

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2012-CP-10-7594

Case Tracking No. 2014-002115

RECEIVED
MAY 07 2015
SC Court of Appeals

One Bell Hall Property Owners Association, Inc. and Brandy Ramey,
individually, and on behalf of all others similarly situated, ...

Respondents,

v.

Trammell Crow Residential Company; TCR NC Construction I, LP; Belle Hall Direct 101, LP; TCR RLD Condominiums, Inc.; CS 101 Belle Hall, LP; TCR Southeast, Inc.; TCR Carolina Properties, Inc.; TCR SE Construction, Inc.; TCR SE Construction II, Inc.; TCR Construction, a division of Trammell Crow Residential; TCR Development, a division of Trammell Crow Residential; Trammell Crow Residential Carolina, a division of Trammell Crow Residential; and Tauer Consulting Company, Inc., a division of Trammell Crow Residential, each individually, and collectively d/b/a "Trammell Crow Residential," "Trammell Crow" or "TCR"; Halter Properties, LLC; Halter Realty LLC; and Halter Realty Group, LLC, each individually, and collectively d/b/a "Halter Companies", Jane Doe 1-5; ABG Caulking & Waterproofing of Morristown, Inc. a/k/a ABG Caulking Contractors; Advanced Building Products & Services, LLC; BASF Corporation; Budget Mechanical Plumbing, Inc.; Builders First Source – Southeast Group, LLC; Builders Services Group, Inc., individually, and d/b/a Gale Contractor Services, Inc.; Century Fire Protection, LLC; Cline Design Associates, P.A. and Gary D. Cline; Coastal Lumber & Framing, LLC; Dodson Brothers Exterminating Co., Inc. a/k/a Dodson Pest Control; First Exteriors, LLC; Flooring Services, Inc.; General Heating & Air Conditioning Company of Greenville, Inc. d/b/a General Heating and Air; Jimmy Warner, individually, and d/b/a Warner Heating & Air; Glazing Consultants, Inc.; GWC Roofing, Inc., individually, and d/b/a Southcoast Exteriors, Inc.; Houston Stafford Electrical Contractors, LP a/k/a IES Residential, Inc. d/b/a Houston Stafford Electric; KMAC of the Carolinas, Inc.; P&P Metal Sales Co., Inc. a/k/a P&P Metal Sales, LLC a/k/a P&P Metal Sales, Inc. a/k/a Carolina Metals; Pleasant Places, Inc.; Raymond Building Supply Corporation d/b/a Energy Saving Products of Florida, Inc. a/k/a Energy Saving Products of Florida; RS Custom Homes, LLC; Southern Specialties, Inc.; Structural Contractors South, Inc.; Superior Construction Services, Inc., individually, and d/b/a Superior Masonry Unlimited, Inc.; TAMKO Building

Products, Inc. f/k/a TAMKO Roofing Products, Inc.; VNS Corporation, individually, and d/b/a Wholesale Building Products f/k/a Wholesale Building Materials, Inc.; What Don't We Do; and John Doe 1-25, Defendants,

Of whom TAMKO Building Products, Inc. is the Appellant.

Appellant.

VNS Corporation, individually, and d/b/a Wholesale Building Products f/k/a Wholesale Building Materials, Third-Party Plaintiff,

v.

Billy Gray, d/b/a United Builders, LLC., Third-Party Defendant,

Houston Stafford Electrical Contractors, LP a/k/a IES Residential, Inc. d/b/a Houston Stafford Electric, Third-Party Plaintiff,

v.

J. Correa Electrical Company, LLC, Third-Party Defendant,

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-10-7594

One Belle Hall Property Owners Association, Inc, et al.
PLAINTIFF(S)

Trammell Crow Residential Company
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☒ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

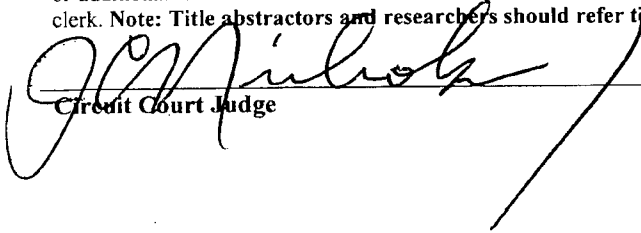
INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N A		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2117
Judge Code

9/16/14
Date

For Clerk of Court Office Use Only

2

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or
placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or
to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ONE BELLE HALL PROPERTY OWNERS)
ASSOCIATION, INC. and BRANDY RAMEY,)
individually, and on behalf of all others similarly)
situated,)

Plaintiffs,)

vs.)

Trammell Crow Residential Company; TCR NC)
Construction I, LP; Belle Hall Direct 101, LP; TCR)
RLD Condominiums, Inc.; CS 101 Belle Hall, LP;)
TCR Southeast, Inc.; TCR Carolina Properties, Inc.;)
TCR SE Construction, Inc.; TCR SE Construction)
II, Inc.; TCR Construction, a division of Trammell)
Crow Residential; TCR Development, a division of)
Trammell Crow Residential; Trammell Crow)
Residential Carolina, a division of Trammell Crow)
Residential; and Tauer Consulting Company, Inc., a)
division of Trammell Crow Residential, each)
individually, and collectively d/b/a "Trammell)
Crow Residential," "Trammell Crow" or "TCR";)
Halter Properties, LLC; Halter Realty, LLC; and)
Halter Realty Group, LLC, each individually, and)
collectively d/b/a "Halter Companies"; Jane Doe 1-)
5; ABG Caulking & Waterproofing of Morristown,)
Inc. a/k/a ABG Caulking Contractors; Advanced)
Building Products & Services, LLC; BASF)
Corporation; Budget Mechanical Plumbing, Inc.;)
Builders First Source – Southeast Group, LLC;)
Builders Services Group, Inc., individually, and)
d/b/a Gale Contractor Services, Inc.; Century Fire)
Protection, LLC; Cline Design Associates, P.A. and)
Gary D. Cline; Coastal Lumber & Framing, LLC;)
Dodson Brothers Exterminating Co., Inc. a/k/a)
Dodson Pest Control; First Exteriors, LLC; Flooring)
Services, Inc.; General Heating & Air Conditioning)
Company of Greenville, Inc. d/b/a General Heating)
and Air; Jimmy Warner, individually, and d/b/a)
Warner Heating & Air; Glazing Consultants, Inc.;)
GWC Roofing, Inc., individually, and d/b/a)
Southcoast Exteriors, Inc.; Houston Stafford)

