightness
- Air sealing package and cellulose blown insulation
- R-38 in attic, R-25 vaults, R-13 walls
- 40-gal gas water heater - w/ min. energy factor =.61
- Fiber optic cable to structured wiring hub

Trim
- 3½" wide casings on windows and doors
- JELD-WEN ® two panel interior doors
- Vernacular trim detailing with 3 PC crown in foyer, living room, dining room and kitchen
- 8" base in formal areas, 6" other areas

In an effort to continually improve our product, JMC Homes of South Carolina, in its sole discretion, reserves the right to change these features without prior notice.

Owner/Builder Agreement

Owner (s) Initials _______

Builder _______

EXHIBIT "B"

CONSTRUCTION DRAW SCHEDULE

The draw percentage below shall be based on the total contract price less Builder deposit.

Total base contract price	$ 316,900.00
Options	$ 37,290.00
Less Deposit	$ 7,500.00
Total House, Options, less Deposits	$346,690.00

DRAW #	%	DESCRIPTION
1	10%	Clearing, grading, foundation, slab poured
2	15%	Framing walls, floors, roof, sheathing
3	15%	Cornice, main roof, windows, exterior doors, rough plumbing, rough HVAC, rough electrical,
4	20%	Porches, exterior trim, siding, brick or stone veneer, wall insulation, drywall hang and finish
5	15%	Interior trim and doors, cabinets, countertops, interior & exterior paint
6	10%	Finish plumbing, finish electrical, a/c units, garage doors
7	15%	Appliances, finish flooring, drive and walks, landscaping, hardware, final clean, C.O.

In the event Owner obtains construction financing, Owner shall pay any shortfall in financing per the above draw schedule.

Owner(s) Initials:
Builder's Initials:

EXHIBIT B

JMC HOMES OF SC, LLC
OWNER/BUILDER AGREEMENT

This Agreement is made and entered into this day, 12/01/2018, by and between JMC Homes of South Carolina, LLC, a South Carolina limited liability company ("Builder"), and the following named "Owner(s)":

Name: David Griffith

Address: 16 Fran Ave, , Trenton, NJ 08638

Phone:
Email: dgryffudd@gmail.com

In consideration of the mutual covenants and agreements set forth herein, Owner and Builder agree as follows:

1. Scope of Work. The Builder agrees to furnish all of the materials and labor to perform all of the work necessary for the construction through completion and delivery of a single family residential home (the "Residence") in accordance with the Plans and Specifications described on the attached Exhibit "A", as herein below defined, said Residence to be constructed on land owned by Owner and having an address of-, and being more particularly described as follows: Lot 0277, Patrick Square, as per plat thereof, recorded in Pickens County, South Carolina (the "Lot").

2. Contract Price and Method of Payment. Owner agrees to pay or cause to be paid to Builder the sum of $375,560.00 in installments as defined on the attached Exhibit "B.

Type of Financing:

[ ] **A. Owner Financing:** Owner shall pay the entire Contract Price to Builder in cash or its equivalent solely from personal funds and does not intend to obtain a loan to finance the construction. Prior to the closing on acquisition by Owner of the Lot, Owner shall provide to Builder evidence of Owner's ability to pay the Contract Price. Upon request by Builder at any time prior to final payment, Builder shall be provided reasonable evidence of Owner's continuing ability to pay the balance due under this Agreement.

[X] **B. Lender Financing.** See Financing Contingency Addendum attached to and made part of the Patrick Square Lot Purchase Agreement.

All payments shall be due and payable on or before ten (10) days after receipt by Owner of an application for payment from Builder. In the event Owner obtains a construction loan, the draw schedule used by the construction lender shall be used provided it is acceptable to Builder in its discretion. If the Owner should fail to pay the Builder at the time the payment of any amount becomes due, then the Builder may, at any time thereafter, upon serving written notice that it will stop work within ten (10) days after receipt of the notice by the Owner, and after such ten (10) day period, stop the work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last address known to it or by personally giving a copy to Owner. Time is of the essence as to all payments due Builder Payments due but unpaid shall bear interest at the annual rate of eighteen percent (18%) per annum.

Owner(s) Initials DAG
Builder's Initials: ______

3. **Construction Schedule**. Following execution of this Agreement or the date of closing on Owner's acquisition of the Lot, whichever is later, Builder shall use its best effort to deliver the completed residence specified herein on or about 150 days from start of construction. Start of construction is defined as the date on which footings are poured. If commencement of construction is delayed beyond that month due to any act or failure to act of Owner or applicable governmental authority, by any law or regulation of any governmental authority, or by any other cause which is not the fault of Builder, then the price of the Residence may be increased by Builder to the current price for the month of actual start. If Builder is prevented by any act or failure to act of Owner from commencing construction of the Residence within 180 days following the closing of Owner's purchase of the Lot, Owner shall be deemed in default of this Agreement. Upon such default, and notwithstanding any other provision of this Agreement to the contrary, this Agreement shall be terminated, and all sums paid to Builder as Installment 2(a) shall be retained by Builder as liquidated damages for such default in lieu of all other remedies. Owner and Builder agree that the damages to Builder which may result from such default are uncertain and unascertainable and that the liquidated damages provided for in this paragraph are a reasonable measure of such damages in light of the respective obligations of the parties under this Agreement and the detriment suffered by Builder as a result of such default. The completion date is not guaranteed and is not of the essence of this Agreement. Builder shall not be liable to Owner for any damages or inconvenience caused to Owner by delay in the completion of construction, regardless of the cause for the delay. If Builder is delayed by any act or neglect of Owner, Builder shall be compensated for all costs which it incurs as a result of such delay, and a change order will be issued therefore.

4. **Delays**. Builder shall have no liability if construction is delayed by acts of God; strikes or other labor disputes or shortages; governmental or court orders or edicts; civil commotion; war; war-like operations; sabotage; Builder's inability to obtain materials or labor; inclement weather; delays directly caused by Owner's change orders or selection of materials or untimely selections thereof; or any other cause beyond the reasonable or practical control of the Builder.

5. **Plans and Specifications**. The Residence will be constructed substantially in accordance with the floor plan, elevation, standard features, custom features, and other applicable drawings and specifications described in the Plans and Specifications subject to substitutions, modifications, and change orders authorized by this Agreement. Builder reserves the right to substitute materials or items of comparable quality and to make changes in the Residence's Plans and Specifications of a nonmaterial nature or as may be required by governmental authorities or necessitated by material availability or construction requirements in the field. Owner acknowledges that the Plans and Specifications for the Residence may not be consistent with the plans and specifications which are on file with applicable governmental authorities, and construction of the Residence need not be accomplished in accordance with the Plans and Specifications on file with such governmental authorities.

6. **Construction Standards**. Builder will construct the Residence utilizing the Plans in accordance with local industry standards and criteria, and South Carolina Residential Construction Standards (http://www.llr.state.sc.us/Pol/ResidentialBuilders/PDF%20files/Residential%20Construction%20Standards.pdf).

7. **Allowances**. The total price of the Residence includes allowances for certain items as set forth in the Special Stipulation section of this Agreement. If Owner's actual cost for the above items is greater or less than the Allowances amount, the total price of the Residence will be adjusted by the difference and a change order will be issued therefore.

Owner(s) Initials ______
Builder's Initials: ______

8. **Selections & Change Orders**. Owner agrees to make all necessary selections for exterior colors, interior finishes, electrical outlet locations, and lighting locations within forty-five (45) days from the effective date of this agreement. Owner also agrees to make all decorative lighting fixture selections and to review and approve the landscaping design within seven (7) days after the rough-in electrical work is completed. Any and all upgrades or modifications to the standard plan and included finishes will also be made within 45 days of the effective date of this agreement and shall be payable to Builder at the time the change order is signed. Selections or changes or upgrades made by Owner shall be final unless the selected item or color becomes unavailable to Builder and Builder requests Owner to make an alternative selection. If Owner fails to make any selection within the timeframe specified herein, the Builder may, at Builder's option, make the selection on Owner's behalf without further notice. Builder makes no representation about any color selected by Owner, but will use best and reasonable efforts to install colors as close as possible to those selected.

If Owner and Builder agree to any change in the Plans and Specifications or standard selections following execution of this Agreement, such change, and its cost, shall be set forth in a written change order signed by Owner and Builder. The cost of each change shall be added to the total price of the Residence and shall be payable to Builder at the time the change order is signed. Owner understands that certain items and improvements are subject to design change by the manufacturer and subject to changes in color and gradations and may vary from any samples that may be shown or specified on the plans made available to Owner. No subcontractor or supplier is authorized to agree to a change on behalf of Builder.

9. **Completion**. The Residence is considered complete when the balance of the Price of the Residence is paid to Builder and a certificate of occupancy for the Residence is issued by City of Clemson.

10. **"Walk Through" Inspection:** At or near the time of Substantial Completion, Owner and Builder's representative shall "Walk Through" the Home and execute a "Walk Through List" specifying the items that remain to be completed in the Home. Owner acknowledges that Builder will make its best effort to complete all of the items specified in the agreed upon "Walk Through List" on a timely basis as soon as reasonably possible after final payment, but the fact that any repairs, touch ups or adjustments are incomplete shall not constitute a valid reason for failure to make final payment. Owner agrees that there shall be no withholding of any or all of final payment for any such "Walk Through Lists" of items that may remain to be completed. Owner acknowledges that the only criteria and standards that will be used in connection with inspections permitted by this Agreement, and in compiling the "Walk Through List", are those as set forth in the Warranty & Construction Performance Standards described herein and generally accepted local area building industry criteria and standards. Owner acknowledges that Builder is not required and will not perform any work which would exceed such criteria or standards and that the Builder is not responsible for addressing or correcting conditions or circumstances located outside the Lot even if affecting the Lot. In lieu of repairing any item specified on the "Walk Through List" or in previous written notification, if not waived, Builder shall have the option of replacing such item within said standards or paying reasonable sums to the Owner which to have those repairs made by the Owner or a third party. Any items outside of said warranty shall be addressed at Builder's sole discretion and shall not constitute a valid reason for failure to make the final payment.

Owner or representatives of the Owner, at Owner's expense and at reasonable times during normal business hours shall have the right to enter upon the Residence for the purpose of viewing progress of construction. Moreover, Owner hereby agrees to limit inspections of the residence to a reasonable period of time and to avoid conversations with workmen or in any way hinder their work. Notwithstanding the provisions of this paragraph, Builder may request that Owner inspect the Residence from time to time, to check colors, equipment, cabinets, or other items during any phase of construction. Finally, Owner agrees to assume all responsibility for the acts of himself, his family members, and representatives in exercising his rights under this paragraph and agrees to hold Builder, harmless for any damages or injuries resulting there from. If Owner becomes aware of any problem during any such inspection, he shall provide prompt notification of such problem to Builder.

Owner(s) Initials ________
Builder's Initials: ________

11. **Occupancy**. Builder shall have the exclusive right to occupy the Lot until completion of the Residence and payment to Builder in full of the price of the Residence; at which time occupancy of the Lot and the Residence will be given to Owner. This Agreement shall be considered a lease of the Residence in favor of Builder for a term ending upon final payment to Builder.

It is expressly understood and agreed that the owner shall in no event take possession of, or enter upon the Property prior to settlement, and should the Owner breach this provision, the owner consents that the Contractor shall have the right to dispossess them from the Property by summary proceedings. The Owner consents that the Contractor and its agents and employees are exempt from any and all liability for damages or injury sustained to the Property or by a third party brought on the Property by the Owner.

12. **Builder Deposit.** Any deposits paid by Owner to Builder are to be deposited in the General Account of the Builder and not in a separate escrow/trust bank account. This Builder Deposit is to be applied as partial payment towards the Contract Price at the time signing of this agreement of closing on the Lot, or otherwise disbursed as provided for herein. Builder shall deposit such funds as provided herein promptly after all parties have accepted this Agreement. Owner acknowledges and agrees that Builder shall have the right to use such funds for whatever purpose Builder sees fit including, but not limited to, payment for labor and materials with respect to the property pursuant to this Agreement, and such funds will not be segregated or set apart in any manner. It is understood and agreed that such funds would be refundable should Owner not be able to obtain financing as set forth in the Financing Contingency as outlined herein. However, upon removal of said contingency all of the above funds shall become non-refundable, except in the case of Builder default.

13. **Copyright**. The Plans and Specifications for the Residence are copyrighted by Builder and it agents. Owner's sole right to the Plans and Specifications for the Residence is limited to the construction of the Residence on the Lot by Builder. Owner shall not copy, duplicate, make available to others, or use for any other purpose the design, plans, and specifications for the Residence, or assist others in doing so, without the written consent of and acceptable compensation to Builder.

14. **Subcontractors.** Builder is entitled to select the subcontractors, employees, and suppliers who will work on or provide material to the Home. Owner agrees to not have any work performed on the Home by its own subcontractors, employees or suppliers until after Builder has completed all of its work on the Home or this Agreement has been terminated. Owner shall not direct, supervise, control, or interfere with the subcontractors, employees or suppliers of Builder.

15. **Insurance**. During the period of construction, Owner will furnish builder's risk insurance in the full amount of the price of the Residence, owner's public liability insurance with limits of not less than $300,000. Owner shall pay all deductibles and shall indemnify Builder as to all casualty losses not covered by such insurance. Each policy of insurance shall name Builder as a co-insured and must otherwise be in form and substance satisfactory to Builder. Owner shall furnish Builder with a copy of each insurance policy, or a certificate showing the insurance to be in effect, prior to commencement of construction. Builder will furnish worker's compensation and builder's public liability insurance.

16. **Fees**. The Builder shall pay impact fees in the amount currently assessed by governmental entities and utility providers. In the event such charges increase or additional impact fees, connection charges or similar fees or charges are imposed subsequent to the date of this Agreement, Owner shall pay all such increased or additional costs to Builder. At the completion of the Residence, the Builder shall remove from the Residence the Builder's tools, surplus materials, construction equipment, machinery, and waste materials.

17. **Wood Infestation Report**. Upon Substantial Completion, Builder shall provide Owner a current Wood Infestation Report. If any additional inspections and/or reports are requested by Owner or Owner's lender, the costs, if any, for such inspection(s) and/or report(s) shall be paid by Owner.

Owner(s) Initials

Builder's Initials

18. **Grading and Site Conditions**: The final grade of the lot at the time of Certificate of Occupancy will be determined by the original grade and type of residence being constructed, and any necessary modifications will be made at the sole discretion of the Builder, and/or its engineer in order to provide the most suitable location for the residence. Builder may encounter rock formations, springs, latent or subsurface conditions, or other conditions materially differing from those ordinarily encountered and generally recognized as inherent in the work of the type covered by this Agreement that substantially inhibit work or increase the Costs or time involved in performing the work. Soils tests, soils engineering, piling, utility service connections, and expenses caused by rock or adverse soil conditions, when applicable, shall be additional expenses paid by Owner.

19. **Limited Warranty**. The Builder warrants the Residence to the Owner upon completion and final payment against defects in the original materials and workmanship for a period of one (1) year from the date of issuance of the Certificate of Occupancy for the Residence. This limited warranty is not transferable by Owner. This limited warranty does not cover lawns and landscaping or items which can be corrected by Owner as normal maintenance. Appliances, air conditioning and heating equipment, plumbing and electrical fixtures, hot water heaters, and all other consumer products installed in the Residence are warranted by the respective manufacturer. The term consumer products shall have the definition set forth in the Magnuson-Moss Warranty Act, 15 USC §2301 et seq. This warranty does not include defects caused by Owner modifications, abuse, improper maintenance, improper operation or latent defects inherent in the type or quality of materials requested or accepted by Owner which are not known or discoverable by Builder with the exercise of reasonable diligence. Any warranty or guarantee from any manufacturer of a consumer product shall be deemed to have been obtained for the benefit of Owner. Builder's liability shall be limited to repair or replacement of defective work which is reported in writing by Owner to Builder within the warranty period. In no event shall Builder be liable to Owner for incidental or consequential damages. THIS WARRANTY IS GIVEN TO OWNER IN LIEU OF ANY AND ALL OTHER REMEDIES AS MAY BE PROVIDED BY LAW INCLUDING ANY IMPLIED OR EXPRESS WARRANTY INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSES NOT SPECIFICALLY CONTAINED IN THIS LIMITED WARRANTY. The foregoing limitations on implied warranties and relief may be unenforceable in certain states. This warranty gives you specific legal rights and you may also have other legal rights which vary from state to state.

20. **Sufficient Funds**. The Owner shall furnish reasonable evidence satisfactory to the Builder, prior to signing this Agreement, or any time thereafter, prior to start of construction, that sufficient funds are available and committed for the entire Cost of the Residence. If the Builder elects to proceed with work without having received such evidence, it may stop work upon fifteen days notice if such evidence has not been furnished within a reasonable time after such request.

21. **Regulatory Changes**. The Builder shall be compensated for change in the plans or specifications necessitated by homeowner association, by municipality, governmental authority or by the enactment or revision of codes. The Builder shall be allowed additional time necessary to complete said work for each alteration of, deviation from, addition to or omission in said Agreement whether at the request of the Owner or other entity.

22. **Defaults & Dispute.**

A. Owner's Rights: If Builder materially breaches its obligations under this Agreement, Owner shall be entitled, after giving Builder written notice of such breach and a ten (10) day period in which to substantially cure the breach, to demand arbitration or to terminate this Agreement in writing.

B. Builder's Rights: If Owner fails to timely make any payment required under this Agreement or other breach, then Builder shall be entitled after giving Owner written notice of such breach and a ten (10) day period to cure, to immediately terminate this Agreement by providing written notice to Owner of such termination or to demand arbitration. As an interim step, Builder shall also be entitled to suspend its obligations under this Agreement pending the curing of any breach by Owner. If Builder decides to suspend its obligations, it shall provide notice to Owner of such decision.

Owner(s) Initials JCKH

Builder's Initials

C. **Payments Upon Termination after Commencement of Work: In the event of termination by Owner** as a result of breach by Builder after Commencement of Work, Owner shall pay Builder any: (1) amounts due at that time pursuant to Paragraph V, this amount having already accounted for the Builder Deposit; (2) amounts to be paid pursuant to Paragraph XII; (3) amounts agreed upon in a Change Order or to which Builder is otherwise entitled under Paragraph XIII, in proportion to which the related work has been performed; and (4) all Costs incurred by Builder in connection with the Home that are not covered by other payments provided in/by this subparagraph. In the event of termination by Builder as a result of breach by Owner, Owner shall pay to Builder all of the amounts to be paid upon termination by Owner (as set forth above). As an alternative to termination, Builder may seek specific performance of the Agreement.