IN THE COURT OF COMMON PLEAS)
FOR THE NINTH JUDICIAL CIRCUIT)
CASE NO. 2012-CP-10-7594)

**ORDER DENYING DEFENDANT
TAMKO'S MOTION TO DISMISS
AND COMPEL ARBITRATION**

FILED
2014 SEP 17 PM 4:04
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Electrical Contractors, LP a/k/a IES Residential,
 Inc. d/b/a Houston Stafford Electric; KMAC of the
 Carolinas, Inc.; P&P Metal Sales Co., Inc. a/k/a
 P&P Metal Sales, LLC a/k/a P&P Metal Sales, Inc.
 a/k/a Carolina Metals; Pleasant Places, Inc.;
 Raymond Building Supply Corporation d/b/a
 Energy Saving Products of Florida, Inc. a/k/a
 Energy Saving Products of Florida; RS Custom
 Homes, LLC; Southern Specialties, Inc.; Structural
 Contractors South, Inc.; Superior Construction
 Services, Inc., individually, and d/b/a Superior
 Masonry Unlimited, Inc.; TAMKO Building
 Products, Inc. f/k/a TAMKO Roofing Products,
 Inc.; VNS Corporation, individually, and d/b/a
 Wholesale Building Products f/k/a Wholesale
 Building Materials, Inc.; What Don't We Do; and
 John Doe 1-25,

Defendants.

VNS Corp., individually, and d/b/a Wholesale
 Building Products f/k/a Wholesale Building
 Materials, Inc.,

Third-Party Plaintiff,

v.

Billy Grady d/b/a United Builders, LLC,

Third-Party Defendant.

Houston Stafford Electrical Contractors, LP a/k/a
 IES Residential, Inc. d/b/a Houston Stafford
 Electric,

Third-Party Plaintiff,

v.

J. Correa Electrical Company, LLC,

Third-Party Defendant.

ORDER

THIS MATTER CAME BEFORE THE COURT on June 25, 2014 upon motions of the Defendant, TAMKO Building Products, Inc. f/k/a TAMKO Roofing Products, Inc. (hereinafter "TAMKO"), to (a) dismiss and compel arbitration in the above-captioned case; and (b) to stay TAMKO's obligation to participate in discovery until TAMKO's arbitration Motion is resolved. Plaintiffs, One Belle Hall Property Owners Association and Brandy Ramey, individually, and on behalf of all others similarly situated (hereinafter collectively referred to as "Plaintiffs"), were represented by attorneys, Justin Lucey and Dabny Lynn; TAMKO was represented by attorney, Richard Willis.

Having reviewed the submissions of the parties and having heard the oral arguments presented by counsel, TAMKO's Motion to Dismiss and Compel Arbitration is DENIED, rendering moot TAMKO's Motion for Protective Order.

FINDING AND CONCLUSIONS

TAMKO's Motion to Dismiss and Compel Arbitration (hereinafter "the Motion" or "TAMKO's Motion") seeks to compel arbitration of Plaintiffs' claims against TAMKO based on the enforcement of a purported arbitration provision contained in TAMKO's Warranty.

A.) TAMKO's Arbitration Provision is Wholly Unconscionable and Unenforceable Under South Carolina Law

Based on the evidence presented and a plain reading of TAMKO's Warranty, this Court finds the Warranty's arbitration provision is wholly unconscionable, and thus, unenforceable under South Carolina law.

Specifically, the arbitration provision is made unconscionable based on the cumulative effect of several ambiguous, oppressive and one-sided provisions located throughout the Warranty, including the "exclusions from coverage," "transferability" and "legal remedies"

sections which purport to (a) waive TAMKO's liability for "damages of any kind whatsoever;" (b) disclaim all implied warranty claims; (c) waive various other important remedies; and (d) prevent the transfer of the Warranty altogether. This Court finds the arbitration provision cannot be severed from such numerous unconscionable provisions which pervade TAMKO's Warranty, and particularly, TAMKO's attempt to waive its liability for "damages of any kind whatsoever" including "consequential or incidental damages of any kind."

Because this Court finds the arbitration provision wholly unconscionable based upon the Warranty's cumulatively unconscionable terms, and also finds the arbitration provision cannot be severed from TAMKO's Warranty, this Court refuses to enforce TAMKO's arbitration provision so as to avoid an unconscionable result.

B.) TAMKO'S Warranty is Wholly Unconscionable, Void of its Essential Purpose, Inherently Ambiguous, and Unenforceable Under South Carolina Law

Based on the evidence presented and a plain reading of TAMKO's Warranty, this Court finds the Warranty's provisions, when considered in their entirety, render the Warranty procedurally and substantively unconscionable, void of its essential purpose; and inherently ambiguous.

Specifically, this Court finds that the terms of TAMKO's Warranty create internal inconsistencies throughout the Warranty itself by (a) purporting to provide certain rights on the one hand, while attempting to nullify the same rights via exclusionary provisions on the other; and (b) by negating all meaningful coverage for the very damage that the Warranty purports to cover – damage arising out of or to TAMKO's Shingles due to manufacturing defects.

Given the number of such objectionable provisions within TAMKO's Warranty, this Court finds the Warranty unconscionable at the time it was made, and thus, unenforceable per South Carolina law.

C.) Because this Court finds Both the Warranty and the Warranty's Arbitration Provision Unenforceable Under South Carolina Law, this Court Denies TAMKO's Motion

Based upon the foregoing, and as is further detailed below, this Court denies TAMKO's Motion because:

- 
- (a) Plaintiffs effectively challenged the arbitrability of their claims against TAMKO based upon general contract principles recognized under South Carolina law;¹
 - (b) The Federal Arbitration Act ("FAA") provides arbitration clauses are unenforceable when state law or equitable principles invalidates clause provisions;²
 - (c) TAMKO'S Warranty is a contract of adhesion that is oppressively (i) limited in duration; (ii) limited in transferability; (iii) limited in compensation; and (iv) limited in available recovery avenues;³
 - (d) TAMKO's Warranty is lacking in mutuality of remedy, particularly in light of TAMKO's "exclusion" provisions which attempt to exempt TAMKO from liability for all monetary damages; TAMKO's "legal remedies" provisions which allegedly

¹S.C. Code § 15-48-10(a) (According to South Carolina law, a party may seek revocation of a contract under "such grounds as exist at law or in equity," including fraud, duress, and unconscionability).

² 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."); *see also Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 363-64 (2001) (noting general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause governed by the FAA); *Smith v. D.R. Horton, Inc.*, 403 S.C. 10, 742 S.E.2d 37 (Ct. App. 2013) ("When deciding a motion to compel arbitration under the SCUAA or the FAA, the court should look to the state law that ordinarily governs the formation of contracts in determining whether a valid arbitration agreement arose between the parties.").

³ *See* 2009 TAMKO Warranty; *see also Simpson v. MSA of Myrtle Beach*, 373 S.C. 14, 25 644 S.E.2d 663, 668-69 (2007) (noting "unconscionability" is defined to include both an absence of meaningful choice as well as oppressive, one-sided contractual provisions); *Carolina Care Plan, Inc. v. United Health Care Servs., Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004) (defining unconscionability 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.")

waive a number of legal remedies; and TAMKO's "transferability" provision which purportedly prevents transferability;⁴

- (e) The arbitration provision and other provisions contained in TAMKO's Warranty are made unconscionable and unenforceable based on the cumulative effect of the oppressive and one-sided provisions located throughout the Warranty;⁵
- (f) The arbitration provision and other provisions of TAMKO's Warranty are cumulatively unconscionable, and thus, unenforceable under South Carolina law;⁶
- (g) Given their pervasive nature, the arbitration provision and other provisions of TAMKO's Warranty are not severable from each other;⁷ and
- (h) TAMKO's Warranty does not provide adequate coverage for residences which incorporate the Shingles, and thus, fails its essential purpose.

⁴*D.R. Horton*, 403 S.C. at 15, 742 S.E.2d at 40-41 (Relying on the South Carolina Supreme Court's analysis in *Simpson*, and affirming a trial court's finding of unconscionability, "*particularly in light of the lack of mutuality of remedy* imposed by Section 14(i), which purported to exempt Horton from liability for monetary damages.")(emphasis added); *Simpson*, 373 S.C. at 25, 644 S.E.2d at 668-69 ("Although this Court acknowledges that parties are always free to contract away their rights, we cannot, under the circumstances, ignore the inconspicuous nature of a provision, which was drafted by the superior party, and which functioned to contract away certain significant rights and remedies otherwise available to Simpson by law. . .").

⁵ *D.R. Horton*, 403 S.C. at 17, 742 S.E.2d at 41 (finding arbitration provision was "wholly unconscionable and unenforceable based on the cumulative effect of a number of oppressive and one-sided provisions" located throughout agreement).

⁶S.C. Code § 15-48-20(a); see also *D.R. Horton*, 403 S.C. at 17, 742 S.E.2d at 41 citing S.C. Code § 36-2-302(1) (2003) ("[South Carolina] legislation permits this Court to refuse to enforce any unconscionable clause in a contract or to limit its application so as to avoid an unconscionable result.") (internal citations omitted).

⁷ *Simpson*, 373 S.C. at 34, 542 S.E.2d at 673 ("[i]f illegality pervades the agreement such that only a disintegrated fragment would remain after hacking away the unenforceable parts. . .") (internal citations omitted); *D.R. Horton*, 403 S.C. at 17, 742 S.E.2d at 41 ("We conclude the arbitration clause in this case should not be severed from the numerous unconscionable provisions and particularly [D.R.] Horton's attempt to waive any seller liability for monetary damages of any kind, including secondary, consequential, punitive, general, special or indirect damages.")(internal citations omitted) (emphasis added); see also *Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165, 1180 (9th Cir. 2003) (finding arbitration agreement wholly unenforceable because of an "insidious pattern" of unconscionable provisions, and therefore "any earnest attempt to ameliorate the unconscionable aspects of [the] arbitration agreement would require [the] court to assume the role of contract author rather than interpreter"); *In re Cotton Yarn Antitrust Litig.*, 406 F.Supp.2d 585, 604 (M.D.N.C. 2005)("[W]here, as here, multiple provisions of the arbitration clauses are inconsistent with Plaintiffs' ability to effectively vindicate their statutory rights. . .the Court finds that the better course of action in this case is to excise the arbitration clauses altogether.").