D. **Timing of Payments:** Notwithstanding any later date for payment specified in this Agreement, any Construction Draw Schedule, and any Change Order or otherwise, the payments required upon termination shall be paid within seven (7) days from the date of termination.

E. **Interest:** Payments due under this paragraph and unpaid for more than thirty (30) days shall bear interest at the rate of eighteen percent (18%) per annum.

23. **Successors and Assigns**. This Agreement shall be binding on the successors, assigns, and legal representatives of the Owner or Builder. Neither party shall assign, sublet or transfer an interest in the Agreement without written consent of the other.

24. **Notices.** Except as may otherwise be provided for in this Agreement, all notices or demands required or permitted hereunder shall be delivered either (a) in person; (b) by overnight delivery service prepaid; (c) by facsimile (FAX) transmission; (d) by the United States Postal Service, postage prepaid, registered or certified, return receipt requested; or (e) E-mail with attachments. Such notices shall be deemed to have been given as of the date and time the same was delivered to the address and/or phone number for the receiving party by one of the methods set forth above.

25. **Photographs**. Owner grants Builder the right to obtain and use photographs of the Lot and/or Home for advertising, promotion and publication. This right shall survive Substantial Completion.

26. **Terminology and Captions**. All pronouns, singular or plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. The singular shall mean and include the plural and the plural shall mean and include the singular. The term "Agreement" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter", and the like mean this Agreement in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings hereof are for reference and convenience only and do not enter into or become a part of the context.

27. **Multiple Owners**. In the event that there is more than one Owner, each Owner hereby authorizes and empowers any other Owner to act on his or her behalf in connection with matters relating to this Agreement, including but not limited to changes in the work and Change Orders, and each Owner authorizes Builder to rely on such action. This authorization shall not preclude Builder from requiring that each Owner agree to matters relating to the Agreement.

28. **Binding Effect**. The terms, covenants and conditions of this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns.

29. **Entire Agreement**. This Agreement constitutes the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties to this Agreement. No representation, promise or inducement not included in this Agreement

Owner(s) Initials ______
Builder's Initials: ______

shall be binding upon any party hereto, including, but not limited to: the terms and conditions of financing; the structural condition of the Lot; the operating condition of the electrical, heating, air-conditioning, plumbing, water heating systems, spa and appliances in the Home; the investment potential or resale value of the Lot containing the Home, or any other system or condition enumerated in the paragraphs above, or any other condition or circumstance which may adversely affect the Lot. Owner and Builder acknowledge that if such, or similar, matters have been of concern to them, they have sought and obtained independent advice relative thereto.

30. <u>Governing Law</u>. This agreement and all of its provisions, exhibits and attachments shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of South Carolina.

31. **Severability**. The provisions of this Agreement are intended to be independent. In the event a provision hereof should be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Agreement.

32. **Time is of the essence:** Time is of the essence of this Agreement.

This Owner/Builder Agreement may only be modified by Addendum attached hereto and made a part hereof.

OWNER(S):

______________________ Date: 19 DEC 18

______________________ Date: ______________

BUILDER: JMC Homes of South Carolina, Inc.

By: ______________________ Date: 12/20/18

Title: CONSTRUCTION MANAGER

EXHIBIT "A"

PLANS AND SPECIFICATIONS

Owner(s) Initials ______

Builder's Initials: ______

Patrick Square

Cottage Homes Included Features

NOHY
INitial

Exteriors
- Insulated single hung tilt windows
- Low "e" glass
- Deck, patio or porch (size per plan)
- Fiber-cement siding with 30-yr mfr. warranty
- Aluminum pre-finished seamless gutters (per plan)
- 1 or 2-car garages per plan with opener(s)
- Landscaping allowance - $8,300 used towards plants, Irrigation system with rain sensor and controller, Zoysia Sod, and landscaping plan

Flooring
- Engineered hardwood flooring in foyer, kitchen, living room, breakfast area, dining room, powder bath and main floor hallways
- AdvanTech sub-flooring with 50-yr mfr. warranty (Homes with crawl spaces & two-story homes)
- Ceramic tile - 12x12" on entire master bath floor, secondary bath floors and laundry floors
- Hardwood solid step treads (two-story homes)
- Level 1 stain resistant carpet with 6 lb pad in bedrooms and closets

Plumbing
- Gerber Blaze 24 pedestal sink in powder bath (per plan)
- Moen "Brantford" 4" single handle chrome faucets in all baths
- Undermount double bowl stainless kitchen sink
- Moen "Integra" stainless pull-out sink faucet
- One-piece fiberglass tub/shower or shower stall(s) in all baths
- Two exterior hose bibs

Electrical
- Pre-wire for TV, Computer/Phone in living room and all bedrooms (4 single jacks + 1 dual jack)
- Two weatherproof exterior receptacles
- All category 5e wiring "home run" to panel
- Pre-wire for ceiling fans/light combo in living room and all bedrooms
- Recess cans (per plan) with LED bulbs

Interiors
- Granite kitchen countertops
- Whirlpool 30" free-standing gas range
- Whirlpool 3-cycle dishwasher with stainless panel
- Microwave hood combo, over range vented to exterior
- Garbage disposal
- Kitchen cabinets custom built - choice of shaker or raised panel style, painted or stained maple
- European (hidden) hinges
- Painted bath vanities with cultured marble tops
- Ceiling height - 10' minimum formal areas
- Ceiling height - 9' minimum on second floor (per plan)
- 4" granite backsplash (tile backsplash optional)
- Lighting allowance
- Ventilated shelving systems in closet and pantry
- Low VOC Sherwin-Williams paint
- Carbon monoxide and smoke detectors per code

High Performance Systems
- High efficiency 14 SEER cooling
- High efficiency 90%+ gas furnace
- MERV 8 air filters
- Sealed ductwork tested for air tightness
- Air sealing package with insulation -- R-38 in attic, R-25 in vaults, R-13 in walls
- 40-gal gas water heater - w/min. energy factor = .61

Trim
- Two-panel interior doors
- "Vernacular" trim detailing
- 6" nominal base throughout
- 4" nominal wide casings on windows and doors

Printed: Fall 2018

X [signature]
Initial

Habersham "D"
w/ opt. extended porch
& opt. fluted columns

The Habersham

3 Bedrooms | 3 Baths

Patrick Square

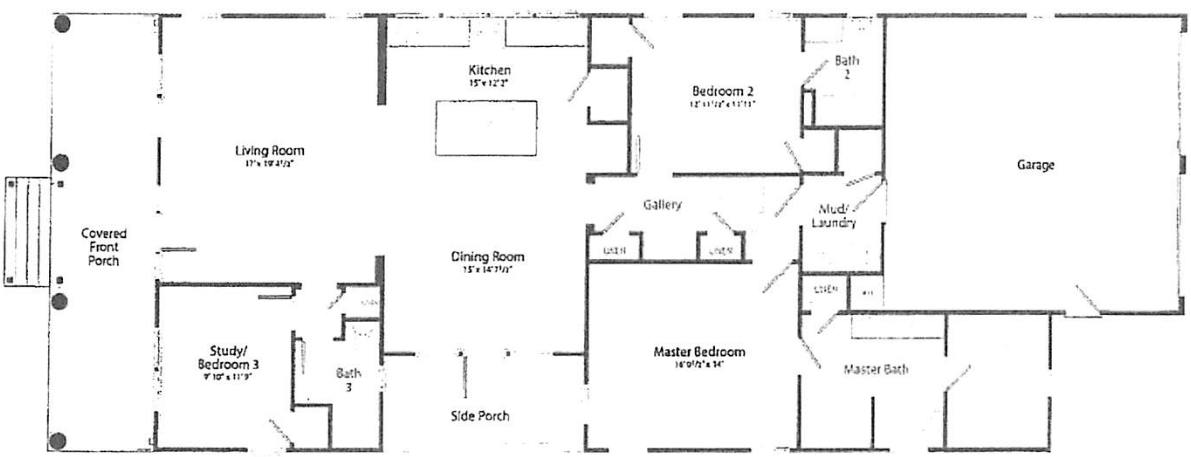
160 Thomas Green Blvd.
Clemson, SC 29631
864-654-1500

The charming Habersham is a livable and slightly more compact version of the Beaufort I. Its attached garage, large master suite and efficient use of living area space make this home a delightful choice. The Habersham offers several different elevation options that honor authentic Traditional Neighborhood Development principles. This means no two homes in Patrick Square are identical and each streetscape has its own charming, hometown feel.

X INITIAL

Specifications

Air Conditioned Living Area	1,751 sq. ft.
Porch	269 sq. ft.
Garage	519 sq. ft.
Total Area	2,539 sq. ft.



PatrickSquare.com

EXHIBIT "B"

CONSTRUCTION DRAW SCHEDULE

The draw percentage below shall be based on the total contract price less Builder deposit.

Total base contract price	$ 333,100.00
Options	$ 42,460.00
Less Deposit	$ 10,000.00
Total House, Options, less Deposits	$365,560.00

DRAW #	%	DESCRIPTION
1	10%	Clearing, grading, foundation, slab poured
2	15%	Framing walls, floors, roof, sheathing
3	15%	Cornice, main roof, windows, exterior doors, rough plumbing, rough HVAC, rough electrical,
4	20%	Porches, exterior trim, siding, brick or stone veneer, wall insulation, drywall hang and finish
5	15%	Interior trim and doors, cabinets, countertops, interior & exterior paint
6	10%	Finish plumbing, finish electrical, a/c units, garage doors
7	15%	Appliances, finish flooring, drive and walks, landscaping, hardware, final clean, C.O.

In the event Owner obtains construction financing, Owner shall pay any shortfall in financing per the above draw schedule.

Owner(s) Initials: [signature]
Builder's Initials: [signature]

JMC Communities

Option Addendum - 0

Sales Agent	Susan Brady				
Customer	David Griffith			**Date**	12/01/2018
Address	16 Fran Ave			**Contract Date**	12/01/2018
Community	Patrick Square	**Model/Floor Plan**	175100000|175100001 - Habersham	**Elevation**	175100004
Lot	0277	**Block** 07	**Phase** Patrick Square	**Address**	213 Pershing Ave.

Current Status of Home

Elevation Only

Qty	Description	Option Code	Type	Unit Price $	Total Price
1.00	Habersham Elevation D	175100004	Finance	$2,900.00	2,900.00

Elevations & Structural

Qty	Description	Option Code	Type	Unit Price $	Total Price
1.00	Garage - Extend 8' in Depth.	175110010	Finance	$6,960.00	6,960.00
1.00	Garage Storage Rm-8x16 area w/dr. Incl drywall	175110321	Finance	$8,020.00	8,020.00
1.00	Radiant Barrier Roof Sheathing D Elevation	175110504	Finance	$420.00	420.00
1.00	Sunroom - Extend and enclose porch off of DR	175113801	Finance	$14,460.00	14,460.00
1.00	Fireplace Brick Chimney	175116601	Finance	$5,920.00	5,920.00

Interior Finishes

Qty	Description	Option Code	Type	Unit Price $	Total Price
1.00	Fireplace Prefab-36" Gas Fireplace w/ logs 36" Gas fireplace with brick liner andTexas Bonfire logs.	175116521	Finance	$3,780.00	3,780.00

Contract Summary

Base Price $	$333,100	Earnest Money Deposit	$10,000
Lot Price $	$77,000	Other Deposits	$10,000
Option Total $	$42,460		
Incentive $		**Total Deposits**	$20,000
Total Sale Price	$452,560	Due At Close	
Loan Amount			
Lender			

I/we acknowledge a full review of all Options that are available at this time. All selections are final at the start of construction. Any changes may be subject to an additional charge.

19 DEC 18

Buyer   Date   Buyer   Date

Sales Agent   Date

Printed By Susan Brady

document rev 6-23-03

12/20/18

JMC Homes of SC LLC

EXHIBIT C

JMC HOMES OF SC, LLC
OWNER/BUILDER AGREEMENT

This Agreement is made and entered into this day, 09/22/2017, by and between JMC Homes of South Carolina, LLC, a South Carolina limited liability company ("Builder"), and the following named "Owner(s)":

Name: Margaret L. Rozendale

Address:2048 Eagle Ridge Drive, , Birmingham, AL 35242

Phone: 205-919-3227
Email: clemsoncpt@bellsouth.net

In consideration of the mutual covenants and agreements set forth herein, Owner and Builder agree as follows:

1. **Scope of Work**. The Builder agrees to furnish all of the materials and labor to perform all of the work necessary for the construction through completion and delivery of a single family residential home (the "Residence") in accordance with the Plans and Specifications described on the attached Exhibit "A", as herein below defined, said Residence to be constructed on land owned by Owner and having an address of-, and being more particularly described as follows: Lot 0273, Patrick Square, as per plat thereof, recorded in Pickens County, South Carolina (the "Lot").

2. **Contract Price and Method of Payment**. Owner agrees to pay or cause to be paid to Builder the sum of $350,583.00 in installments as defined on the attached Exhibit "B.

Type of Financing:

[√] **A. Owner Financing:** Owner shall pay the entire Contract Price to Builder in cash or its equivalent solely from personal funds and does not intend to obtain a loan to finance the construction. Prior to the closing on acquisition by Owner of the Lot, Owner shall provide to Builder evidence of Owner's ability to pay the Contract Price. Upon request by Builder at any time prior to final payment, Builder shall be provided reasonable evidence of Owner's continuing ability to pay the balance due under this Agreement.

[ ] **B. Lender Financing.** See Financing Contingency Addendum attached to and made part of the Patrick Square Lot Purchase Agreement.

All payments shall be due and payable on or before ten (10) days after receipt by Owner of an application for payment from Builder. In the event Owner obtains a construction loan, the draw schedule used by the construction lender shall be used provided it is acceptable to Builder in its discretion. If the Owner should fail to pay the Builder at the time the payment of any amount becomes due, then the Builder may, at any time thereafter, upon serving written notice that it will stop work within ten (10) days after receipt of the notice by the Owner, and after such ten (10) day period, stop the work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last address known to it or by personally giving a copy to Owner. Time is of the essence as to all payments due Builder. Payments due but unpaid shall bear interest at the annual rate of eighteen percent (18%) per annum.

Owner(s) Initials MLR
Builder's Initials:________

3. **Construction Schedule**. Following execution of this Agreement or the date of closing on Owner's acquisition of the Lot, whichever is later, Builder shall use its best effort to deliver the completed residence specified herein on or about 150 days from start of construction. Start of construction is defined as the date on which footings are poured. If commencement of construction is delayed beyond that month due to any act or failure to act of Owner or applicable governmental authority, by any law or regulation of any governmental authority, or by any other cause which is not the fault of Builder, then the price of the Residence may be increased by Builder to the current price for the month of actual start. If Builder is prevented by any act or failure to act of Owner from commencing construction of the Residence within 180 days following the closing of Owner's purchase of the Lot, Owner shall be deemed in default of this Agreement. Upon such default, and notwithstanding any other provision of this Agreement to the contrary, this Agreement shall be terminated, and all sums paid to Builder as Installment 2(a) shall be retained by Builder as liquidated damages for such default in lieu of all other remedies. Owner and Builder agree that the damages to Builder which may result from such default are uncertain and unascertainable and that the liquidated damages provided for in this paragraph are a reasonable measure of such damages in light of the respective obligations of the parties under this Agreement and the detriment suffered by Builder as a result of such default. The completion date is not guaranteed and is not of the essence of this Agreement. Builder shall not be liable to Owner for any damages or inconvenience caused to Owner by delay in the completion of construction, regardless of the cause for the delay. If Builder is delayed by any act or neglect of Owner, Builder shall be compensated for all costs which it incurs as a result of such delay, and a change order will be issued therefore.

4. **Delays**. Builder shall have no liability if construction is delayed by acts of God; strikes or other labor disputes or shortages; governmental or court orders or edicts; civil commotion; war; war-like operations; sabotage; Builder's inability to obtain materials or labor; inclement weather; delays directly caused by Owner's change orders or selection of materials or untimely selections thereof; or any other cause beyond the reasonable or practical control of the Builder.

5. **Plans and Specifications**. The Residence will be constructed substantially in accordance with the floor plan, elevation, standard features, custom features, and other applicable drawings and specifications described in the Plans and Specifications subject to substitutions, modifications, and change orders authorized by this Agreement. Builder reserves the right to substitute materials or items of comparable quality and to make changes in the Residence's Plans and Specifications of a nonmaterial nature or as may be required by governmental authorities or necessitated by material availability or construction requirements in the field. Owner acknowledges that the Plans and Specifications for the Residence may not be consistent with the plans and specifications which are on file with applicable governmental authorities, and construction of the Residence need not be accomplished in accordance with the Plans and Specifications on file with such governmental authorities.

6. **Construction Standards**. Builder will construct the Residence utilizing the Plans in accordance with local industry standards and criteria, and South Carolina Residential Construction Standards (http://www.llr.state.sc.us/Pol/ResidentialBuilders/PDF%20files/Residential%20Construction%20Standards.pdf).

7. **Allowances**. The total price of the Residence includes allowances for certain items as set forth in the Special Stipulation section of this Agreement. If Owner's actual cost for the above items is greater or less than the Allowances amount, the total price of the Residence will be adjusted by the difference and a change order will be issued therefore.

Owner(s) Initials: MK

Builder's Initials: ________

8. **Selections & Change Orders**. Owner agrees to make all necessary selections for exterior colors, interior finishes, electrical outlet locations, and lighting locations within forty-five (45) days from the effective date of this agreement. Owner also agrees to make all decorative lighting fixture selections and to review and approve the landscaping design within seven (7) days after the rough-in electrical work is completed. Any and all upgrades or modifications to the standard plan and included finishes will also be made within 45 days of the effective date of this agreement and shall be payable to Builder at the time the change order is signed. Selections or changes or upgrades made by Owner shall be final unless the selected item or color becomes unavailable to Builder and Builder requests Owner to make an alternative selection. If Owner fails to make any selection within the timeframe specified herein, the Builder may, at Builder's option, make the selection on Owner's behalf without further notice. Builder makes no representation about any color selected by Owner, but will use best and reasonable efforts to install colors as close as possible to those selected.

If Owner and Builder agree to any change in the Plans and Specifications or standard selections following execution of this Agreement, such change, and its cost, shall be set forth in a written change order signed by Owner and Builder. The cost of each change shall be added to the total price of the Residence and shall be payable to Builder at the time the change order is signed. Owner understands that certain items and improvements are subject to design change by the manufacturer and subject to changes in color and gradations and may vary from any samples that may be shown or specified on the plans made available to Owner. No subcontractor or supplier is authorized to agree to a change on behalf of Builder.

9. **Completion**. The Residence is considered complete when the balance of the Price of the Residence is paid to Builder and a certificate of occupancy for the Residence is issued by City of Clemson.

10. **"Walk Through" Inspection**: At or near the time of Substantial Completion, Owner and Builder's representative shall "Walk Through" the Home and execute a "Walk Through List" specifying the items that remain to be completed in the Home. Owner acknowledges that Builder will make its best effort to complete all of the items specified in the agreed upon "Walk Through List" on a timely basis as soon as reasonably possible after final payment, but the fact that any repairs, touch ups or adjustments are incomplete shall not constitute a valid reason for failure to make final payment. Owner agrees that there shall be no withholding of any or all of final payment for any such "Walk Through Lists" of items that may remain to be completed. Owner acknowledges that the only criteria and standards that will be used in connection with inspections permitted by this Agreement, and in compiling the "Walk Through List", are those as set forth in the Warranty & Construction Performance Standards described herein and generally accepted local area building industry criteria and standards. Owner acknowledges that Builder is not required and will not perform any work which would exceed such criteria or standards and that the Builder is not responsible for addressing or correcting conditions or circumstances located outside the Lot even if affecting the Lot. In lieu of repairing any item specified on the "Walk Through List" or in previous written notification, if not waived, Builder shall have the option of replacing such item within said standards or paying reasonable sums to the Owner which to have those repairs made by the Owner or a third party. Any items outside of said warranty shall be addressed at Builder's sole discretion and shall not constitute a valid reason for failure to make the final payment.

Owner or representatives of the Owner, at Owner's expense and at reasonable times during normal business hours shall have the right to enter upon the Residence for the purpose of viewing progress of construction. Moreover, Owner hereby agrees to limit inspections of the residence to a reasonable period of time and to avoid conversations with workmen or in any way hinder their work. Notwithstanding the provisions of this paragraph, Builder may request that Owner inspect the Residence from time to time, to check colors, equipment, cabinets, or other items during any phase of construction. Finally, Owner agrees to assume all responsibility for the acts of himself, his family members, and representatives in exercising his rights under this paragraph and agrees to hold Builder, harmless for any damages or injuries resulting there from. If Owner becomes aware of any problem during any such inspection, he shall provide prompt notification of such problem to Builder.

Owner(s) Initials MLK
Builder's Initials:______________

11. **Occupancy**. Builder shall have the exclusive right to occupy the Lot until completion of the Residence and payment to Builder in full of the price of the Residence; at which time occupancy of the Lot and the Residence will be given to Owner. This Agreement shall be considered a lease of the Residence in favor of Builder for a term ending upon final payment to Builder.

It is expressly understood and agreed that the owner shall in no event take possession of, or enter upon the Property prior to settlement, and should the Owner breach this provision, the owner consents that the Contractor shall have the right to dispossess them from the Property by summary proceedings. The Owner consents that the Contractor and its agents and employees are exempt from any and all liability for damages or injury sustained to the Property or by a third party brought on the Property by the Owner.

12. **Builder Deposit.** Any deposits paid by Owner to Builder are to be deposited in the General Account of the Builder and not in a separate escrow/trust bank account. This Builder Deposit is to be applied as partial payment towards the Contract Price at the time signing of this agreement of closing on the Lot, or otherwise disbursed as provided for herein. Builder shall deposit such funds as provided herein promptly after all parties have accepted this Agreement. Owner acknowledges and agrees that Builder shall have the right to use such funds for whatever purpose Builder sees fit including, but not limited to, payment for labor and materials with respect to the property pursuant to this Agreement, and such funds will not be segregated or set apart in any manner. It is understood and agreed that such funds would be refundable should Owner not be able to obtain financing as set forth in the Financing Contingency as outlined herein. However, upon removal of said contingency all of the above funds shall become non-refundable, except in the case of Builder default.

13. **Copyright**. The Plans and Specifications for the Residence are copyrighted by Builder and it agents. Owner's sole right to the Plans and Specifications for the Residence is limited to the construction of the Residence on the Lot by Builder. Owner shall not copy, duplicate, make available to others, or use for any other purpose the design, plans, and specifications for the Residence, or assist others in doing so, without the written consent of and acceptable compensation to Builder.

14. **Subcontractors.** Builder is entitled to select the subcontractors, employees, and suppliers who will work on or provide material to the Home. Owner agrees to not have any work performed on the Home by its own subcontractors, employees or suppliers until after Builder has completed all of its work on the Home or this Agreement has been terminated. Owner shall not direct, supervise, control, or interfere with the subcontractors, employees or suppliers of Builder.

15. **Insurance**. During the period of construction, Owner will furnish builder's risk insurance in the full amount of the price of the Residence, owner's public liability insurance with limits of not less than $300,000. Owner shall pay all deductibles and shall indemnify Builder as to all casualty losses not covered by such insurance. Each policy of insurance shall name Builder as a co-insured and must otherwise be in form and substance satisfactory to Builder. Owner shall furnish Builder with a copy of each insurance policy, or a certificate showing the insurance to be in effect, prior to commencement of construction. Builder will furnish worker's compensation and builder's public liability insurance.

16. **Fees**. The Builder shall pay impact fees in the amount currently assessed by governmental entities and utility providers. In the event such charges increase or additional impact fees, connection charges or similar fees or charges are imposed subsequent to the date of this Agreement, Owner shall pay all such increased or additional costs to Builder. At the completion of the Residence, the Builder shall remove from the Residence the Builder's tools, surplus materials, construction equipment, machinery, and waste materials.

17. **Wood Infestation Report.** Upon Substantial Completion, Builder shall provide Owner a current Wood Infestation Report. If any additional inspections and/or reports are requested by Owner or Owner's lender, the costs, if any, for such inspection(s) and/or report(s) shall be paid by Owner.

Owner(s) Initials: MK
Builder's Initials: ____________

18. **Grading and Site Conditions:** The final grade of the lot at the time of Certificate of Occupancy will be determined by the original grade and type of residence being constructed, and any necessary modifications will be made at the sole discretion of the Builder, and/or its engineer in order to provide the most suitable location for the residence. Builder may encounter rock formations, springs, latent or subsurface conditions, or other conditions materially differing from those ordinarily encountered and generally recognized as inherent in the work of the type covered by this Agreement that substantially inhibit work or increase the Costs or time involved in performing the work. Soils tests, soils engineering, piling, utility service connections, and expenses caused by rock or adverse soil conditions, when applicable, shall be additional expenses paid by Owner.

19. **Limited Warranty**. The Builder warrants the Residence to the Owner upon completion and final payment against defects in the original materials and workmanship for a period of one (1) year from the date of issuance of the Certificate of Occupancy for the Residence. This limited warranty is not transferable by Owner. This limited warranty does not cover lawns and landscaping or items which can be corrected by Owner as normal maintenance. Appliances, air conditioning and heating equipment, plumbing and electrical fixtures, hot water heaters, and all other consumer products installed in the Residence are warranted by the respective manufacturer. The term consumer products shall have the definition set forth in the Magnuson-Moss Warranty Act, 15 USC §2301 et seq. This warranty does not include defects caused by Owner modifications, abuse, improper maintenance, improper operation or latent defects inherent in the type or quality of materials requested or accepted by Owner which are not known or discoverable by Builder with the exercise of reasonable diligence. Any warranty or guarantee from any manufacturer of a consumer product shall be deemed to have been obtained for the benefit of Owner. Builder's liability shall be limited to repair or replacement of defective work which is reported in writing by Owner to Builder within the warranty period. In no event shall Builder be liable to Owner for incidental or consequential damages. THIS WARRANTY IS GIVEN TO OWNER IN LIEU OF ANY AND ALL OTHER REMEDIES AS MAY BE PROVIDED BY LAW INCLUDING ANY IMPLIED OR EXPRESS WARRANTY INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSES NOT SPECIFICALLY CONTAINED IN THIS LIMITED WARRANTY. The foregoing limitations on implied warranties and relief may be unenforceable in certain states. This warranty gives you specific legal rights and you may also have other legal rights which vary from state to state.

20. **Sufficient Funds**. The Owner shall furnish reasonable evidence satisfactory to the Builder, prior to signing this Agreement, or any time thereafter, prior to start of construction, that sufficient funds are available and committed for the entire Cost of the Residence. If the Builder elects to proceed with work without having received such evidence, it may stop work upon fifteen days notice if such evidence has not been furnished within a reasonable time after such request.

21. **Regulatory Changes**. The Builder shall be compensated for change in the plans or specifications necessitated by homeowner association, by municipality, governmental authority or by the enactment or revision of codes. The Builder shall be allowed additional time necessary to complete said work for each alteration of, deviation from, addition to or omission in said Agreement whether at the request of the Owner or other entity.

22. **Defaults & Dispute.**

A. Owner's Rights: If Builder materially breaches its obligations under this Agreement, Owner shall be entitled, after giving Builder written notice of such breach and a ten (10) day period in which to substantially cure the breach, to demand arbitration or to terminate this Agreement in writing.

B. Builder's Rights: If Owner fails to timely make any payment required under this Agreement or other breach, then Builder shall be entitled after giving Owner written notice of such breach and a ten (10) day period to cure, to immediately terminate this Agreement by providing written notice to Owner of such termination or to demand arbitration. As an interim step, Builder shall also be entitled to suspend its obligations under this Agreement pending the curing of any breach by Owner. If Builder decides to suspend its obligations, it shall provide notice to Owner of such decision.

Owner(s) Initials: MUR
Builder's Initials: ________

C. Payments Upon Termination after Commencement of Work: In the event of termination by Owner as a result of breach by Builder after Commencement of Work, Owner shall pay Builder any: (1) amounts due at that time pursuant to Paragraph V, this amount having already accounted for the Builder Deposit; (2) amounts to be paid pursuant to Paragraph XII; (3) amounts agreed upon in a Change Order or to which Builder is otherwise entitled under Paragraph XIII, in proportion to which the related work has been performed; and (4) all Costs incurred by Builder in connection with the Home that are not covered by other payments provided in/by this subparagraph. In the event of termination by Builder as a result of breach by Owner, Owner shall pay to Builder all of the amounts to be paid upon termination by Owner (as set forth above). As an alternative to termination, Builder may seek specific performance of the Agreement.

D. Timing of Payments: Notwithstanding any later date for payment specified in this Agreement, any Construction Draw Schedule, and any Change Order or otherwise, the payments required upon termination shall be paid within seven (7) days from the date of termination.

E. Interest: Payments due under this paragraph and unpaid for more than thirty (30) days shall bear interest at the rate of eighteen percent (18%) per annum.

23. **Successors and Assigns**. This Agreement shall be binding on the successors, assigns, and legal representatives of the Owner or Builder. Neither party shall assign, sublet or transfer an interest in the Agreement without written consent of the other.

24. **Notices.** Except as may otherwise be provided for in this Agreement, all notices or demands required or permitted hereunder shall be delivered either (a) in person; (b) by overnight delivery service prepaid; (c) by facsimile (FAX) transmission; (d) by the United States Postal Service, postage prepaid, registered or certified, return receipt requested; or (e) E-mail with attachments. Such notices shall be deemed to have been given as of the date and time the same was delivered to the address and/or phone number for the receiving party by one of the methods set forth above.

25. **Photographs.** Owner grants Builder the right to obtain and use photographs of the Lot and/or Home for advertising, promotion and publication. This right shall survive Substantial Completion.

26. **Terminology and Captions.** All pronouns, singular or plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. The singular shall mean and include the plural and the plural shall mean and include the singular. The term "Agreement" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter", and the like mean this Agreement in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings hereof are for reference and convenience only and do not enter into or become a part of the context.

27. **Multiple Owners.** In the event that there is more than one Owner, each Owner hereby authorizes and empowers any other Owner to act on his or her behalf in connection with matters relating to this Agreement, including but not limited to changes in the work and Change Orders, and each Owner authorizes Builder to rely on such action. This authorization shall not preclude Builder from requiring that each Owner agree to matters relating to the Agreement.

28. **Binding Effect.** The terms, covenants and conditions of this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns.

29. **Entire Agreement.** This Agreement constitutes the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties to this Agreement. No representation, promise or inducement not included in this Agreement

Owner(s) Initials: MLK
Builder's Initials: ______

shall be binding upon any party hereto, including, but not limited to: the terms and conditions of financing; the structural condition of the Lot; the operating condition of the electrical, heating, air-conditioning, plumbing, water heating systems, spa and appliances in the Home; the investment potential or resale value of the Lot containing the Home; or any other system or condition enumerated in the paragraphs above, or any other condition or circumstance which may adversely affect the Lot. Owner and Builder acknowledge that if such, or similar, matters have been of concern to them, they have sought and obtained independent advice relative thereto.

30. **Governing Law.** This agreement and all of its provisions, exhibits and attachments shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of South Carolina.

31. **Severability**. The provisions of this Agreement are intended to be independent. In the event a provision hereof should be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Agreement.

32. **Time is of the essence:** Time is of the essence of this Agreement.

This Owner/Builder Agreement may only be modified by Addendum attached hereto and made a part hereof.

OWNER(S):

Margaret Louise Fitzgerald Date: Sept 22, 2017

_______________ Date: _______________

BUILDER: JMC Homes of South Carolina, Inc.

By: _______________ Date: _______________

Title: _______________

EXHIBIT "A"

PLANS AND SPECIFICATIONS

Owner(s) Initials: MLF
Builder's Initials: _______________

EXHIBIT D

JMC HOMES OF SC, LLC
OWNER/BUILDER AGREEMENT

This Agreement is made and entered into this day, 03/19/2018, by and between JMC Homes of South Carolina, LLC, a South Carolina limited liability company ("Builder"), and the following named "Owner(s)":

Name: Cheryl Donahue

Address:116 Billington Street, , Plymouth, MA 02360

Phone: 508-746-7676
Email: sherrydon116@yahoo.com

In consideration of the mutual covenants and agreements set forth herein, Owner and Builder agree as follows:

1. **Scope of Work**. The Builder agrees to furnish all of the materials and labor to perform all of the work necessary for the construction through completion and delivery of a single family residential home (the "Residence") in accordance with the Plans and Specifications described on the attached Exhibit "A", as herein below defined, said Residence to be constructed on land owned by Owner and having an address of-, and being more particularly described as follows: Lot 0274, Patrick Square, as per plat thereof, recorded in Pickens County, South Carolina (the "Lot").

2. **Contract Price and Method of Payment**. Owner agrees to pay or cause to be paid to Builder the sum of $272,980.00 in installments as defined on the attached Exhibit "B.

Type of Financing:

[✓] **A. Owner Financing:** Owner shall pay the entire Contract Price to Builder in cash or its equivalent solely from personal funds and does not intend to obtain a loan to finance the construction. Prior to the closing on acquisition by Owner of the Lot, Owner shall provide to Builder evidence of Owner's ability to pay the Contract Price. Upon request by Builder at any time prior to final payment, Builder shall be provided reasonable evidence of Owner's continuing ability to pay the balance due under this Agreement.

[ ] **B. Lender Financing.** See Financing Contingency Addendum attached to and made part of the Patrick Square Lot Purchase Agreement.

All payments shall be due and payable on or before ten (10) days after receipt by Owner of an application for payment from Builder. In the event Owner obtains a construction loan, the draw schedule used by the construction lender shall be used provided it is acceptable to Builder in its discretion. If the Owner should fail to pay the Builder at the time the payment of any amount becomes due, then the Builder may, at any time thereafter, upon serving written notice that it will stop work within ten (10) days after receipt of the notice by the Owner, and after such ten (10) day period, stop the work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last address known to it or by personally giving a copy to Owner. Time is of the essence as to all payments due Builder. Payments due but unpaid shall bear interest at the annual rate of eighteen percent (18%) per annum.

Owner(s) Initials: CAD
Builder's Initials: [signature]

3. **Construction Schedule**. Following execution of this Agreement or the date of closing on Owner's acquisition of the Lot, whichever is later, Builder shall use its best effort to deliver the completed residence specified herein on or about 150 days from start of construction. Start of construction is defined as the date on which footings are poured. If commencement of construction is delayed beyond that month due to any act or failure to act of Owner or applicable governmental authority, by any law or regulation of any governmental authority, or by any other cause which is not the fault of Builder, then the price of the Residence may be increased by Builder to the current price for the month of actual start. If Builder is prevented by any act or failure to act of Owner from commencing construction of the Residence within 180 days following the closing of Owner's purchase of the Lot, Owner shall be deemed in default of this Agreement. Upon such default, and notwithstanding any other provision of this Agreement to the contrary, this Agreement shall be terminated, and all sums paid to Builder as Installment 2(a) shall be retained by Builder as liquidated damages for such default in lieu of all other remedies. Owner and Builder agree that the damages to Builder which may result from such default are uncertain and unascertainable and that the liquidated damages provided for in this paragraph are a reasonable measure of such damages in light of the respective obligations of the parties under this Agreement and the detriment suffered by Builder as a result of such default. The completion date is not guaranteed and is not of the essence of this Agreement. Builder shall not be liable to Owner for any damages or inconvenience caused to Owner by delay in the completion of construction, regardless of the cause for the delay. If Builder is delayed by any act or neglect of Owner, Builder shall be compensated for all costs which it incurs as a result of such delay, and a change order will be issued therefore.

4. **Delays**. Builder shall have no liability if construction is delayed by acts of God; strikes or other labor disputes or shortages; governmental or court orders or edicts; civil commotion; war; war-like operations; sabotage; Builder's inability to obtain materials or labor; inclement weather; delays directly caused by Owner's change orders or selection of materials or untimely selections thereof; or any other cause beyond the reasonable or practical control of the Builder.

5. **Plans and Specifications**. The Residence will be constructed substantially in accordance with the floor plan, elevation, standard features, custom features, and other applicable drawings and specifications described in the Plans and Specifications subject to substitutions, modifications, and change orders authorized by this Agreement. Builder reserves the right to substitute materials or items of comparable quality and to make changes in the Residence's Plans and Specifications of a nonmaterial nature or as may be required by governmental authorities or necessitated by material availability or construction requirements in the field. Owner acknowledges that the Plans and Specifications for the Residence may not be consistent with the plans and specifications which are on file with applicable governmental authorities, and construction of the Residence need not be accomplished in accordance with the Plans and Specifications on file with such governmental authorities.