SUMMARY OF PERTINENT FACTS

A.) Overview of the Present Case

The present case arises out of numerous defective conditions existing within the One Belle Hall Condominiums ("One Belle Hall") located in Charleston County, South Carolina. One Belle Hall is a condominium complex consisting of four, three-story buildings featuring 59 individual condominium units located in Mt. Pleasant, South Carolina. Certain failures to properly design and manufacture the building components installed at One Belle Hall, coupled with other failures associated with the design, construction and repair of One Belle Hall, have led to construction deficiencies which, in turn, have resulted in moisture damage, water intrusion, and termite infestation affecting each of the four One Belle Hall buildings and other property.

On November 19, 2012, Plaintiff's commenced this action by filing an Initial Complaint which asserted a number of claims including negligence, breach of warranty, unfair trade practices, strict liability, amalgamation and breach of fiduciary duty against the parties who participated in the design, construction, repair and/or supervision of One Belle Hall. On December 30, 2013, Plaintiffs filed an Amended Complaint which named additional participatory parties including TAMKO, the manufacturer of the shingles installed at One Belle Hall. On February 14, 2014, TAMKO filed an Answer to Plaintiffs' Amended Complaint, and thereafter, TAMKO filed its Motion to dismiss Plaintiffs' claims against TAMKO⁵ and compel arbitration as to the same based upon purported arbitration provisions contained in TAMKO's Warranty.

B.) TAMKO's Limited Warranty

TAMKO is a Missouri Corporation which manufactures roofing products for commercial and residential markets, and specifically, manufactures the Elite Glass-Seal (AR) 3-

⁵ Plaintiffs' claims against TAMKO include negligence, breach of warranty and strict liability.

Tab Asphalt Shingles (the "Shingles") installed upon each of the One Belle Hall buildings. TAMKO's Shingles are sold with an express warranty that guarantees the Shingles are free from manufacturing defects for a period of twenty-five years. However, TAMKO's Warranty is (a) limited in duration; (b) limited in transferability; (c) limited in compensation; and (d) limited in available recovery avenues.

Given its limited nature, TAMKO's Warranty does not provide adequate coverage for residences which incorporate the Shingles. Not only does TAMKO's Warranty provide insufficient coverage, it also wrongfully attempts to disclaim TAMKO's liability for the same and unconscionably restricts recovery avenues through its "arbitration" and related "legal remedies", "exclusions from coverage" and "transferability" provisions. Specifically, these provisions provide, in pertinent part, as follows:⁶

- Exclusions from Coverage: TAMKO shall *not* be liable under any circumstances for:

***.

(2) Damages to any building, either exterior or interior, or any property contained therein or for injuries or *damages of any kind whatsoever*. . .

- Transferability: The Owner may transfer this Limited Warranty one (1) time during the first two (2) years of the Term to a Purchaser of the building upon which the Shingles are installed. . . Neither a Purchaser *nor any other person* may transfer this Warranty.
- Legal Remedies: Except where prohibited by law, the obligation contained in this limited warranty is expressly in lieu of all other obligations, guarantees, warranties, and conditions expressed or implied, *including any implied warranty or condition of merchantability of fitness for a particular purpose, and of any other obligations or liability on the part of TAMKO Building Products, Inc.* In no event, shall TAMKO be liable for *consequential or incidental damages of any kind*. . . *No action for breach* of this limited warranty or *any other action* against TAMKO relating to or arising out the Shingles. . . *shall be brought later than one year* after any cause of action has accrued.

⁶For ease of reading purposes, the notable sections of TAMKO's Warranty are extracted and referenced specifically below. However, the exact format of these extracted sections does not mirror the format of said sections as written in TAMKO's warranty as certain items are in different color, bolded or otherwise varied.

- **Mandatory Binding Arbitration:** *Every claim, controversy, or dispute of any kind whatsoever including whether any particular matter is subject to arbitration* (each an “action”) between you and TAMKO (including any of TAMKO’s employees and agents) relating to or arising out of the product shall be resolved by final and binding arbitration, regardless of whether the action sounds in warranty, contract, statute or any other legal or equitable theory. To arbitrate an action against TAMKO, you must initiate the arbitration in accordance with the applicable rules of arbitration of the American Association (which are available online at www.adr.org or by calling the American Arbitration Association at (800-778-7879), the judicial arbitration and mediation service or other arbitration service agreed to in writing by TAMKO, and provide written notice to TAMKO by certified mail at P.O. Box 1404, Joplin, Missouri 64802 within one year following the discovery of the leak.

Any action brought by you against TAMKO will be arbitrated (or, if arbitration of the action is not permitted by law, litigated) *individually and you will not consolidate, or seek class treatment for, any action unless previously agreed to in writing by both TAMKO and you.*

LEGAL DISCUSSION

A.) South Carolina Law Operates to Invalidate TAMKO’s Warranty Provisions, Including the Warranty’s Arbitration Provision

Even though the Federal Arbitration Act, 9 U.S.C. 1, *et seq.* (“FAA”) applies to the instant case, the FAA provides arbitration clauses are unenforceable when state law or equitable principles invalidate clause provisions. 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.”). In other words, where state law governs issues concerning the validity, revocability and enforcement of contracts generally,⁷ state law also governs issues concerning the validity, revocability and enforcement of arbitration clauses.⁸

⁷ According to South Carolina law, a party may seek revocation of a contract under “such grounds as exist at law or in equity,” including fraud, duress, and unconscionability. S.C. Code § 15-48-10(a).