6. **Construction Standards**. Builder will construct the Residence utilizing the Plans in accordance with local industry standards and criteria, and South Carolina Residential Construction Standards (http://www.llr.state.sc.us/Pol/ResidentialBuilders/PDF%20files/Residential%20Construction%20Standards.pdf).

7. **Allowances**. The total price of the Residence includes allowances for certain items as set forth in the Special Stipulation section of this Agreement. If Owner's actual cost for the above items is greater or less than the Allowances amount, the total price of the Residence will be adjusted by the difference and a change order will be issued therefore.

Owner(s) Initials cad
Builder's Initials: [signature]

8. **Selections & Change Orders**. Owner agrees to make all necessary selections for exterior colors, interior finishes, electrical outlet locations, and lighting locations within forty-five (45) days from the effective date of this agreement. Owner also agrees to make all decorative lighting fixture selections and to review and approve the landscaping design within seven (7) days after the rough-in electrical work is completed. Any and all upgrades or modifications to the standard plan and included finishes will also be made within 45 days of the effective date of this agreement and shall be payable to Builder at the time the change order is signed. Selections or changes or upgrades made by Owner shall be final unless the selected item or color becomes unavailable to Builder and Builder requests Owner to make an alternative selection. If Owner fails to make any selection within the timeframe specified herein, the Builder may, at Builder's option, make the selection on Owner's behalf without further notice. Builder makes no representation about any color selected by Owner, but will use best and reasonable efforts to install colors as close as possible to those selected.

If Owner and Builder agree to any change in the Plans and Specifications or standard selections following execution of this Agreement, such change, and its cost, shall be set forth in a written change order signed by Owner and Builder. The cost of each change shall be added to the total price of the Residence and shall be payable to Builder at the time the change order is signed. Owner understands that certain items and improvements are subject to design change by the manufacturer and subject to changes in color and gradations and may vary from any samples that may be shown or specified on the plans made available to Owner. No subcontractor or supplier is authorized to agree to a change on behalf of Builder.

9. **Completion**. The Residence is considered complete when the balance of the Price of the Residence is paid to Builder and a certificate of occupancy for the Residence is issued by City of Clemson.

10. **"Walk Through" Inspection:** At or near the time of Substantial Completion, Owner and Builder's representative shall "Walk Through" the Home and execute a "Walk Through List" specifying the items that remain to be completed in the Home. Owner acknowledges that Builder will make its best effort to complete all of the items specified in the agreed upon "Walk Through List" on a timely basis as soon as reasonably possible after final payment, but the fact that any repairs, touch ups or adjustments are incomplete shall not constitute a valid reason for failure to make final payment. Owner agrees that there shall be no withholding of any or all of final payment for any such "Walk Through Lists" of items that may remain to be completed. Owner acknowledges that the only criteria and standards that will be used in connection with inspections permitted by this Agreement, and in compiling the "Walk Through List", are those as set forth in the Warranty & Construction Performance Standards described herein and generally accepted local area building industry criteria and standards. Owner acknowledges that Builder is not required and will not perform any work which would exceed such criteria or standards and that the Builder is not responsible for addressing or correcting conditions or circumstances located outside the Lot even if affecting the Lot. In lieu of repairing any item specified on the "Walk Through List" or in previous written notification, if not waived, Builder shall have the option of replacing such item within said standards or paying reasonable sums to the Owner which to have those repairs made by the Owner or a third party. Any items outside of said warranty shall be addressed at Builder's sole discretion and shall not constitute a valid reason for failure to make the final payment.

Owner or representatives of the Owner, at Owner's expense and at reasonable times during normal business hours shall have the right to enter upon the Residence for the purpose of viewing progress of construction. Moreover, Owner hereby agrees to limit inspections of the residence to a reasonable period of time and to avoid conversations with workmen or in any way hinder their work. Notwithstanding the provisions of this paragraph, Builder may request that Owner inspect the Residence from time to time, to check colors, equipment, cabinets, or other items during any phase of construction. Finally, Owner agrees to assume all responsibility for the acts of himself, his family members, and representatives in exercising his rights under this paragraph and agrees to hold Builder, harmless for any damages or injuries resulting there from. If Owner becomes aware of any problem during any such inspection, he shall provide prompt notification of such problem to Builder.

Owner(s) Initials: mad
Builder's Initials: ______

11. **Occupancy**. Builder shall have the exclusive right to occupy the Lot until completion of the Residence and payment to Builder in full of the price of the Residence; at which time occupancy of the Lot and the Residence will be given to Owner. This Agreement shall be considered a lease of the Residence in favor of Builder for a term ending upon final payment to Builder.

It is expressly understood and agreed that the owner shall in no event take possession of, or enter upon the Property prior to settlement, and should the Owner breach this provision, the owner consents that the Contractor shall have the right to dispossess them from the Property by summary proceedings. The Owner consents that the Contractor and its agents and employees are exempt from any and all liability for damages or injury sustained to the Property or by a third party brought on the Property by the Owner.

12. **Builder Deposit.** Any deposits paid by Owner to Builder are to be deposited in the General Account of the Builder and not in a separate escrow/trust bank account. This Builder Deposit is to be applied as partial payment towards the Contract Price at the time signing of this agreement of closing on the Lot, or otherwise disbursed as provided for herein. Builder shall deposit such funds as provided herein promptly after all parties have accepted this Agreement. Owner acknowledges and agrees that Builder shall have the right to use such funds for whatever purpose Builder sees fit including, but not limited to, payment for labor and materials with respect to the property pursuant to this Agreement, and such funds will not be segregated or set apart in any manner. It is understood and agreed that such funds would be refundable should Owner not be able to obtain financing as set forth in the Financing Contingency as outlined herein. However, upon removal of said contingency all of the above funds shall become non-refundable, except in the case of Builder default.

13. **Copyright**. The Plans and Specifications for the Residence are copyrighted by Builder and it agents. Owner's sole right to the Plans and Specifications for the Residence is limited to the construction of the Residence on the Lot by Builder. Owner shall not copy, duplicate, make available to others, or use for any other purpose the design, plans, and specifications for the Residence, or assist others in doing so, without the written consent of and acceptable compensation to Builder.

14. **Subcontractors.** Builder is entitled to select the subcontractors, employees, and suppliers who will work on or provide material to the Home. Owner agrees to not have any work performed on the Home by its own subcontractors, employees or suppliers until after Builder has completed all of its work on the Home or this Agreement has been terminated. Owner shall not direct, supervise, control, or interfere with the subcontractors, employees or suppliers of Builder.

15. **Insurance**. During the period of construction, Owner will furnish builder's risk insurance in the full amount of the price of the Residence, owner's public liability insurance with limits of not less than $300,000. Owner shall pay all deductibles and shall indemnify Builder as to all casualty losses not covered by such insurance. Each policy of insurance shall name Builder as a co-insured and must otherwise be in form and substance satisfactory to Builder. Owner shall furnish Builder with a copy of each insurance policy, or a certificate showing the insurance to be in effect, prior to commencement of construction. Builder will furnish worker's compensation and builder's public liability insurance.

16. **Fees**. The Builder shall pay impact fees in the amount currently assessed by governmental entities and utility providers. In the event such charges increase or additional impact fees, connection charges or similar fees or charges are imposed subsequent to the date of this Agreement, Owner shall pay all such increased or additional costs to Builder. At the completion of the Residence, the Builder shall remove from the Residence the Builder's tools, surplus materials, construction equipment, machinery, and waste materials.

17. **Wood Infestation Report**. Upon Substantial Completion, Builder shall provide Owner a current Wood Infestation Report. If any additional inspections and/or reports are requested by Owner or Owner's lender, the costs, if any, for such inspection(s) and/or report(s) shall be paid by Owner.

Owner(s) Initials cad
Builder's Initials:

18. **Grading and Site Conditions:** The final grade of the lot at the time of Certificate of Occupancy will be determined by the original grade and type of residence being constructed, and any necessary modifications will be made at the sole discretion of the Builder, and/or its engineer in order to provide the most suitable location for the residence. Builder may encounter rock formations, springs, latent or subsurface conditions, or other conditions materially differing from those ordinarily encountered and generally recognized as inherent in the work of the type covered by this Agreement that substantially inhibit work or increase the Costs or time involved in performing the work. Soils tests, soils engineering, piling, utility service connections, and expenses caused by rock or adverse soil conditions, when applicable, shall be additional expenses paid by Owner.

19. **Limited Warranty**. The Builder warrants the Residence to the Owner upon completion and final payment against defects in the original materials and workmanship for a period of one (1) year from the date of issuance of the Certificate of Occupancy for the Residence. This limited warranty is not transferable by Owner. This limited warranty does not cover lawns and landscaping or items which can be corrected by Owner as normal maintenance. Appliances, air conditioning and heating equipment, plumbing and electrical fixtures, hot water heaters, and all other consumer products installed in the Residence are warranted by the respective manufacturer. The term consumer products shall have the definition set forth in the Magnuson-Moss Warranty Act, 15 USC §2301 et seq. This warranty does not include defects caused by Owner modifications, abuse, improper maintenance, improper operation or latent defects inherent in the type or quality of materials requested or accepted by Owner which are not known or discoverable by Builder with the exercise of reasonable diligence. Any warranty or guarantee from any manufacturer of a consumer product shall be deemed to have been obtained for the benefit of Owner. Builder's liability shall be limited to repair or replacement of defective work which is reported in writing by Owner to Builder within the warranty period. In no event shall Builder be liable to Owner for incidental or consequential damages. THIS WARRANTY IS GIVEN TO OWNER IN LIEU OF ANY AND ALL OTHER REMEDIES AS MAY BE PROVIDED BY LAW INCLUDING ANY IMPLIED OR EXPRESS WARRANTY INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSES NOT SPECIFICALLY CONTAINED IN THIS LIMITED WARRANTY. The foregoing limitations on implied warranties and relief may be unenforceable in certain states. This warranty gives you specific legal rights and you may also have other legal rights which vary from state to state.

20. **Sufficient Funds**. The Owner shall furnish reasonable evidence satisfactory to the Builder, prior to signing this Agreement, or any time thereafter, prior to start of construction, that sufficient funds are available and committed for the entire Cost of the Residence. If the Builder elects to proceed with work without having received such evidence, it may stop work upon fifteen days notice if such evidence has not been furnished within a reasonable time after such request.

21. **Regulatory Changes**. The Builder shall be compensated for change in the plans or specifications necessitated by homeowner association, by municipality, governmental authority or by the enactment or revision of codes. The Builder shall be allowed additional time necessary to complete said work for each alteration of, deviation from, addition to or omission in said Agreement whether at the request of the Owner or other entity.

22. **Defaults & Dispute.**

A. Owner's Rights: If Builder materially breaches its obligations under this Agreement, Owner shall be entitled, after giving Builder written notice of such breach and a ten (10) day period in which to substantially cure the breach, to demand arbitration or to terminate this Agreement in writing.

B. Builder's Rights: If Owner fails to timely make any payment required under this Agreement or other breach, then Builder shall be entitled after giving Owner written notice of such breach and a ten (10) day period to cure, to immediately terminate this Agreement by providing written notice to Owner of such termination or to demand arbitration. As an interim step, Builder shall also be entitled to suspend its obligations under this Agreement pending the curing of any breach by Owner. If Builder decides to suspend its obligations, it shall provide notice to Owner of such decision.

Owner(s) Initials cad
Builder's Initials:

C. Payments Upon Termination after Commencement of Work: In the event of termination by Owner as a result of breach by Builder after Commencement of Work, Owner shall pay Builder any: (1) amounts due at that time pursuant to Paragraph V, this amount having already accounted for the Builder Deposit; (2) amounts to be paid pursuant to Paragraph XII; (3) amounts agreed upon in a Change Order or to which Builder is otherwise entitled under Paragraph XIII, in proportion to which the related work has been performed; and (4) all Costs incurred by Builder in connection with the Home that are not covered by other payments provided in/by this subparagraph. In the event of termination by Builder as a result of breach by Owner, Owner shall pay to Builder all of the amounts to be paid upon termination by Owner (as set forth above). As an alternative to termination, Builder may seek specific performance of the Agreement.

D. Timing of Payments: Notwithstanding any later date for payment specified in this Agreement, any Construction Draw Schedule, and any Change Order or otherwise, the payments required upon termination shall be paid within seven (7) days from the date of termination.

E. Interest: Payments due under this paragraph and unpaid for more than thirty (30) days shall bear interest at the rate of eighteen percent (18%) per annum.

23. **Successors and Assigns**. This Agreement shall be binding on the successors, assigns, and legal representatives of the Owner or Builder. Neither party shall assign, sublet or transfer an interest in the Agreement without written consent of the other.

24. **Notices.** Except as may otherwise be provided for in this Agreement, all notices or demands required or permitted hereunder shall be delivered either (a) in person; (b) by overnight delivery service prepaid; (c) by facsimile (FAX) transmission; (d) by the United States Postal Service, postage prepaid, registered or certified, return receipt requested; or (e) E-mail with attachments. Such notices shall be deemed to have been given as of the date and time the same was delivered to the address and/or phone number for the receiving party by one of the methods set forth above.

25. **Photographs**. Owner grants Builder the right to obtain and use photographs of the Lot and/or Home for advertising, promotion and publication. This right shall survive Substantial Completion.

26. **Terminology and Captions**. All pronouns, singular or plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. The singular shall mean and include the plural and the plural shall mean and include the singular. The term "Agreement" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter", and the like mean this Agreement in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings hereof are for reference and convenience only and do not enter into or become a part of the context.

27. **Multiple Owners**. In the event that there is more than one Owner, each Owner hereby authorizes and empowers any other Owner to act on his or her behalf in connection with matters relating to this Agreement, including but not limited to changes in the work and Change Orders, and each Owner authorizes Builder to rely on such action. This authorization shall not preclude Builder from requiring that each Owner agree to matters relating to the Agreement.

28. **Binding Effect**. The terms, covenants and conditions of this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns.

29. **Entire Agreement**. This Agreement constitutes the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties to this Agreement. No representation, promise or inducement not included in this Agreement

Owner(s) Initials CAA
Builder's Initials: [signature]

shall be binding upon any party hereto, including, but not limited to: the terms and conditions of financing; the structural condition of the Lot; the operating condition of the electrical, heating, air-conditioning, plumbing, water heating systems, spa and appliances in the Home; the investment potential or resale value of the Lot containing the Home; or any other system or condition enumerated in the paragraphs above, or any other condition or circumstance which may adversely affect the Lot. Owner and Builder acknowledge that if such, or similar, matters have been of concern to them, they have sought and obtained independent advice relative thereto.

30. **Governing Law**. This agreement and all of its provisions, exhibits and attachments shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of South Carolina.

31. **Severability**. The provisions of this Agreement are intended to be independent. In the event a provision hereof should be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Agreement.

32. **Time is of the essence:** Time is of the essence of this Agreement.

This Owner/Builder Agreement may only be modified by Addendum attached hereto and made a part hereof.

OWNER(S):

Cheryl A Donahue Date: 3/19/18

______________________ Date: ______________

BUILDER: JMC Homes of South Carolina, Inc.

By: [signature] Date: 3/20/18

Title: PRESIDENT

EXHIBIT "A"

PLANS AND SPECIFICATIONS

Owner(s) Initials: CAD
Builder's Initials: [initials]

ELECTRONICALLY FILED - 2025 May 02 12:04 PM - PICKENS - COMMON PLEAS - CASE#2024CP3900465

EXHIBIT "B"

CONSTRUCTION DRAW SCHEDULE

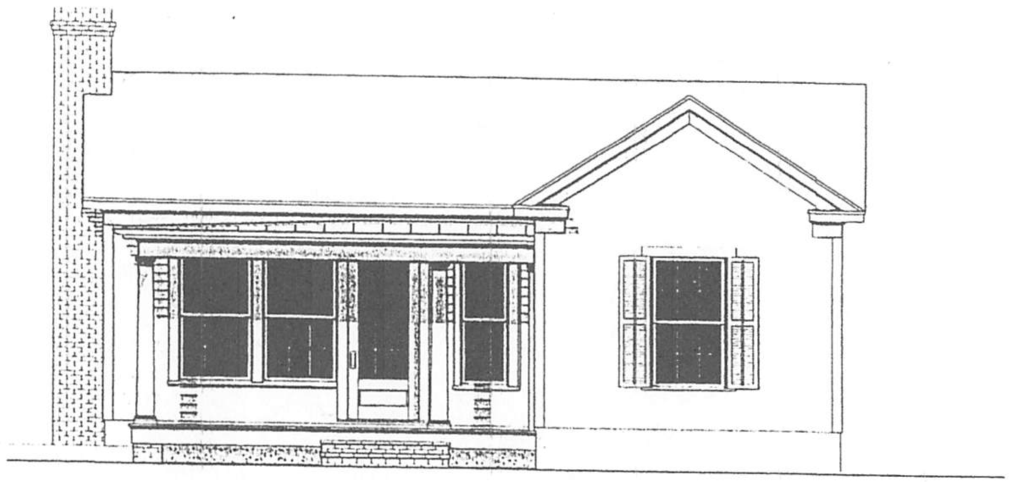
The draw percentage below shall be based on the total contract price less Builder deposit.

Total base contract price	$ 263,100.00
Options	$ 9,880.00
Less Deposit	$ 7,500.00
Total House, Options, less Deposits	$265,480.00

DRAW #	%	DESCRIPTION
1	10%	Clearing, grading, foundation, slab poured
2	15%	Framing walls, floors, roof, sheathing
3	15%	Cornice, main roof, windows, exterior doors, rough plumbing, rough HVAC, rough electrical,
4	20%	Porches, exterior trim, siding, brick or stone veneer, wall insulation, drywall hang and finish
5	15%	Interior trim and doors, cabinets, countertops, interior & exterior paint
6	10%	Finish plumbing, finish electrical, a/c units, garage doors
7	15%	Appliances, finish flooring, drive and walks, landscaping, hardware, final clean, C.O.

In the event Owner obtains construction financing, Owner shall pay any shortfall in financing per the above draw schedule.