⁸ As noted by Justices Breyer, Ginsburg, Sotomayor and Kagan in their dissenting opinion to *AT&T Mobility, LLC v. Concepcion*: “even though contract defenses, e.g., duress and unconscionability, slow down the dispute resolution process, *federal arbitration law normally leaves such matters to the States.*” 131 S.Ct. 1740, 1760 (2011) (emphasis added); *Rent-A-Center*, 130 S.Ct. at 2775 (2010) (arbitration agreements “may be invalidated by ‘generally

Thus, in South Carolina, a party may effectively challenge the arbitrability of a given claim based upon general contract defenses including fraud, duress and unconscionability. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 363-64 (2001) (noting general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause governed by the FAA).

When such questions of arbitrability arise, the trial court, not the arbitrator, decides whether a matter should be resolved through arbitration. *See Oxford Health Plans, LLC v. Sutter*, 569 U.S. ____ (2013) (noting questions of arbitrability are presumptively left for the court to decide); *Granite Rock Co. v. Int'l Bhd. Of Teamsters*, 561 U.S. 287, 296 (2010) (noting when such questions of arbitrability arise, the trial court, not the arbitrator, decides whether a matter should be resolved through arbitration); *AT & T Tech., Inc. v. Comm'n Workers of Am.*, 475 U.S. 643, 651 (1986). This 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, 644 S.E.2d 663 (2007) (noting where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place.); *Smith v. D.R. Horton, Inc.*, 403 S.C. 10, 742 S.E.2d 37 (Ct. App. 2013) ("When deciding a motion to compel arbitration under the SCUAA or the FAA, the court should look to the state law that ordinarily governs the formation of contracts in determining whether a valid arbitration agreement arose between the parties."); *see also* S.C. Code § 15-48-20 (a) (providing arbitration will be denied if a court determines no agreement to arbitrate existed).

applicable contract defenses"); *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 363-64 (2001) ("General contract principles of state law apply to arbitration clauses governed by the FAA").

Here, Plaintiffs do not consent to arbitration, and Plaintiffs present state-specific grounds challenging the legitimacy of TAMKO's arbitration provision. This Court agrees with Plaintiffs and finds South Carolina law invalidates TAMKO's arbitration provision in addition to TAMKO's other Warranty provisions.

B.) TAMKO's Warranty Provisions are Unconscionable and Unenforceable

Given the absence of meaningful choice necessarily involved in connection with TAMKO's Warranty, coupled with the one-sided nature of its "arbitration," "exclusion," "remedial" and "transferability" provisions, TAMKO's Warranty is unconscionable, and thus, unenforceable under South Carolina. S.C. Code § 15-48-20(a); *see also D.R. Horton*, 403 S.C. 10, 17, 742 S.E.2d 37, 41 (2013) *citing* S.C. Code § 36-2-302(1) (2003) ("[South Carolina] legislation permits this Court to refuse to enforce any unconscionable clause in a contract or to limit its application so as to avoid an unconscionable result.") (internal citations omitted).

Under our jurisprudence, "unconscionability" is defined to include both an absence of meaningful choice as well as oppressive, one-sided contractual provisions. *Simpson v. MSA of Myrtle Beach*, 373 S.C. 14, 25 644 S.E.2d 663, 668-69 (2007); *Carolina Care Plan, Inc. v. United Health Care Servs., Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004) (defining unconscionability 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.").

1.) Absence of Meaningful Choice

"Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue." *Id.* (citations omitted). "In determining whether a contract was 'tainted by an absence of meaningful choice,' courts

should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause." *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669 (citations omitted). "[U]nder general principles of state contract law, an adhesion contract is a standard form contract offered on a 'take-it-or-leave-it' basis with terms that are not negotiable." *Id.* at 373 S.C at 26-27, 644 S.E.2d at 669. In circumstances involving adhesion contracts, an absence of meaningful choice is readily apparent based upon the lack of bargaining power. Accordingly, adhesion contracts, such as commercial sales agreements and manufacturer warranties, are subject to "considerable skepticism" due to the disparity in bargaining positions of the parties. *Id.* at 27, 644 S.E.2d at 669. Consequently, "the presumption in favor of arbitration is substantially weaker when there are strong indications that the contract at issue is an adhesion contract, and the arbitration clause itself appears to be adhesive in nature. In this situation, there arises considerable doubt that any true agreement ever existed to submit disputes to arbitration." *Id.* at 26, 644 S.E.2d at 669 (citations omitted).

Here, Plaintiffs had no choice and no input as to any aspect of TAMKO's Warranty, including the Warranty's arbitration provisions. Given Plaintiffs are unsophisticated, lacked bargaining power and were presented with TAMKO's Warranty on a take it or leave it basis, there is clearly an absence of meaningful choice.⁹ *Simpson*, 373 S.C. at 27, 644 S.E.2d at 670 ("Applying the factors considered by the Fourth Circuit in analyzing arbitration clauses, we also acknowledge Simpson's claim that she did not possess the business judgment necessary to make her aware of the implications of the arbitration agreement. . . ."); *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 394, 498 S.E.2d 898, 901 (Ct. App. 1998) (recognizing a contract of

⁹ At the June 25th hearing of this Motion, TAMKO admitted the adhesiveness of its Warranty.

adhesion is generally thought of as a standard form contract, offered on a take-it-or-leave-it basis, containing non-negotiable terms). This is even more the case given TAMKO's arbitration and other related provisions result in (a) the loss of all monetary damages; (b) the loss of the right to a jury trial; (c) the loss of the ability to maintain a class action; and (d) the loss of other certain remedies otherwise allowed by South Carolina law including this Court's ability to adjudicate "arbitrability" questions.



As such, this Court cannot ignore the "adhesive" nature of these provisions - non-negotiable provisions which were drafted by TAMKO on a take it or leave it basis - and which functioned to contract away certain significant rights and remedies otherwise lawfully available to Plaintiffs. *Simpson*, 373 S.C. at 25, 644 S.E.2d at 668-69 ("Although this Court acknowledges that parties are always free to contract away their rights, we cannot, under the circumstances, ignore the inconspicuous nature of a provision, which was drafted by the superior party, and which functioned to contract away certain significant rights and remedies otherwise available to Simpson by law. . .").

2.) Oppressive/One-Sided Terms

Specifically as to oppressive terms, the South Carolina Court of Appeals in *Smith versus D.R. Horton* recently affirmed a trial court's decision finding the arbitration provision contained in a D.R. Horton purchase contract unconscionable and unenforceable due to the "cumulative effect" of partisan provisions. *Smith v. D.R. Horton, Inc.*, 403 S.C. 10, 15, 742 S.E.2d 37, 40 (Ct. App. 2013), *cert. granted* July 28, 2014. The trial court, confronted with a motion to compel arbitration brought by D.R. Horton, viewed the warranties and arbitration section of the purchase contract as a whole, finding it "referenced that certain disputes are to be resolved by mandatory binding arbitration along with an entire host of attempted waivers of important legal

remedies. . .” *Id.* Per its review, the court held the sections’ collective attempt to disclaim implied warranty claims was oppressive and unconscionable. *Id.* The court further found “perhaps even more stark [were] the provisions in the Limitations of Liability. . .” in which D.R. Horton claimed it was not liable for monetary damages of any kind. *Id.* Based upon the foregoing, the trial court concluded, and our Court of Appeals affirmed, the arbitration provision was “wholly unconscionable and unenforceable based on the cumulative effect of a number of oppressive and one-sided provisions.” *Id.*

Here, a review of TAMKO’s Warranty reveals strikingly similar warranty limitations and disclaimers to those addressed, and rejected, by the *D.R. Horton* Court. For example, TAMKO’s arbitration provides:

Mandatory Binding Arbitration: Every claim, controversy, or dispute of any kind whatsoever including whether any particular matter is subject to arbitration (each an “action”) between you and TAMKO (including any of TAMKO’s employees and agents) relating to or arising out of the product shall be resolved by final and binding arbitration, regardless of whether the action sounds in warranty, contract, statute or any other legal or equitable theory. . .

Any action brought by you against TAMKO will be arbitrated (or, if arbitration of the action is not permitted by law, litigated) individually and you will not consolidate, or seek class treatment for, any action unless previously agreed to in writing by both TAMKO and you.

“Perhaps even more stark,” the “Legal Remedies” and “Exclusion from Coverage”

Sections of TAMKO’s Warranty further provides, in pertinent part, as follows:

Exclusions from Coverage: TAMKO shall not be liable under any circumstances for. . .damages of any kind whatsoever. . .

Legal Remedies: . . .[T]his limited warranty is expressly in lieu of all other obligations, guarantees, warranties, and conditions expressed or implied, including any implied warranty or condition of merchantability of fitness for a particular purpose, and of any other obligations or liability on the part of TAMKO Building Products, Inc. In no event, shall TAMKO be liable for consequential or incidental damages of any kind. . . .

In other words, TAMKO's Warranty contains arbitration and remedial provisions which mirror the provisions found unconscionable in *D.R. Horton*:

D.R. Horton's Warranty	TAMKO's Warranty
Purported to be only warranty extended by Horton.	Purports to be only warranty extended by TAMKO.
Purported to disclaim all other warranties, express or implied, as to quality, fitness for particular purpose, merchantability and habitability.	Purports to disclaim all other obligations, guarantees, warranties, and conditions, express or implied, including any implied warranty or condition of merchantability or fitness for particular purpose, and of any other obligations or liability on the part of TAMKO.
Provided all disputes, of any kind, are subject to binding arbitration.	Provides all disputes, of any kind (including disputes regarding "arbitrability"), are subject to binding arbitration.
Provided Horton shall not be liable for monetary damages of any kind, including secondary, consequential, punitive, general, special or indirect damages.	Provides TAMKO shall not be liable, under any circumstance, for any damages whatsoever
Provided exclusions to warranty for landscaping.	Provides, among other exclusionary clauses, that TAMKO shall not be liable for damage to any building or any property contained therein. Provides that exposure of TAMKO Shingles at any time to winds in excess of 60 mph <i>extinguishes TAMKO's Liability</i>. Provides <i>neither Purchaser nor any other person may transfer</i> under its "transferability" provision.

Not only does the unconscionable language of TAMKO's Warranty mirror that of D.R. Horton's Warranty, TAMKO Warranty contains an additional provision which further operates

to wrongfully deprive consumer rights.¹⁰ Under our state law principles of contract interpretation, such limitations offered on a take it or leave it basis and which serve to wrongfully deprive substantial rights while concomitantly eviscerating all means of recovering any damages are unconscionable. Indeed, as noted by our Supreme Court in *Simpson*:

The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution. . . [T]his arbitration clause violates statutory law because it prevents Simpson from receiving the mandatory statutory remedies to which she may be entitled. . . Therefore, under the general rule, this provision in the arbitration clause is unenforceable. . . In conjunction with Simpson's lack of meaningful choice in agreeing to arbitrate, this provision is an unconscionable waiver of statutory rights, and therefore, unenforceable.