Owner(s) Initials ________
Builder's Initials: ________



Summerville "A"

3/20/18
cad 3/19/18

Communities

Option Addendum - 0

Sales Agent Susan Brady

Customer Cheryl Donahue | Date 03/19/2018

Address 116 Billington Street | Contract Date 03/19/2018

Community Patrick Square | Model/Floor Plan 152800000|152800001 - Summerville | Elevation

Lot 0274 | Block 07 | Phase Patrick Square | Address

Current Status of Home

Elevation Only

Qty	Description	Option Code	Type	Unit Price $	Total Price
1.00	Summerville - Elevation A	152800099	Finance	$0.00	0.00

Elevations & Structural

Qty	Description	Option Code	Type	Unit Price $	Total Price
1.00	Radiant Barrier Roof Sheathing A Elevation	152810501	Finance	$350.00	350.00
1.00	Fireplace Brick Chimney → NOTE LOCATION ?	152816601	Finance	$5,750.00	5,750.00

Interior Finishes

Qty	Description	Option Code	Type	Unit Price $	Total Price
1.00	Fireplace Prefab-36" Gas Fireplace w/ logs 36" Gas fireplace with brick liner andTexas Bonfire logs.	152816521	Cash	$3,780.00	3,780.00

Contract Summary

Base Price $	$263,100	Earnest Money Deposit	$2,500
Lot Price $	$73,000	Other Deposits	$7,500
Option Total $	$9,880		
Incentive $		**Total Deposits**	$10,000
Total Sale Price	$345,980	Due At Close	
Loan Amount			
Lender			

I/we acknowledge a full review of all Options that are available at this time. All selections are final at the start of construction. Any changes may be subject to an additional charge.

Cheryl Donahue 3/19/18

Buyer | Date | Buyer | Date

Sales Agent | Date

Printed By: Jason Armstrong

document rev 6-23-03

3/20/18

PRESIDENT

Exhibit "A" Summerville Plans & Specifications

Patrick Square
PatrickSquare.com

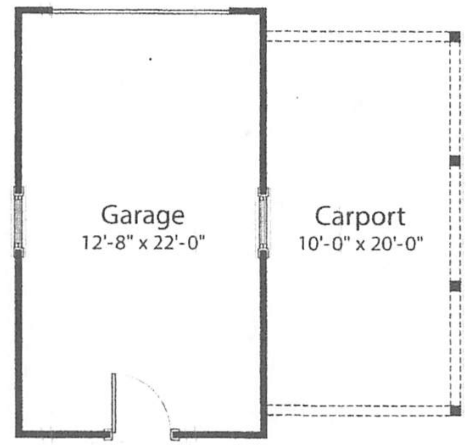
160 Thomas Green Blvd
Clemson SC 29631
864.654.1500

The Summerville Cottage
3 Bedroom | 2 Bath

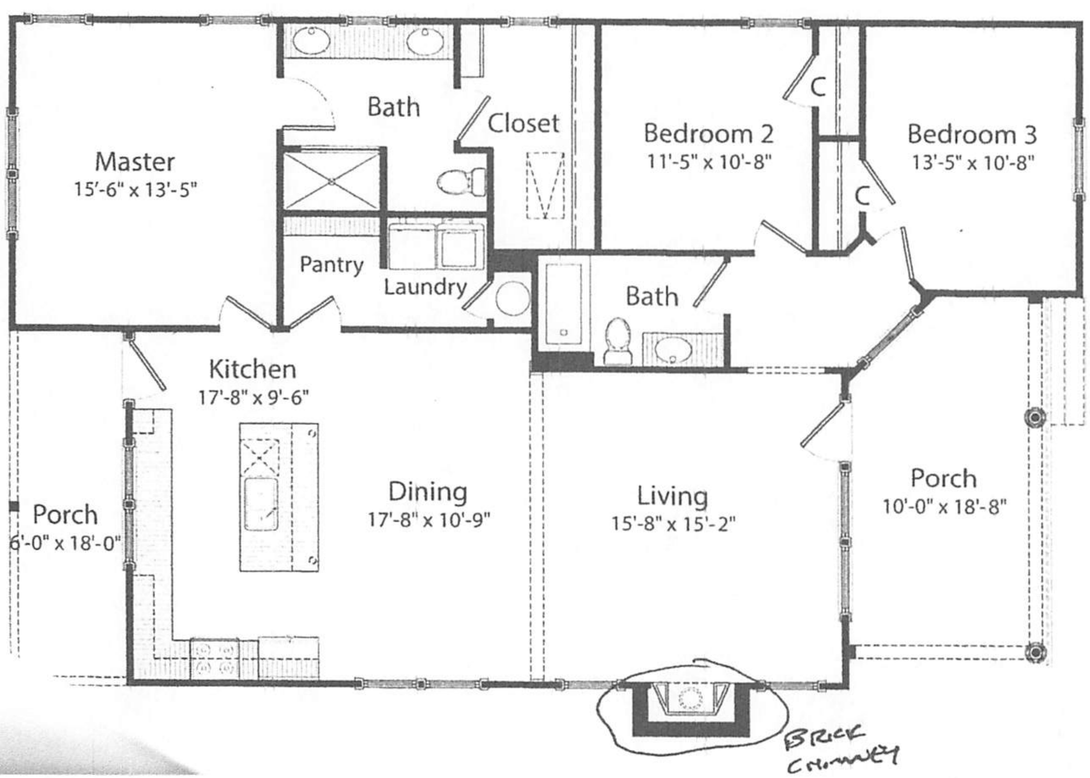
Air Conditioned Living Area	1,528 sq ft
Porch	285 sq ft
Garage	252 sq ft
Total	2,065 sq ft

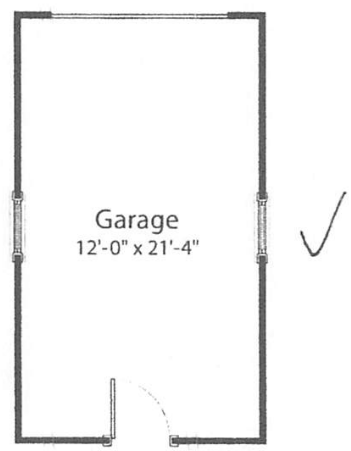
cad 3/19/18 x

SS 3/20/18 x



Garage with optional carport





Garage

EXHIBIT E

Newton Law Firm of Clemson, LLC
Post Office Box 1539
Clemson, SC 29633-1539
Attorney's File No. 19-0057

TITLE TO REAL ESTATE

Grantee's Address:
16 Fran Avenue
Ewing, NJ 08638

STATE OF SOUTH CAROLINA)
: TMS # 4064-18-42-4153
COUNTY OF PICKENS)

KNOW ALL MEN BY THESE PRESENTS, that

PATRICK SQUARE, LLC

in consideration of **Ten and no/100 ($10.00) Dollars and other good and valuable consideration,** the receipt of which is hereby acknowledged, has bargained, sold and released, and by these presents does hereby grant, bargain, sell and release unto

DAVID A. GRIFFITH,
his heirs and assigns forever:

All that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Pickens, being shown and designated as **Lot Number Two Hundred Seventy-seven (277) of PATRICK SQUARE SUBDIVISION, Phases VII and VIII,** on a plat prepared by John R. Long, SC RLS #6270, dated September 11, 2017, and recorded in Plat Book 606 at page 178, records of Pickens County, South Carolina, reference to which is invited for a more complete and accurate description.

This being a portion of the property conveyed to Digital Development, LLC n/k/a Patrick Square, LLC by deed of Isaqueena Corporation, dated April 17, 2007, and recorded April 19, 2007, in Deed Book 1092, at page 254, records of Pickens County, South Carolina.

This conveyance is specifically made subject to any and all easements, restrictions, covenants, conditions, rights of way, zoning rules and laws and regulations, any of which may be found of record in the Register of Deeds Office for Pickens County, South Carolina, together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto **DAVID A. GRIFFITH,** his heirs and assigns forever in fee simple. And, the grantor does hereby bind itself, its heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto **DAVID A. GRIFFITH,** his heirs and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the hand and seal of the grantor this 24th day of January, 2019.

SIGNED, sealed and delivered
in the presence of:

Lori K. Sanders
Witness

Lori K. Sanders
Print Name of Witness

Witness or Notary Public

Rendell M. Newton
Print Name of Witness

Patrick Square, LLC

BY: Jason K. Armstrong, Pres.
Jason K. Armstrong, President

STATE OF SOUTH CAROLINA)
: ACKNOWLEDGMENT
COUNTY OF PICKENS)

BEFORE ME, A Notary Public for South Carolina, personally appeared Jason K. Armstrong, President of Patrick Square LLC who, being personally known to me or having produced proper identification, and upon being duly sworn, states that he executed the within-written Title to Real Estate for the purposes therein written.

SWORN to before me this
24th day of January, 2019.

(SEAL)

_____________________(LS)
Notary Public for South Carolina
My commission expires 10-13-25

Print Name: Randall M. Newton

STATE OF SOUTH CAROLINA)
: Affidavit
COUNTY OF PICKENS)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at 221 Pershing Ave. (Lot 277, Patrick Square), Clemson, SC 29631 bearing County TMS #4064-18-42-4153, was transferred by Patrick Square LLC to David A. Griffith on 01/24/19.

3. Check one of the following: The deed is

(A) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth in the amount of $77,000.00.

(B) ____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(C) ____ exempt from the deed recording fee because:

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (see information section of this affidavit):

(A) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $77,000.00.

(B) ____ The fee is computed on the fair market value of the realty which is $________.

(C) ____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $________.

5. Check Yes ____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "yes" the amount of the outstanding balance of this lien or encumbrance is: $________.

6. The deed recording fee is computed as follows:

(A) Place the amount listed in item 4 above here: $77,000.00.

(B) Place the amount listed in item 5 above here: $0.00

(C) Subtract line 6(b) from line 6(a) and place result here: $77,000.00.

7. The deed recording fee due is based on the amount listed on line 6c above and the deed recording fee due is: $284.90.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me this
24th day of January, 2019.

Notary Public for South Carolina
My Commission Expires: 10/13/25
Print Name: Randall M. Newton

Responsible Person Connected with the Transaction

Patrick Square LLC
BY: Jason K. Armstrong, Pres.
Jason K. Armstrong, President

Inst # 201618467 DocType:DEED Page 1 of 4 BKD:1820 PG:252 12/05/2016 at 10:59:15 AM, Fee:$10.00 Cnty:$83.60 St:$197.60 PAUL MCGUFFIN ROD PICKENS CO, SC - County Assesor & Auditor 222 McDaniel Ave., B8 & B7 Pickens, SC 29671

Newton Law Firm of Clemson, LLC
Post Office Box 1539
Clemson, SC 29633-1539
Attorney's File No. 16-1478

TITLE TO REAL ESTATE

Grantee's Address:
6 Thornwood Ln.
Greenville, SC 29605

STATE OF SOUTH CAROLINA)
: TMS # 4064-18-41-5826
COUNTY OF PICKENS)

KNOW ALL MEN BY THESE PRESENTS, that

PATRICK SQUARE, LLC

in consideration of **Ten and no/100 ($10.00) Dollars and other good and valuable consideration,** the receipt of which is hereby acknowledged, has bargained, sold and released, and by these presents does hereby grant, bargain, sell and release unto

DEBORAH C. COLEMAN, TRUSTEE OF THE DEBORAH C. COLEMAN REVOCABLE TRUST, DATED THE 20TH DAY OF JANUARY, 2012, her heirs and assigns forever:

All that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Pickens, being shown and designated as **Lot Number Two Hundred Thirty-Five (235), PHASE VI, of PATRICK SQUARE SUBDIVISION** on a plat prepared by John R. Long, SC RLS #6270, dated April 13, 2015, and recorded in Plat Book 601 at page 336, records of Pickens County, South Carolina, reference to which is invited for a more complete and accurate description.

This being a portion of the property conveyed to Digital Development, LLC, now known as Patrick Square, LLC, by deed of Isaqueena Corporation, dated April 17, 2007, and recorded in Deed Book 1092 at page 254, records of Pickens County, South Carolina.

This conveyance is specifically made subject to any and all easements, restrictions, covenants, conditions, rights of way, zoning rules and laws and regulations, any of which may be found of record in the Register of Deeds Office for Pickens County, South Carolina, together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto **DEBORAH C. COLEMAN, TRUSTEE OF THE DEBORAH C. COLEMAN REVOCABLE TRUST, DATED THE 20TH DAY OF JANUARY, 2012**, her heirs and assigns forever in fee simple. And, the grantor does hereby bind itself, its heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto **DEBORAH C. COLEMAN, TRUSTEE OF THE DEBORAH C. COLEMAN REVOCABLE TRUST, DATED THE 20TH DAY OF JANUARY, 2012**, her heirs and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the hand and seal of the grantor this 1st day of December, 2016.

SIGNED, sealed and delivered in the presence of:

Lori K. Sanders
Witness

Lori K. Sanders
Print Name of Witness

Witness or Notary Public

Randall M. Newton
Print Name of Witness

Patrick Square, LLC

BY: Jason K. Armstrong 1PM
Jason K. Armstrong,
Project Manager

STATE OF SOUTH CAROLINA)
: ACKNOWLEDGMENT
COUNTY OF PICKENS)

BEFORE ME, A Notary Public for South Carolina, personally appeared Jason K. Armstrong, Project Manager of Patrick Square, LLC who, being personally known to me or having produced proper identification, and upon being duly sworn, states that he executed the within-written Title to Real Estate for the purposes therein written.

SWORN to before me this
1st day of December, 2016.

(SEAL)

_______________________(LS)
Notary Public for South Carolina
My commission expires 10-13-25
Randall M. Newton

STATE OF SOUTH CAROLINA)
: Affidavit
COUNTY OF PICKENS)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at 413 Pershing Avenue, Clemson, SC 29631 bearing County TMS #4064-18-41-5826, was transferred by Patrick Square, LLC to Deborah C. Coleman, Trustee on 12/01/16.

3. Check one of the following: The deed is

(A) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth in the amount of $76,000.00.

(B) ____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(C) ____ exempt from the deed recording fee because:

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (see information section of this affidavit):

(A) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $76,000.00.

(B) ____ The fee is computed on the fair market value of the realty which is $____________.

(C) ____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $____________.

5. Check Yes ______ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "yes" the amount of the outstanding balance of this lien or encumbrance is: $____________.

6. The deed recording fee is computed as follows:

(A) Place the amount listed in item 4 above here: $76,000.00.

(B) Place the amount listed in item 5 above here: $0.00

(C) Subtract line 6(b) from line 6(a) and place result here: $76,000.00.

7. The deed recording fee due is based on the amount listed on line 6c above and the deed recording fee due is: $281.20.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: The closing Attorney.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me this
1st day of December, 2016.

Lori K. Sanders
Notary Public for South Carolina
My Commission Expires: 8/6/17
Lori K. Sanders

Responsible Person Connected with
the Transaction

Randall M. Newton, Attorney at Law or
Kimberly N. Renaud, Attorney at Law

EXHIBIT F

https://jmccommunities.com

ox Remote Access SC Judicial Depart... Logikcull SC Code SCCCLE Lexis CHS JURY TRIAL R... South Carolina Sec... SC RULES IOP Camera PNC Wells Fargo American Express

JMC COMMUNITIES

Current Communities Past Successes Contact

Belleview Place - Belleair, FL
JMC Resort Properties - Clearwater Beach. FL
Patrick Square - Clemson, SC

Welcome to JMC Communities!

Few terms are as meaningful as the word "home." It gives shape to our lives, reveals our individuality, showcases our accomplishments and anchors our spirit. Since 1978, JMC Communities has built homes that fulfill such promises and become part of an equally meaningful concept: community, where people find an easy sense of belonging.

Building in Florida and South Carolina, JMC specializes in condominiums, single family homes, Traditional Neighborhood Development (TND) communities, resorts and commercial enterprises. Each is distinguished by thoughtful planning, innovative design, quality craftsmanship, attention to detail and unparalleled personal service.

EXHIBIT G

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Civil Action No. 2024-CP-39-00465

DAVID GRIFFITH, WILLIAM COLEMAN AS TRUSTEE OF THE WILLIAM COLEMAN REVOCABLE TRUST, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

vs.

JMC COMMUNITIES, INC., JMC HOMES OF SOUTH CAROLINA, LLC, PATRICK SQUARE, LLC, F/K/A DIGITAL DEVELOPMENT, LLC, ALPHA OMEGA CONSTRUCTION GROUP, INC., GORZE, INC., COTHRAN LANDSCAPES AND GRADING, LLC, GENTRY SERVICES, LLC A/K/A GENTRY BROTHERS SERVICES, LLC, TINY BILL SWANEY D/B/A SWANEY MASONRY, SOLID ROCK CONSTRUCTION SERVICES LLC, H & H CONCRETE, LLC, MARIA CONSTRUCTION INC., F & V FRAMING, LLC, FIVE STAR CONSTRUCTION, INC., DAVIS FRAMING, LLC, ASHLEY COTHRAN D/B/A COTHRAN CUSTOM HOMES, LLC, UFP MID-ATLANTIC, LLC, BUILDER FIRST SOURCE, INC. A/K/A BUILDERS FIRSTSOURCE ATLANTIC GROUP, LLC, A/K/A BUILDERS FIRSTSOURCE SOUTHEAST GROUP, LLC, RC JOHNSON, LLC, GUNTER HEATING AND AIR CONDITIONING OF SC, LLC, 84 LUMBER COMPANY, LP, DOGWOOD EXTERIORS, LLC, H & R DRYWALL, INC., CRISTOBAL AND PAINTERS, LLC, WILLOW TREE LANDSCAPING, INC., HARBIN LUMBER COMPANY, INC., SOTO HVAC, LLC, RIVERSIDE LANDSCAPING, LLC, INTERNATIONAL CONSTRUCTION SERVICES, INC., PALMETTO GRADING AND DRAINAGE, INC., JANE DOE #1-10, AND JOHN DOE #27-50,

Defendants.

AFFIDAVIT OF DAVID GRIFFITH

PERSONALLY appeared before me, David Griffith, who, being first duly sworn, deposes and says as follows:

1. My name is David Griffith, and I am a named Plaintiff in this action.

2. I have no education, training, or professional experience in the law, real estate, or construction.

3. In 2019, I purchased my home located at 221 Pershing Avenue in the Patrick Square subdivision from JMC Homes of SC, LLC. ("JMC").

4. On December 19, 2018, I signed what appeared to be a standard form purchase agreement that was provided by JMC and presented to me as JMC's standard contract.

5. JMC did not explain that my purchase agreement contained dispute resolution-related provisions before I signed the agreement.

6. I was also never given the opportunity to negotiate or modify these provisions before I signed the agreement.

7. I was also not represented by my own attorney at the time I signed the agreement.

8. In January 2019, I closed on the purchase of my home and received my Deed.

FURTHER THE AFFIANT SAYETH NOT.