Simpson, 373 S.C. at 29-30, 644 S.E.2d at 671 (emphasis added).

Subsequently, the *D.R. Horton* Court reached a similar conclusion:

Relying on the supreme court's analysis in *Simpson*, we affirm the trial court's finding of unconscionability, *particularly in light of the lack of mutuality of remedy imposed by Section 14(i), which purported to exempt Horton from liability for monetary damages.*

D.R. Horton, 403 S.C. at 15, 742 S.E.2d at 40-41 (emphasis added).

As applied to One Belle Hall, TAMKO's Warranty provisions negates the very damages separately classified, calculated and contemplated as available under the Warranty's terms. Thus, contrary to TAMKO's contention, the TAMKO Warranty does not provide the Plaintiffs "the possibility of recovery" – there is no recovery to be had per the Warranty provisions drafted by TAMKO. Rather, The Warranty provisions create an internal inconsistency within the Warranty itself by negating all meaningful warranty coverage for the primary risk associated with said Warranty – damage arising out of or to TAMKO's Shingles. Like the defendants in both *D.R. Horton* and *Simpson*, TAMKO takes the position its Warranty relieves TAMKO of all liability for this very damage under any conceivable set of circumstances. This renders the Warranty (a) void

¹⁰TAMKO's Warranty also purports to restrict the Statute of Limitations to one year.

of its essential purpose; (b) lacking in mutuality; and (c) procedurally and substantively unconscionable.¹¹

Given such unconscionable provisions are unenforceable according to South Carolina law, this Court should deny TAMKO's Motion so as to avoid any unconscionable result irrespective of the FAA's application. *Id. citing* S.C. Code § 36-2-302(1) (2003) ("If a court as a matter of law finds any clause of a contract to have been unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause, or so limit its application so as to avoid any unconscionable result. . . ."); *see also* TAMKO Supporting Memorandum, p. 5 (noting the grounds for revocation of an arbitration agreement include "generally applicable contract defenses, such as fraud, duress or unconscionability. . .").

C.) The Warranty Provisions are Not Severable

While Courts are permitted to "sever" unconscionable, contractual provisions, the purported agreement between Plaintiffs and TAMKO is not a proper candidate for the application of this remedy. South Carolina Courts "recognize severability if 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. . .'" *Simpson*, 373 S.C. at 34, 542 S.E.2d at 673; *D.R. Horton, supra*, ("We conclude the

¹¹ Under our jurisprudence, such internal inconsistencies render TAMKO's Warranty inherently ambiguous and unconscionable, and therefore, this Court declines to enforce the same. In the insurance context, for example, the South Carolina Court of Appeals in *Isle of Palms Pest Control Company versus Monticello Insurance Company*, directly confronted a similar "internal inconsistency" issue, concluding as follows:

[T]he internal inconsistency created by [a policy exclusion] which purports to bar coverage for claims arising out of the very operation sought to be insured renders [the policy] ambiguous in favor of coverage.

319 S.C. 12, 19, 459 S.E.2d 318, 321 (Ct. App. 1994), *reh'g denied*, (Aug. 4, 1995 (emphasis added); *see also* *Hooters of Augusta, Inc. v. American Global Ins. Co.*, 272 F. Supp.2d 1365, 1378 (S.D. Ga. 2003) (noting "[i]nsurers must not deceive insurance purchasers into believing they have coverage only to have an exclusionary provision entirely nullify it").

arbitration clause in this case should not be severed from the numerous unconscionable provisions and particularly [D.R.] Horton's attempt to waive any seller liability for monetary damages of any kind, including secondary, consequential, punitive, general, special or indirect damages.") (internal citations omitted) (emphasis added); *see also Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165, 1180 (9th Cir. 2003) (finding arbitration agreement wholly unenforceable because of an "insidious pattern" of unconscionable provisions, and therefore "any earnest attempt to ameliorate the unconscionable aspects of [the] arbitration agreement would require [the] court to assume the role of contract author rather than interpreter"); *In re Cotton Yarn Antitrust Litig.*, 406 F.Supp.2d 585, 604 (M.D.N.C. 2005)("[W]here, as here, multiple provisions of the arbitration clauses are inconsistent with Plaintiffs' ability to effectively vindicate their statutory rights. . .the Court finds that the better course of action in this case is to excise the arbitration clauses altogether.").

Similar to *Simpson* and *D.R. Horton*, TAMKO's arbitration clause is "made unconscionable" by oppressive provisions which pervade the Warranty, thereby rendering "severability" impractical, if not impossible. Thus, all unconscionable provisions contained within TAMKO's Warranty should be read together, and all are ultimately rejected together by this Court.

CONCLUSION

Given this Court's authority to decide arbitrability issues, and this Court's authority to refuse to enforce unconscionable contract provisions under South Carolina law, this Court refuses to enforce TAMKO's Warranty limitations and disclaimers, including its arbitration provision, and thus, denies TAMKO's Motion. In sum, because (a) TAMKO's arbitration, exclusionary, remedial, and transferability provisions are wholly unconscionable and unenforceable as matter of South Carolina law; (b) the above-referenced provisions are made

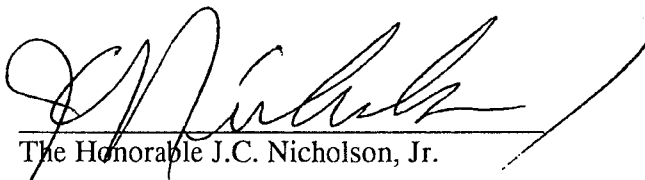
unconscionable and unenforceable due to the cumulative effect of a number of oppressive and one-sided Warranty terms under South Carolina law; (c) the above-referenced provisions are not severable from each other or from TAMKO's Warranty according to South Carolina law; and/or (d) TAMKO's Warranty is inherently ambiguous and void of its essential purpose, it is proper TAMKO's Motion is denied under South Carolina law.