David Griffith

SWORN TO AND SUBSCRIBED before me
this 12th day of November, 2024.

Notary Public for South Carolina
My Commission Expires: 10/10/2032

GRETTA CARVER NOTARY PUBLIC SOUTH CAROLINA

Page 2 of 2

EXHIBIT H

STATE OF SOUTH CAROLINA COUNTY OF PICKENS	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT Civil Action No. 2024-CP-39-00465
DAVID GRIFFITH, WILLIAM COLEMAN AS TRUSTEE OF THE WILLIAM COLEMAN REVOCABLE TRUST, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiffs, vs. JMC COMMUNITIES, INC., JMC HOMES OF SOUTH CAROLINA, LLC, PATRICK SQUARE, LLC, F/K/A DIGITAL DEVELOPMENT, LLC, ALPHA OMEGA CONSTRUCTION GROUP, INC., GORZE, INC., COTHRAN LANDSCAPES AND GRADING, LLC, GENTRY SERVICES, LLC A/K/A GENTRY BROTHERS SERVICES, LLC, TINY BILL SWANEY D/B/A SWANEY MASONRY, SOLID ROCK CONSTRUCTION SERVICES LLC, H & H CONCRETE, LLC, MARIA CONSTRUCTION INC., F & V FRAMING, LLC, FIVE STAR CONSTRUCTION, INC., DAVIS FRAMING, LLC, ASHLEY COTHRAN D/B/A COTHRAN CUSTOM HOMES, LLC, UFP MID-ATLANTIC, LLC, BUILDER FIRST SOURCE, INC. A/K/A BUILDERS FIRSTSOURCE ATLANTIC GROUP, LLC, A/K/A BUILDERS FIRSTSOURCE SOUTHEAST GROUP, LLC, RC JOHNSON, LLC, GUNTER HEATING AND AIR CONDITIONING OF SC, LLC, 84 LUMBER COMPANY, LP, DOGWOOD EXTERIORS, LLC, H & R DRYWALL, INC., CRISTOBAL AND PAINTERS, LLC, WILLOW TREE LANDSCAPING, INC., HARBIN LUMBER COMPANY, INC., SOTO HVAC, LLC, RIVERSIDE LANDSCAPING, LLC, INTERNATIONAL CONSTRUCTION SERVICES, INC., PALMETTO GRADING AND DRAINAGE, INC., JANE DOE #1-10, AND JOHN DOE #27-50, Defendants.	**AFFIDAVIT OF WILLIAM COLEMAN**

PERSONALLY appeared before me, William Coleman, who, being first duly sworn, deposes and says as follows:

1. My name is William Coleman, and I am a named Plaintiff in this action.

2. I have no education, training, or professional experience in the law, real estate, or construction.

3. In 2016, I purchased our home located at 413 Pershing Avenue in the Patrick Square subdivision from JMC Homes of SC, LLC. ("JMC").

4. On November 4, 2016, I signed what appeared to be a standard form purchase agreement that was provided by JMC and presented to me as JMC's standard contract.

5. JMC did not explain that my purchase agreement contained dispute resolution-related provisions before I signed the agreement.

6. I was also never given the opportunity to negotiate or modify these provisions before I signed the agreement.

7. I was also not represented by my own attorney at the time I signed the agreement.

8. In December 2016, I closed on the purchase of my home and received my Deed.

FURTHER THE AFFIANT SAYETH NOT.

William Coleman

SWORN TO AND SUBSCRIBED before me
this 12th day of November, 2024.

Notary Public for South Carolina
My Commission Expires: 10/10/2032

GRETTA CARVER
NOTARY PUBLIC
SOUTH CAROLINA

EXHIBIT I

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	2014-CP-08-854
RICHARD O. DICKERSON, AND CYNTHIA L. PAGE-RICHARDSON, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, Plaintiffs, vs. DAN RYAN BUILDERS, INC., AND DAN RYAN BUILDERS SOUTH CAROLINA, LLC, Defendants.	**ORDER DENYING DEFENDANTS' MOTION TO STAY, MOTION TO COMPEL ARBITRATION, AND MOTION TO DENY CLASS CERTIFICATION**

This matter came before the Court on September 2, 2014, on Defendants' Motion to Stay, Motion to Compel Arbitration and Motion to Deny Class Certification. Appearing on behalf of the Plaintiffs were Justin Lucey, Esquire, Phillip W. Segui, Jr., Esquire, and John T. Chakeris, Esquire. Appearing on behalf of Defendants were Evan M. Musselwhite, Esquire, Perry R. Safran, Esquire, and Joseph F. Singleton, Esquire.

This case arises out of alleged construction defects and damages to single-family homes in a development in the Foxbank subdivision of Moncks Corner, Berkeley County, South Carolina. Plaintiffs, Richard Dickerson and Cynthia Richardson, on behalf of themselves and others similarly situated, filed a class action Complaint on April 22, 2014, alleging that construction defects exist at each of the homes in this development, which have resulted in slab failures, differential movement, and further consequential damages to the

DB

structure.

On July 22, 2014, Defendants filed a Motion to Stay based on the South Carolina Notice and Opportunity to Cure Destruction Dwelling Defects Act; Motion to Compel Arbitration; and Motion to Deny Class Certification.

WHEREAS, after hearing arguments of counsel and reviewing memoranda filed by all Parties, the Court finds,

I. Plaintiffs have presented sufficient evidence that they have complied with all requirements of the South Carolina Notice and Opportunity to Cure Destruction Dwelling Defects Act, S.C. Code Ann. § 40-59-840 *et seq.*, by a) providing 221 days pre-suit notice to Dan Ryan Builders, Inc. and Dan Ryan Builders of South Carolina, LLC's (collectively "DRB"), which surpasses the requisite 90 day period prescribed by the Statute; b) providing an adequate description of the alleged defects and damages in the pre-suit notice to Defendants; and c) permitting more than enough time for offers to settle to be made or for repairs to be completed under the Statute.

With regard to the latter requirement, Plaintiffs specifically provided evidence that Defendants responded to the pre-suit notice and attempted to repair the Dickerson home; however, Plaintiffs allege these repairs to have been ineffective. It appears that allowing additional time at this juncture, given the alleged unsuccessful repair attempts, along with the other cited activities taken by the Defendants to familiarize themselves with or potentially address Plaintiffs' concerns, would be futile.

II. After reviewing the various documents surrounding the sale of the residences at issue, the Court finds the Agreements of Sale contemplate the purchase of a completed dwelling located within South Carolina.

III. After reviewing the various documents surrounding the sale of the residences at issue, the Court finds several one-sided and oppressive provisions permeate the documents.

IV. After reviewing the various documents surrounding the sale of the residences at issue, the Court further finds that Defendants' arbitration clauses, anti-suit provisions, and warranty disclaimers, limitations and waivers contained in the Agreements of Sale are unconscionable, contrary to South Carolina law, inherently ambiguous, and adhesive, and thus, render these terms, the arbitration clauses, and contracts unenforceable and inapplicable to Plaintiffs.

V. The Court further finds the arbitration provisions and other provisions contained in the documents surrounding sale are not severable from each other.

VI. The arbitration clauses are also unenforceable as they fail to comply with the South Carolina's Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, *et seq.* ("UAA"). The South Carolina Supreme Court in *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 730 S.E.2d 312 (2012), considered nearly identical issues as the matter at bar and held that the *Brentwood Homes*' arbitration clauses did not satisfy the requirements of the UAA. Likewise, the arbitration clauses at issue in this case do not satisfy the requirements of the UAA as, a) the arbitration provisions were not in underlined capital letters on the first page of the sales contract; and b) because the contracts at issue are, by their own terms, contracts for the sale of a finished home and not construction contracts, do not invoke the application of the Federal Arbitration Act as intrastate, rather than interstate commerce is at issue.

Additionally, Dan Ryan Builders, Inc. is not a party to the Agreements of Sale at issue in this case, and therefore is not a party to any arbitration agreement.

VII. Finally, the Plaintiffs have not yet filed a Motion for Class Certification, and therefore, Defendants' Motion to Deny Class Certification is procedurally incorrect and premature. Accordingly, IT IS HEREBY ORDERED, that based upon the foregoing, the Defendants' Motion to Stay, Motion to Compel Arbitration, and Motion to Deny Class Certification are **DENIED**.

IT IS FURTHER ORDERED, that pursuant to agreement of the Parties, Defendants are permitted to inspect the Richardson residence at a mutually convenient time for the Parties.

AND IT IS SO ORDERED this 14th day of January, 2014 at Anderson, South Carolina.

The Honorable J. Cordell Maddox, Jr.
Presiding Judge, Ninth Judicial Circuit

SOLOMON, BUDMAN & STRICKER, L.L.P.

DONALD J. BUDMAN

MICHAEL A. STRICKER
(SC, GA, TN)

Of Counsel:
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December 3, 2014

Hon. J. Cordell Maddox, Jr.
P.O. Box 8002
Anderson, SC 29622

Re: Keller Unlimited, Inc. v. Wilson's Carpet Plus, Inc.
Case # 2013-CP-08-0966

Dear Judge Maddox,

You were to hear the above case in Berkeley County on September 3, 2014. Counsel for the parties advised the Clerk of Court that the case had been settled. You requested that a Consent Order be submitted reflecting the settlement.

Accordingly, I enclose a proposed Consent Order, containing the signatures of the parties and their counsel. If you have any changes or additions to the proposed order, please advise. If the proposed order meets with your approval, please sign it and return it to me in the envelope I have provided for your convenience. When I receive it from you, I will have it filed with the Clerk of Court. My client informs me that the terms of the settlement have been complied with by both parties.

Thank you for your consideration of this matter and with best regards, I remain

Respectfully,

Donald J. Budman

Cc: Amy F. Bower, Esq. (w/enc.)
Haynesworth Sinkler Boyd, P.A.
P.O. Box 340
Charleston, SC 29402

RECEIVED
Jul 15 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
The Honorable Jessica A. Salvini, Circuit Court Judge

Case No. 2024-CP-39-00465

David Griffith, William Coleman
as Trustee of the William Coleman Revocable Trust ....Respondents,

v.

JMC Communities, Inc., JMC Homes of South Carolina, LLC, and
Patrick Square, LLC .... Appellants.

NOTICE OF APPEAL

Appellants JMC Communities, Inc., JMC Homes of South Carolina, LLC, and Patrick Square, LLC appeal from the order of the Pickens County Circuit Court denying their Motion to Compel Arbitration, which was entered by the Honorable Jessica A. Salvini. The Court issued a short-form order on May 8, 2025, and a final written order on June 30, 2025. Copies of both orders are attached and provided to the Court of Appeals with this Notice. Written notice of entry of the final order was received by Appellants on June 30, 2025.

Respectfully submitted this 15th day of July 2025.

/s/ Jonathan E. Schulz
Ryan L. Beaver (S.C. Bar No. 10759)
Jonathan E. Schulz (S.C. Bar No. 79850)
Bradley Arant Boult Cummings LLP
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Attorney for Appellants JMC Communities, Inc., JMC Homes of South Carolina, LLC, and Patrick Square, LLC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
The Honorable Jessica A. Salvini, Circuit Court Judge

Case No. 2024-CP-39-00465

David Griffith, William Coleman
as Trustee of the William Coleman Revocable Trust ....Respondents,

v.

JMC Communities, Inc., JMC Homes of South Carolina, LLC, and
Patrick Square, LLC .... Appellants.

PROOF OF SERVICE

I certify that I served the notice of appeal by depositing a copy of it on the date shown below in the United States Mail, postage prepaid, addressed as follows:

Jesse A. Kirchner
T. Happel Scurry
K. Dalton Clifton
Thurmond Kirchner & Timbes, P.A.
15 Middle Atlantic Wharf
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55 Beattie Place, Suite 1200
Greenville, South Carolina 29601

Attorneys for Respondents David Griffith and William Coleman
as Trustee of the William Coleman Revocable Trust

This the 15th day of July 2025.

/s/ Jonathan E. Schulz
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STATE OF SOUTH CAROLINA	*	COURT OF COMMON PLEAS
	*	
COUNTY OF PICKENS	*	TRANSCRIPT OF RECORD

------------------------------x

DAVID GRIFFITH, WILLIAM COLEMAN as Trustee of the William Coleman Revocable Trust, Individually, and on behalf of all other similarly situtated,

Plaintiffs,

vs. — Case No. 2024-CP-39-00465

JMC COMMUNITIES, INC., et al.,

Defendants.

------------------------------x

May 7, 2025

B E F O R E:

The Honorable Jessica A. Salvini, Presiding Judge

A P P E A R A N C E S:

Jesse Kirchner, Esq.
Attorney for the Plaintiff

Ryan Beaver, Esq.
Attorney for Defendant JMC Homes of South Carolina, LLC; Patrick Square, LLC; JMC Communities, LLC

Jared Garraux, Esq.
Attorney for Defendant 84 Lumber

Recorded by: WebEx Recording

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E X

E X H I B I T S

(None.)

COURT REPORTER/TRANSCRIBER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[sic]	Indicates the word is written as said
(Indiscernible)	Indicates word(s) is not known due to poor audio recording quality

P R O C E E D I N G S

THE COURT: All right. We are going to move on to the next matter that is on the Court's docket, which is -- it's two motions for our next -- our next block. Give me one moment to get your pleadings.

And this would be David Griffith, William Coleman as trustee of the William Coleman Revocable Trust, individually, and on behalf of all others similarly situated versus JMC Communities, Inc. And I'm going to say "et al." Case No. 2024-CP-39-00465.

I've got numerous counsel -- and I'm going to apologize in advance. In order for me to see everyone, I now have to scroll through my screen to a second screen. I don't have a second screen on this bench here in this courtroom with me. So if it takes me a moment to see you, that is the reason why.

I have two motions on the Court's docket. One is the Motion to Compel Arbitration, and the second is a Motion to Strike and Dismiss the Amended Complaint.

And so I'm happy to handle it in whatever order you-all believe would be appropriate. It may be easier to do them jointly. But let me -- let me hear from counsel.

MR. KIRCHNER: Jesse Kirchner here on behalf of the plaintiffs.

THE COURT: I can hear you now. Perfect. Thank you.

MR. KIRCHNER: I don't see—

THE COURT: I don't either.

MR. KIRCHNER: —Ryan, who is the moving party's lawyer.

THE COURT: I know. And I was kind of scrolling, and I don't -- I don't see him either.

For the record, it's 10:32. This was docketed at 10:30.

MR. GARRAUX: Your Honor, this is Jared Garraux. I represent one of the defendants. And my associate is, apparently, in another courtroom -- virtual courtroom, and she says there's a few other people in that one as well. So it's possible Mr. Beaver may be in a different virtual setting than this one.

THE COURT: All right. Let me -- I'm going to -- I've got my law clerk and my administrative assistant with me. She's -- my administrative assistant is checking now. Thank you for letting me know that.

I know that he made a request to appear in person, but it's just, unfortunately, just too hard to do a half hybrid, half in person. So let's see if we can find him. Which is why I denied that request. Unfortunately, we don't have a court reporter; we're only using my virtual courtroom.

There's nobody in my sealed courtroom. Do you know which courtroom they had logged into or were sitting in?

MR. GARRAUX: I mean, it says Judge Jessica Ann Salvini's virtual courtroom. I mean, it -- and she's still waiting to get in as well, so I'm not sure what's going on.

THE COURT: Let me see. Because there's nobody -- I have nobody waiting.

MR. GARRAUX: Yeah. Let's see.

THE COURT: Emily, do you think there's, like, a link still to the old virtual courtroom that somehow is active that shouldn't be active?

Okay. So they're sitting in the wrong courtroom. Can you tell me how we can help them? There's an old link to an old courtroom -- old virtual courtroom, which was supposed to have been taken down. I don't have access to that anymore.

Do you?

(Court confers off the record with Ms. Skidmore.)

THE COURT: And they're all sitting there.

EMILY: Do you want to send me the link and then we could try to get in?

THE COURT: Can you chat with them on there? Can you send them a chat? We don't have the ability to do a microphone to tell them that they're sitting in an old link, which is -- I don't know how this happens.

MR. KIRCHNER: I'm happy to send them an email as well to see if we can --

THE COURT: You want to send them an email and just tell them that -- I don't know what -- there's an old virtual courtroom. I have a new virtual courtroom that you-all got the -- that you-all accessed, but I don't know why they're in that one. And I can't access it anymore.

Will you send them an email or if you have their cell phone? It's not letting us chat even.

MR. KIRCHNER: I'll definitely send -- I'll send them an email right now. I don't think I have his cell phone, but I will -- I'll double-check. I'm going to send him a link that I used as well.

How did you -- how did you get to that courtroom? Emily?

MS. SKIDMORE: (Inaudible.)

THE COURT: I'm going to try to -- while you're sending them a message, I'm going to see if either me or my law clerk can try to just access the lobby of that. But I'll be right back with y'all. Let me see if I can't get in there.

(Pause in the proceedings.)

THE COURT: All right, y'all. Well, I was able to access that link, which I'm surprised it's still working, and there was one other person sitting there that was Mr. Matthews, I believe. So he's now coming over.

And let's see -- don't I have one person waiting? You're going to let him in?

So now I'm just waiting for, I think, Mr. Matthews.

MR. BEAVER: Your Honor, can you hear me? This is Ryan Beaver.

THE COURT: Yes, I can hear you. Thank you. I'm sorry that you were directed to the -- an old courtroom.

MR. BEAVER: And that's okay. I was in the waiting room and starting to get a little nervous when I saw the call come in from the clerk's office. So I apologize for being a few minutes late.

THE COURT: No, you are completely fine.

Now, there was a Mr. Matthews that was also sitting there.

MR. BEAVER: Yes.

THE COURT: Are you waiting for him?

MR. BEAVER: We do not need to wait for him, Your Honor. He may join. That is one of my colleagues who wanted -- he's a first-year lawyer who just wanted to observe. And so he may join if he can, but we do not need to wait for him, since I've already put us several minutes late.

THE COURT: Nope, y'all -- and I know you requested to appear in person, and I love -- I would prefer everything to be in person, but since we're doing the virtual courtroom, it's just -- it's just too hard to do a hybrid.

MR. BEAVER: Understood. And let me just address that. I just wanted to make sure that it was not virtual optional versus virtual mandatory. But I do take full responsibility for the email that went to your clerk yesterday that did not have opposing counsel copied on it. Completely my fault, and I apologize to everybody on the call, you and opposing counsel included. It was not intentional for them to be excluded, but it is -- I take responsibility for it. So sorry about that.

THE COURT: Nope, not a problem at all. And -- okay, so we've got everybody that we need.

And before you came on, I called the case but indicated that we have two motions. We've got the Motion to Compel Arbitration and Dismiss or Stay. And then I also have just a motion -- I have a Motion to Dismiss and a Motion to Strike the Amended Complaint. We can hear them jointly. I can go in any order that you-all would like, but I'm happy to hear from you.

MR. BEAVER: From -- Your Honor, these are both my motions. From my perspective, it probably makes sense to do the Motion to Stay and Compel Arbitration first because, if that is granted or if you take that under consideration today, it may make sense to table the other one until that one is decided.

THE COURT: Okay.

MR. BEAVER: And so, from my perspective, it makes sense to do that one first and then see how we need to proceed with the other one. And so that that would be my preference, as long as that is okay with you.

THE COURT: That's fine with me. Happy to do it.

MR. BEAVER: I'll tell you what, Your Honor, before I start, let me just move you to this other screen here so that I don't look like I'm staring off into space, since my camera is down here. Sorry about that.

THE COURT: That's okay.

MR. BEAVER: All right. We are ready to begin, Your Honor?

THE COURT: Yes, sir.

MR. BEAVER: Okay. So we're starting with this Motion to Compel Arbitration, Your Honor. From our perspective, this is kind of the main and primary motion today. And before we get started, what I'd really like to do is sort of clarify the scope of our motion and what's before the Court today.

Before the Court, we are at a Motion to Compel Arbitration of two individual plaintiffs, William Coleman and David Griffith, which is based on the arbitration clauses that they signed that are in their construction agreements.

Plaintiff's opposition -- their brief in opposition, which I've had an opportunity to read, I think interprets the scope of the motion probably more broadly as if -- as if we're making either a class-wide issue or making this a question of class arbitration, which we are not.

I think their brief in opposition sort of frames this as if this is a certified class already. And to be clear, there's been no motion to certify the class. This is not a certified class action.

What we have here are two named plaintiffs in a Complaint, in which there are certainly class allegations. We don't dispute that; that's what the whole other motion is about, is some of those class allegations. But this is not a certified class action at this point. It is two named plaintiffs.

And the relief we are seeking today is for those two named plaintiffs, with signed arbitration agreements in a construction contract, to send these disputes to arbitration, where, from our perspective, they belong.

So let's just go ahead, I guess, and start with what we're asking for. We're asking for Mr. Coleman and Mr. Griffith to resolve their claims through binding arbitration on an individual basis pursuant to the Federal Arbitration Act. That's the relief we're seeking today. And we're asking, obviously, that this matter be stayed pending that -- conclusion of that arbitration.

I'm sure Your Honor has dealt with these -- with Motions to Stay and Compel Arbitration before, but the Federal Arbitration Act has a strong federal policy favoring arbitration, requires courts to enforce written arbitration agreements according to their terms, and courts have consistently interpreted the FAA very broadly to promote arbitration to remove obstacles to their enforcement. That's the Moses H. Cone case that we cite.

And also, on many, many occasions, both federal and state courts, including South Carolina, said that any doubts regarding the arbitrability of a case should be resolved in favor of arbitration. Arbitration is a favored remedy when there is an arbitration clause.

Under Section 2 of the FAA, there's really only two requirements that the statute or the statute to apply a written arbitration agreement and that it involves commerce in the interstate in any version -- you know, any aspect of interstate commerce, Your Honor.

So, first, let's just start with what we have here. Both the Coleman and the Griffith construction agreements contain written arbitration provisions. The Coleman and Griffith arbitration agreement or, I guess, their construction agreements, are slightly different. The Coleman agreement has actually two arbitration clauses; the Griffith provision -- the Griffith contract has one. And so we'll talk about those differently in just a moment. But both of them have arbitration agreements in them as the venue in which any disputes regarding the contract should be resolved.

Secondly, Your Honor, the transactions at issue here, which are -- is the construction of homes in this neighborhood, involve interstate commerce. They have subcontractors, including some of the entities that are named, are subcontractors that are outside the state. It certainly involved the incorporation of materials from outside the state. And so, the -- you know, I believe we referenced the case of Zabinski v. Bright Acres.

The Agreement and the Complaint and the surrounding facts is what the Court needs to look at to determine whether a matter involves commerce under the FAA. Commerce can be both either parties from outside the state or materials from outside the state.

Here, the agreements involve the construction of residential homes that use materials, equipment, subcontractors, all of which were sourced from outside the state. And all of that is confirmed within the affidavit of Jim Bar, I think that is attached to our motion, Your Honor.

This is exactly the type of commercial activity that the Federal Arbitration Act was meant to reach. And as the Court recognized in the Episcopal Housing v. Federal Insurance, which is a South Carolina case from 1977, "It is virtually impossible to construct a" -- and this is a multi-story building, but -- "a building with materials, equipment and supplies all produced and manufactured solely within the state of South Carolina." That is a South Carolina case from 1977, Your Honor.

The same reasoning applies here. Construction of, you know, homes involves interstate commerce of goods and services, which satisfies the Federal Arbitration Act's definition of "commerce" and triggers the Act's protections.

Because there's a written arbitration agreement and the matter involves interstate commerce, we believe it applies. And so we're going to talk a little bit about what these arbitration clauses actually say.

Both of the plaintiffs' claims, both Mr. Coleman and Mr. Griffith's claims, arise directly from the construction agreement, or as they're called, I believe it is the Buyer/Purchaser/Builder Agreement. And they're going to be subject to the arbitration clause.

They have -- in the Complaint, there are two claims. There is a negligence claim that is based on failures in designing, constructing, and supervising work on the homes. Those are duties that exist only because of the construction contract. Those are things found from this exact construction contract we're quoting from, Your Honor. And those are in the Amended Complaint at paragraph 105, 124, 126. So they are taken directly from the construction agreement at paragraph 1.

The breach of an implied warranty claim is also contractual. South Carolina courts have held that implied warranty claims arise from construction contracts and should be arbitrated. In the case of Dixon v. Pattee, which is, I think, a case that we cited, but is from the South Carolina Court of Appeals from 2023.

So we've got arbitration. We've talked about arbitration and, you know, why we think these fall -- these disputes fall within the arbitration provision. Let's -- I guess the easiest way to go about this is let's just talk about what the arbitration clauses say. You may have seen them in our motion or as well in our brief.

But the Coleman contract, as I said earlier, has two arbitration clauses. It has what is we'll refer to as paragraph 22, which is entitled, "Defaults and Disputes." This is an arbitration provision that's included in both the Coleman and Griffith construction contract. It grants the owner and the builder mutual rights to demand arbitration in the event of a material breach, which included, in the plain terms, as "any failure to properly perform the construction obligations." And it is exactly the type of construction defect allegations that are raised in the Complaint here.

Furthermore, this clause is reciprocal and it's triggered after written notice, opportunity to cure, and doesn't have any exclusions. It is very straightforward and point-blank.

Paragraph 22, which is included in both contracts, Mr. Coleman's and Mr. Griffith's, is a fully enforceable arbitration clause. Courts have consistently upheld similar arbitration clauses under the FAA, and as a matter of fact, the Fourth Circuit in American Home v. Vecco Concrete enforced an arbitration clause that said, "In any question of fact shall arise under this contract, either party may demand arbitration." That was the only language regarding arbitration in the contract. It was enforced as a valid arbitration clause.

That is almost the exact language that we have here. It provides mutual arbitration rights, clear procedural trigger, and it encompasses the very disputes that are before the Court in this Complaint.

You know, paragraph 22, it says, "If builder materially breaches," blah, blah, blah, "then the rights shall be -- after a ten-day period, to demand arbitration or to terminate this agreement."

Paragraph 22(b), "Builder's rights. If owner fails to timely make payments," so on and so forth, then owner -- then they shall have the right, upon providing written notice to owner, to either terminate or to demand arbitration. That is language almost identical to what is in Vecco Concrete Construction I just referenced. It's an enforceable arbitration clause under the FAA, Your Honor.

I should also reference the fact that paragraph -- that the Coleman contract has paragraph 24, which is a much broader arbitration clause. It goes even further. It has an extensive arbitration language. It talks about -- it actually references the Federal Arbitration Act. It references the services that should be used, the construction arbitration services. It goes on to define all sorts of things in there.

Again, Your Honor, I don't think that it's even really necessary to talk that much about 24 in the Coleman contract, because paragraph 22 is sufficient. But I should point out, paragraph 24, in one of the two contracts in question before the Court, is a much broader and extensive arbitration clause that certainly -- certainly satisfies the requirements of the Federal Arbitration Act.

So these are, from our perspective, valid arbitration provisions. The FAA applies. The claims at issue all fall squarely within the scope of these provisions, and so they should be enforced.

From our perspective, that's a pretty straightforward aspect of this, Your Honor, particularly when you look at it as a "we're talking about two plaintiffs here" and that this is not a certified class.

Now, I do want to address a couple of things that the plaintiffs bring up in their motions and then some of the materials that they -- that they cite. One of the things that they talk about is there's -- they have four contracts, for instance, Your Honor, and that the four -- of the four contracts, only one of them has this paragraph 24 that's in the Coleman contract.

Well, (A) we're not talking about four contracts. We're talking about two plaintiffs. We want to litigate over other contracts, we can -- they can make them named plaintiffs, and we can talk about that in a different matter. But the two parties before the Court, Coleman and Griffith, they both have paragraph 22, and the Coleman has -- also has paragraph 24, all of which are enforceable arbitration agreements.

I should point out, from what we can tell of the four contracts that the defendants referenced, all of them have paragraph -- what is -- what I'm referring to as paragraph 22 where the remedy is to demand arbitration. All of them have some version of an arbitration clause in there.

So (A) we're not really talking about four contracts here. We're talking about two, talking about construction -- these two construction contracts with -- for Griffith and Mr. Coleman. Even if you were to look beyond those two for some reason, the other two also have arbitration clauses as well. And so I'm not really sure what, you know, what relevance that has as it pertains to these two, but I did want to point that out to the Court.

In addition to talking about the other two contracts, the plaintiffs bring up a couple of other issues that they say make these arbitration clauses unenforceable. They bring up, you know, other threshold issues. And I want to address a couple of those during my time.

Your Honor, one of their arguments in their memorandum is that this is not a construction contract, it's a purchase agreement. That's, I think, incorrect. This is clearly a construction contract. It talks about the construction itself, what the obligations of the builder have. The very name of it is a purchaser or -- I'm sorry, an owner and builder contract agreement. And every aspect of it is -- it relates to the construction itself.

Here's why: And this issue actually arises -- it actually pertains to another one of their arguments I'll get to in a minute, Your Honor. But both Mr. Coleman and Mr. Griffith executed two contracts with the -- with my client. Those two contracts, they have a lot purchase agreement where they purchased the land itself, and a builder agreement -- a separate builder agreement. They contract with my client for the construction of the actual house. Okay?

And the timing on this is important because this gets to the merger argument they make in a minute. The lot purchase agreement and the construction agreement are executed simultaneously. Okay? And then the closing occurs and a deed is conveyed. And once the deed is conveyed to Mr. Griffith or Mr. Coleman, both of them within 30 days of the execution of those agreements. At that point -- excuse me -- at that point in time, we commence construction, Your Honor, and proceed with the construction and building of the house.

And if you actually look at the contracts, what you will see in the exhibits -- or, I'm sorry, in the contract when it talks about scheduling, which I believe is paragraph 3, it says, "Following execution of this agreement or the date of closing on owner's acquisition of the lot, whichever is later, Builder shall use its best efforts to deliver the completed residence specified herein at -- on or after about 150 days from the start of construction."

Our obligations to start construction under the Builder Agreement for Mr. Coleman and Mr. Griffith does not commence until after the lot is closed. So to call this a purchase agreement is wrong. The obligations that take place in this contract all take place after the purchase agreement has been executed and concluded, and the lot itself is then transferred to Mr. Griffith or Mr. Coleman, and the construction contract then goes -- which has already been executed -- goes into effect, and we have 150 days in which to perform the construction obligations under the Builder Agreement, Your Honor.

So the argument that this is a purchase agreement and not a construction contract, (A) I think is a little bit of a red herring because it has an arbitration clause regardless, but I think it's wrong to call it a purchase agreement. It's not. It is a construction agreement.

THE COURT: I'm giving you your five-minute warning. Actually, three-minute warning because I want to hear from Plaintiff's counsel, and y'all have a second motion, so...

MR. BEAVER: Thank you, Your Honor. I will move quickly through it.

THE COURT: Thank you.

MR. BEAVER: If you look at the agreement, it does contain numerous construction requirements. It talks about what we're providing: furnishing the material, the labor supervising subcontractors, we're paid on a draw schedule. All the hallmarks of a construction contract.

This also pertains to the argument that for -- somehow this contract no longer holds any sway because it was merged into the deed. This contract is executed or is -- the performance under it all takes place after the conveyance of a deed.

This is not a purchase agreement anyway, and the merger aspect of the deed really only applies to the land acquisition contract, which is the lot purchase agreement, which this has nothing to do with, and instead, applies solely to -- and so this is not -- (A) there's no merger clause here because this isn't a lot acquisition contract. It's a construction contract. But either way, all of this takes place after the deed is conveyed.

How can a contract whose performance post-dates the deed be merged into the deed? Well, again, Your Honor -- and so we believe that this merger clause argument is based on the faulty idea that this is a purchase agreement, which it is not.

Very briefly. I know I've probably only got about a minute left. On unconscionability, Your Honor—

THE COURT: Yes.

MR. BEAVER: —if you look at the cases, what you will find is that unconscionability pertains -- when determined by this Court, this Court looks at the arbitration clause alone. If they want to make our arguments that other aspects of the contract are unconscionable, they're free to do that to an arbitrator.

This Court, as many courts have made clear, determines solely the validity and conscionability of the arbitration clause. Trying to pull in other aspects of various provisions which we believe are conscionable -- to be clear, Your Honor, we don't have any -- we don't believe there's any unconscionability at all. But when looking at aspects of this, the Court is solely to look at the arbitration clause itself. And as long as the arbitration clause is not unconscionable, which in this case, it's mutual, it contains no waivers, it doesn't have any -- I mean, any exclusions about what is arbitrable, it's a -- that is a valid and binding arbitration clause. Similar ones have been enforced hundreds, if not thousands, of times throughout the years since the execution of the FAA, Your Honor.

I'll just conclude very quickly. I know you've put me on a time limit.

THE COURT: I did, because only it's 11:00, and y'all -- you docketed this for 30 minutes, and I've gave you time --

extra time.

MR. BEAVER: Understood.

THE COURT: But there's a lot behind y'all, and there's a second motion that, if I don't -- if I take this under advisement, I'm going to want to hear at least brief arguments on. So that's the only reason why I'm cutting you off.

MR. BEAVER: Understood, Your Honor.

Again, in conclusion, we have what we believe are two very straightforward arbitration clauses that pertain to these two particular plaintiffs. Those are the only two before the Court today. It's not a certified class action. And we would respectfully request that these two arbitration clauses be honored and these individuals be sent into arbitration where this matter belongs.

THE COURT: All right. Thank you.

MR. BEAVER: And I will stop there. I know I probably exceeded my three-minute warning, but I will...

THE COURT: Well, y'all -- you've creeped into the 11:00 block, so I -- but I still want to hear from Plaintiffs' counsel.

Talk to me about the fact that this case is not -- there's not a certified class here, at least not yet. Maybe there's a motion pending that I don't know about, but --

MR. KIRCHNER: Your Honor, I'm glad you mentioned that. And the reason there's not a motion pending is solely and exclusively because of the defendant's motion practice.

So we filed this as a class back in April of last year. You can't just ignore the class allegations. They exist.

The defendants actually removed -- six months after we filed it, they removed it to federal court. It's under the Class Action Fairness Act. So they were, at least at that point, agreeing and arguing that there was a class action or at least class action allegations pending. They solely and exclusively removed it based on CAFA. No diversity jurisdiction, no federal question jurisdiction, just CAFA.

We briefed it. Actually, the Court didn't even hold oral argument. They remanded it based on the local controversy exception to CAFA. Right? The local controversy exception to the Class Action Fairness Act.

And about -- I don't know -- a week after it was remanded back to the state court, they filed the instant motions that we are here before Your Honor. So, candidly, we have not had an opportunity to file a Motion for Class Certification. We certainly intend to. I have had a number of these types of cases certified in the past. This is virtually all I do is construction defect litigation.

And, candidly, class action is really a superior method to deal with these things. We're talking about folks in a single neighborhood whose homes are all constructed and sold by these defendants. And were a class not certified, we would turn around and file 300 individual lawsuits in Pickens County. That is certainly not efficient -- judicially efficient or efficient for our clients. I mean, it's really the reason South Carolina enacted Rule 23, which -- and I know we're not arguing class certification now, but is a much, much lower threshold than its federal counterpart.

So the class action allegations exist. We fully intend to move for class certification. We haven't even had an opportunity to conduct discovery yet. The defendants have refused to respond to our discovery while their Motion to Compel Arbitration was pending. And that's their -- their right. Because I think if you answer discovery, it could be argued as a waiver. So I'm not complaining about it, but just highlighting that.

We haven't done any discovery in the year that this case has been pending because we've been fighting Motions to Remove and now Motions to Compel Arbitration and so on and so forth. Meanwhile, the homes continue to leak and get worse and my clients continue to suffer.

So I don't think because they have -- they essentially filed this Motion to Compel Arbitration a week after we were remanded back to state court, I don't think they can say we have just ignored the class allegations, we're only talking about two defendants. We're talking about -- or two plaintiffs, rather. We are actually, in actuality, talking about close to 300 potential plaintiffs, 165 of which have no agreement whatsoever with any of these defendants, much less an agreement to waive the right to a jury trial and compel arbitration. Those are subsequent purchasers that don't have any type of contract.

These two plaintiffs that we have named -- I'll point out a few things before I -- and, again, let me just say for the record, Judge, we've briefed this pretty extensively. We'll rely on our briefs for purposes of the record. I just want to try to hit the highlights for you, because I know that you are short on time.

THE COURT: Y'all did a great job briefing, so thank you.

MR. KIRCHNER: Thank you, Judge.

The defendants that are parties to the contract is JMC Homes of South Carolina. Okay? So the others, JMC Communities and Patrick Square, LLC, are not parties to the contract that have this purported arbitration agreement. So that's number one.

Number two, Mr. Coleman, his contract, the agreement on which they are relying to compel arbitration, is between William Coleman and Deborah Coleman, his wife. The home is actually owned by a trust that is not a party to any agreement, much less an agreement to arbitrate.

And the arbitration provision in the Coleman contract, this paragraph 22 that Mr. Beaver talked about, the remedy there is to -- after you give notice to the builder and they have ten days to cure, the remedy is to -- at the owner's option -- to either demand arbitration or cancel the contract.

I mean, here we are post-completion that the homes are occupied, many of them by subsequent purchasers, that have these latent defects with leaks and problems. There's no way to cancel the contract. It is legally impossible.

So it's clear that that particular arbitration provision in no way contemplated post-completion obligations and post-completion issues. That is there because, if there's an issue during construction and the builder refuses to cure it or doesn't cure it satisfactorily, the owner, at their option, has the ability to either send it to an arbitration or cancel the contract.

Again, that is a legal impossibility now. That arbitration provision, to the extent it's enforceable, which we claim it's not for a variety of reasons, but to the extent it's enforceable, clearly does not apply to the situation we're in now where we are multiple years past completion and these latent defects start to manifest and show themselves and emerge.

And, again, the purchase agreement that Mr. Beaver talked about, I just want to address that, too, because the -- I don't believe that's in the record. I've never seen it; this is, candidly, the first I've heard of it. And the timing doesn't make sense because Mr. Coleman -- sorry -- Mr. Griffith entered his builder agreement on December the 1st, 2018. The deed conveying the lot and the house to him all at once, that didn't happen until January 24th of 2019, so more than a year later, after construction was completed.

So this is more akin to the Bradley vs. Brentwood Homes case that we cited in our brief. It is not a situation where these folks own the lot, and they can go hire whatever builder they want, and they enter into a construction contract. This was a purchase of a completed home. My clients had no say in the means and method of who was hired or anything. They got to pick some interior finishes and colors and things of that nature, but that was -- that was it. This was essentially a spec house, not a custom build, and they purchased and closed on the home after it was constructed. And so that is, by definition, a purchase, not a construction contract, when they have no say in the actual construction. And that is identical to what our Supreme Court was faced with in the Brentwood case and the Foxbank case.

We actually have a chart in our brief that highlights the similarities of the language in those three, the ones that -- the contracts that were considered in Brentwood, the contracts that were considered in Foxbank, and our clients' contracts. And, there, the Supreme Court said this is an entirely intrastate transaction because it is the purchase of a home in

South Carolina. It is not a construction contract. It is a purchase contract. And that is de facto what these are. And why that's important is because, if it's a purchase agreement that is entirely intrastate, the South Carolina Uniform Arbitration Act governs, not the FAA.

And the South Carolina Uniform Arbitration Act has very, very, very strict notice provisions. The fact that the contract might be subject to arbitration has to be noticed on the first page of the contract and has to be in all caps and underlined. And if any of those three things don't exist, the arbitration or the purported arbitration provision is completely unenforceable under South Carolina law.

That doesn't exist here. There's no notice provision on the first page. Obviously, because there's no notice provision, it's also not underlined and capitalized.

But even if the Court were to determine -- and just to be clear, we identified, I think, maybe seven reasons in our brief why the arbitration provisions were unenforceable. Any one of those grounds is an independently sustaining ground to not enforce the arbitration provisions, so it doesn't have to, you know, violate one or more of them. Any one -- if it violates any one of our -- the items we set forth, it's unenforceable.

So if the Court were to determine that the defendants somehow that aren't parties to the agreement are able to take advantage of the arbitration provision and a plaintiff who is not party to the agreement or a group of plaintiffs not party to the agreement are bound by this arbitration clause and the FAA applies, not the South Carolina Uniform Arbitration Act, it is unconscionable under South Carolina law because it is woven into and referenced by warranties. And it's the exact same language, probably worse than our Supreme Court considered in Smith vs. D.R. Horton and Damico vs. Lennar where you have warranties that basically exclude all warranties, which is unenforceable in South Carolina -- which we can talk about at the next motion if we get there -- but it excludes all warranties and limits warranties and limits remedies. It excludes consequential damages.

The only remedy available to my clients under this purported limited warranty is for the builder to repair or replace at its option. That's the precise language that the Supreme Court of South Carolina found was unconscionable. And because it is intertwined and referenced in the arbitration agreement, the arbitration agreement is also -- is also unconscionable. And, again, the Court doesn't have to just view the arbitration agreement when you have references like that.

The other thing that I think is worth highlighting is we -- as Mr. Beaver pointed out, we have not sued any defendant for breach of contract. We're not relying on these contracts in the slightest.

And contrary to what JMC Homes would have the Court believe, the duties that we have sued for and the breaches of those duties and the damages resulting from those breaches, arise completely independent of any contract.

If you -- no matter what your builder's contract says or even if you don't have a contract, a builder has a legal liability to follow the building code and to complete construction that's commensurate with industry standards. That is a tort liability that arises by operation of law. It doesn't have anything to do with any language in any contract.

We have sued them for breach of those duties, for negligence and gross negligence. We've also sued for breach of implied warranties. And, again, contrary to what JMC Homes says, those warranties do not arise out of contract. Breach of the implied warranty of workmanlike service, according to our Supreme Court, arises just by undertaking the work.

So if you have no contract and the builder comes on your property and builds, you know, a house or whatever, they implied by law, impliedly warrant that that work is going to be of a workmanlike service, so it does not arise out of any contract. It arises by operation of law.

The implied warranty of habitability, actually, our Supreme Court says it springs from the sale itself. So if you are a developer and you put defective construction into the stream of commerce, that triggers the implied warranty of habitability.

So, again, we have not sued under any contract-based theory. We have not sued for breach of contract. We're not relying on the contracts.

We have sued because our homes or my clients' homes leak and have problems that these defendants are responsible for by law. Not by contract, but by law. They have a tort obligation to follow the building code, and we have alleged that they have not followed the building code.

Again, that paragraph 24 only applies -- only appears in the Griffith contract.

The other paragraph, 22, that appears in all the other contracts that are in the record before the Court clearly don't apply to post-completion obligations when the remedy is for the owner, at its option, to demand arbitration or cancel the contract. Here, the contract clearly cannot be cancelled.

I mentioned that about 165 of the potential class members have not in any way, shape, or form agreed to submit their claims to arbitration. And for those reasons, Judge, we believe that you should deny the defendants' Motion to Compel Arbitration.

The other thing, just real briefly worth highlighting is the Supreme Court of the United States has said that a class cannot be compelled to arbitrate its claims unless there is specific and explicit language in the purported arbitration provision compelling them to do so. Here, the purported arbitration provision is completely silent as to class claims.

Again, I don't believe the Court can just ignore the class claims. We properly pled them. They exist. The only reason we haven't filed a Motion to Certify the Class is because we have been fighting removal and now a Motion to Compel Arbitration, but that motion will be forthcoming.

And I believe the claims -- the class claims that we have pled are properly pled at this stage of the litigation. The Court has to accept them as true in all inferences concerning those class allegations and to be construed in the light most favorable to the plaintiffs.

So we believe we're in the right spot. We believe we're appropriately here before the circuit court, and we should not have to arbitrate either these individual plaintiffs' claims or certainly not the class claims.

THE COURT: All right, gentlemen. I'm going to take this one under advisement.

Do you want to give me a brief argument on your other motion, or you want me to -- do you want me to table it?

MR. KIRCHNER: Ryan, I'm happy to have her rule on -- like, rule on this first, and then, based on that ruling, we can take up the other motion.

MR. BEAVER: I think that makes sense. I think if you're taking this under advisement, Your Honor, the other motion probably belongs elsewhere, depending on how this is handled.

May I have two minutes to respond or are you done hearing from us?

THE COURT: I'm going to give you -- it is your motion, so I'll give you a brief response, but then let me take it under advisement. If I -- if I grant the motion, it kind of renders your other motion moot. If I don't, then I'll get it scheduled for y'all.

MR. BEAVER: Okay.

I'll address three very brief things, and I will be quick, Your Honor.

Plaintiffs' attorney argued that two of my clients, so to speak, are not party to the agreement, but his own pleading says they're a single unit. They're a single unit. He alleges that multiple times in their Complaint; they have to be treated as a single business unit. We're taking him at his word for purposes of this motion.

The argument about Mr. Griffith not having -- that this is not a construction contract, he acknowledges that he picked finishes which subcontractors performed, and we performed post-closing. That both implicates the Federal Arbitration Act with regard to interstate commerce, and it also shows that this is a construction contract. This was not a completed home. He was picking certain aspects of the home which we were constructing for him.

With regard to the unconscionability argument, even if you determine that paragraph 24 is somehow unconscionable, which we, obviously, wildly disagree with, paragraph 22 is still sufficient, Your Honor. They say this is clearly not determined -- supposed to pertain to allegations after the completion of the work.

Paragraph 22 is very clear. Any dispute, any material breach of this agreement, the remedies are you can terminate or you can demand arbitration. It doesn't say, "Once the contract is over, we're done here."

The provision needs to be enforced on its word. And even if you have some question about that, the Federal Arbitration Act says that's resolved in favor of arbitration. The parties clearly contemplated arbitration in their agreement.

Finally, with regard to class arbitration, Your Honor, we're not seeking class arbitration. The silence with regard to class arbitration doesn't really have anything to pertain to anything that we're asking for. We're asking for individual parties who we're contracted with, who have individual arbitrations with us as anticipated in their contract.

And so I think -- I went through that as quick as I could, Your Honor. That's our counter-arguments to most of that.

THE COURT: Well -- and that's part of the reason why I want to take it under advisement is I don't want to rush the decision. I want to go back and look at your briefs and your memorandums so, that way, y'all -- I don't miss anything.

MR. BEAVER: We're fine to table the Motion to Strike. Do you want additional briefing on any questions? Or you want to just look at it and be done?

THE COURT: Not yet. I'm going to -- let me take a look at what y'all filed again, because I do have it in front of me. If I need any -- if I have any additional questions, I'll send an email to both of you.

MR. BEAVER: Okay.

MR. KIRCHNER: Thank you, Your Honor. I appreciate you.

THE COURT: Thank y'all.

MR. BEAVER: Thank you.

THE COURT: All right. And y'all can log off.

MR. BEAVER: Your Honor, do you need us to do anything with regard to the tabling of that other motion for now or are you going to handle that on your end?

THE COURT: I'll handle that with Michelle, depending on what my ruling is.

MR. BEAVER: Okay. Just wanted to make sure you did not need anything from us. Thank you very much for your time today, Your Honor, and I apologize for starting off in the wrong courtroom.

THE COURT: No, no. That's okay. Everyone else -- I know we're running behind. Y'all going to have to give me a few minutes. I've got lots of notes and highlighting that I've been doing while they've been arguing, and I just -- I don't want to forget where I'm at so just give me a couple -- just a couple of minutes to kind of make sure my notes are good and then I'll move on to the next case.

Gentlemen, thank y'all. You can log off.

MR. BEAVER: Thank you very much.

(The hearing concluded.)

Certificate of Transcriber

CASE NAME: Griffith, et al. V. JMC Communities, et al.

DATE OF HEARING: 5/7/25

RECORDING METHOD: WebEx Recording

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that I was not present for the live proceeding; and that said proceedings were transcribed to the best of my ability from the audio and/or video recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case; and I have no interest, financial or otherwise, in its outcome.

Bobbi Fisher

_/s/ Bobbi Fisher_______________

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 12/9/25

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Certificate of Occupancy

City of Clemson

Planning and Codes Administration

This Certificate issued pursuant to the requirements of Section 110.3 of the 2015 International Residential Code certifying that at the time of issuance this structure was in compliance with the various ordinances of the City of Clemson regulating building construction or use for the following:

Permit # 19-0160

Property Address: 221 Pershing Ave Clemson, SC 29631

Owner: David Griffith

Owner Address: 16 Fran Ave Trenton NJ

Use Classification: Single Family

Sprinkler System: No

Occupancy Type: R-3 Residential or one or two family house

Type of Construction: VB

Building Official: ______

Date: October 10, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2024-CP-39-00465

DAVID GRIFFITH, WILLIAM COLEMAN AS TRUSTEE OF THE WILLIAM COLEMAN REVOCABLE TRUST, individually, and behalf of all others similarly situated,

Plaintiffs,

v.

JMC COMMUNITIES, INC., JMC HOMES OF SOUTH CAROLINA, LLC, PATRICK SQUARE, LLC, F/K/A DIGITAL DEVELOPMENT, LLC, ALPHA OMEGA CONSTRUCTION GROUP, INC., GORZE, INC., COTHRAN LANDSCAPES AND GRADING, LLC, GENTRY SERVICES, LLC A/K/A GENTRY BROTHERS SERVICES, LLC, TINY BILL SWANEY D/B/A SWANEY MASONRY, SOLID ROCK CONSTRUCTION SERVICES LLC, H & H CONCRETE, LLC, MARIA CONSTRUCTION INC., F & V FRAMING, LLC, FIVE STAR CONSTRUCTION, INC., DAVIS FRAMING, LLC, ASHLEY COTHRAN D/B/A COTHRAN CUSTOM HOMES, LLC, UFP MID-ATLANTIC, LLC, BUILDER FIRST SOURCE, INC. A/K/A BUILDERS FIRST SOURCE ATLANTIC GROUP, LLC, A/K/A BUILDERS FIRST SOURCE SOUTHEAST GROUP, LLC, RC JOHNSON, LLC, GUNTER HEATING AND AIR CONDITIONING OF SC, LLC, 84 LUMBER COMPANY, LP, DOGWOOD EXTERIORS, LLC, H & R DRYWALL, INC., CRISTOBAL AND PAINTERS, LLC, WILLOW TREE LANDSCAPING, INC., HARBIN LUMBER COMPANY, INC., SOTO HVAC, LLC, RIVERSIDE LANDSCAPING, LLC, INTERNATIONAL CONSTRUCTION SERVICES, INC.,

PALMETTO GRADING AND	)
DRAINAGE, INC., JANE DOE #1-10, AND	)
JOHN DOE #27-50,	)
	)
Defendants.	)
	)

AFFIDAVIT OF JIM BAAR IN SUPPORT OF DEFENDANTS, JMC COMMUNITIES, INC., JMC HOMES OF SOUTH CAROLINA, LLC, AND PATRICK SQUARE, LLC'S MOTION TO COMPEL ARBITRATION AND DISMISS OR STAY THIS ACTION

STATE OF FLORIDA §

COUNTY OF PINELLAS §

BEFORE ME, the undersigned notary public, on this day personally appeared Jim Baar, who, being by me first duly sworn according to law, upon oath deposed and did state as follows:

1. My name is Jim Baar. I am at least 18 years of age, of sound mind, and fully capable of making this Affidavit.

2. I submit this Affidavit in support of Defendants, JMC Communities, Inc. ("JMCC"), JMC Homes of South Carolina, LLC ("JMC Homes of SC"), and Patrick Square, LLC's ("PSL") (JMCC, JMC Homes of SC, and PSL are hereinafter collectively referred to as "Developer Defendants") Motion to Compel Arbitration and Dismiss or Stay this Action.

3. I am the Secretary and Chief Financial Officer for JMCC, and, on that basis, I am authorized to make this Affidavit.

4. The matters in this Affidavit are stated based upon my personal knowledge, or, where indicated, on my review of records maintained in the ordinary course of business by Defendants related to the construction project, more specifically, the construction of a neighborhood of approximately 371 dwelling units consisting of single family homes, paired homes, and town homes located in the Patrick Square Subdivision in Pickens County, South Carolina (the "Project").

5. In the regular performance of the job functions referenced above, I have had access to, and am generally familiar with, the business records of Developer Defendants related to the Project. These records were made at or near the time of the actions or events they reflect by, or from information transmitted from, a person with knowledge of the Project in the regular practice and ordinary course of business. I have basic knowledge of the manner in which Developer Defendants business records related to the Project were created and kept, and I have reviewed and relied upon these records in executing this Affidavit.

6. JMCC provided administrative and management support services for the Project.

7. JMC Homes of SC acted as general contractor and builder for approximately 236 out of the approximately 265 single family homes on the Project.

8. PSL acted as seller for the homes built by JMC Homes of SC on the Project.

9. Upon information and belief, during the time in which these homes were constructed, it was standard procedure for Developer Defendants to request that homeowners agree to resolve any disputes arising from the construction of the homes exclusively through the use of binding arbitration. The arbitration agreements were included as clauses in each of the homeowners' construction agreement.

10. On or about October 28, 2016, JMC Homes of SC entered into a builder agreement with William A. Coleman ("Coleman"), whereby Coleman agreed to pay JMC Homes of SC Three Hundred Fifty-Four Thousand One Hundred Ninety dollars ($354,190.00), for the construction of a single-family home on Lot No. 0235 of the Project (the "Coleman Construction Agreement"). A true and correct copy of the Coleman Construction Agreement is attached hereto as **Exhibit 1.**

11. On or about December 20, 2018, JMC Homes of SC entered into a builder agreement with David Griffith ("Griffith"), whereby Griffith agreed to pay JMC Homes of SC Three Hundred Seventy-Five Thousand Five Hundred Sixty dollars ($375,560.00), for the construction of a single-family home on Lot No. 0277 of the Project (the "Griffith Construction Agreement"). A true and correct copy of the Griffith Construction Agreement is attached hereto as **Exhibit 2.**

12. Upon information and belief, JMC Homes of SC entered substantially similar construction agreements with the other proposed Plaintiffs in the class for which JMC Homes of SC acted as builder (the "Construction Agreements").

13. Upon information and belief, the Construction Agreements contain substantially similar arbitration provisions to the Coleman Construction Agreement and the Griffith Construction Agreement.

14. Upon information and belief, some of the subcontractors Developer Defendants used on the Project were from different states other than South Carolina.

15. Upon information and belief, some of the materials Developer Defendants used on the Project originated from outside of South Carolina and were transported across state lines.

Further Affiant Sayeth Naught.

Jim Baar
Secretary and Chief Financial Officer
JMC Communities, Inc.

SUBSCRIBED AND SWORN TO before me, the undersigned notary, on this the 31st day of October, 2024.

LYNN M. FOTE
MY COMMISSION # HH 197412
EXPIRES: March 1, 2026
Bonded Thru Notary Public Underwriters

Lynn M Fote
Notary Public
Notary Public No.: # HH197412
In and For the State of Florida