Accordingly, it is hereby:

ORDERED, ADJUDGED, and DECREED that TAMKO'S Motion to Dismiss and Compel Arbitration is **DENIED**;

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that TAMKO'S Motion for Protective Order is moot, and therefore, **DISMISSED as moot**.

IT IS SO ORDERED.


The Honorable J.C. Nicholson, Jr.

This 15 day of Sept., 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10- <u>7594</u>
	)	
ONE BELLE HALL PROPERTY OWNERS	)	
ASSOCIATION, INC. and BRANDY RAMEY,	)	
individually, and on behalf of all others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
TRAMMELL CROW RESIDENTIAL; TCR	)	
NC CONSTRUCTION I, LP; BELLE HALL	)	
DIRECT 101, LP; TCR RLD	)	
CONDOMINIUMS, INC.; CS 101 BELLE	)	
HALL, LP; JANE DOE 1-5; FIRST	)	
EXTERIORS, LLC; AND JOHN DOE 1-60,	)	
	)	
Defendants.	)	

COMPLAINT
(Defective Construction)

(Jury Trial Demand)

FILED
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JUDGE J. ARMSTRONG
CLERK OF COURT

The Plaintiffs, One Belle Hall Property Owners Association, Inc. and Brandy Ramey, individually and on behalf of all others similarly situated, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

PARTIES AND JURISDICTIONAL STATEMENT

1. Plaintiff One Belle Hall Property Owners Association, Inc. ("POA") is a non-profit corporation organized and existing under the laws of the State of South Carolina.

2. The POA is the property owners association for the One Belle Hall Horizontal Property Regime.

3. The One Belle Hall Horizontal Property Regime is a Horizontal Property Regime ("One Belle Hall") which exists by virtue of a Master Deed dated December 11, 2006 and recorded December 12, 2006 in the RMC Office of Charleston County, SC in Book K608, Page 211.

4. One Belle Hall consists of fifty-nine (59) condominiums located in four (4) buildings and related common elements, which are located behind the Belle Hall shopping center in Mount Pleasant, South Carolina.

5. By virtue of governing documents and the South Carolina Horizontal Property Regime Act, S.C. Code § 27-31-10, *et. seq.*, the POA is charged with certain duties, powers, rights and authority in connection with One Belle Hall.

6. The POA is charged with, *inter alia*, the management and administration of One Belle Hall, the investigation, maintenance and repair of One Belle Hall's Common Elements and Areas of Responsibility, and has the right and obligation to bring this action on behalf of One Belle Hall, the POA, and the respective owners and members.

7. Plaintiff Ramey (hereinafter "Plaintiff Ramey") is a citizen of Charleston County, South Carolina and is an owner of a condominium within One Belle Hall more particularly described as 2100 Belle Isle Avenue, Unit 101, Mount Pleasant, South Carolina, 29464.

8. Plaintiff Ramey entered into a contract to purchase the above-described real property on or about October 2, 2009.

9. By virtue of property ownership in One Belle Hall, Plaintiff Ramey is a member of the POA, has been a member of the POA at all times relevant hereto, and has ownership and membership rights relating thereto.

10. Defendant Trammell Crow Residential ("Trammell Crow") is a company organized and existing under the laws of the State of Texas. At all times relevant to this action, Trammell Crow was engaged in the business of designing, developing, marketing, constructing, repairing and/or selling condominiums in Charleston County, South Carolina.

11. Defendant Belle Hall Direct 101, LP (hereinafter "Belle Hall Direct") is a limited partnership organized and existing under the laws of the State of Texas. At all times relevant to

this action, Belle Hall Direct was engaged in the business of designing, developing, marketing, constructing, repairing and/or selling condominiums in Charleston County, South Carolina.

12. Defendant TCR NC Construction I, LP (hereinafter "TCR Construction") is a limited partnership organized and existing under the laws of the State of Texas. At all times relevant to this action, TCR Construction was engaged in the business of designing, constructing and/or repairing condominiums in Charleston County, South Carolina.

13. Defendant TCR RLD Condominiums, Inc. (hereinafter "TCR Condominiums") is a corporation organized and existing under the laws of the State of Texas. At all times relevant hereto, TCR Condominiums was engaged in the business of designing, developing, marketing constructing, repairing and/or selling condominiums in Charleston County.

14. Defendant CS 101 Belle Hall, LP (hereinafter "CS 101") is a limited partnership organized and existing under the laws of the State of Texas. At all times relevant to this action, CS 101 was engaged in the business of designing, developing, marketing, constructing repairing and/or selling condominiums in Charleston County, South Carolina.

15. Defendants Trammel Crow, TCR Construction, TCR Condominiums and CS 101, were actual or *de facto* joint ventures, partners, contractors, members, managers, control persons, and/or agents of Belle Hall Direct and participated in the design, development, construction, repair, marketing and/or sale of One Belle Hall condominiums.

16. The address and identity of all Jane Doe Defendants are unknown at this time.

17. Defendants Jane Doe #1-5 (hereinafter "Jane Doe Defendants") are other TCR affiliates which were actual or *de facto* joint ventures, partners, managers, members, contractors, control persons, and/or agents of Belle Hall Direct and participated in the design, development, construction, repair, marketing and/or sale of One Belle Hall condominiums.

18. Defendants Belle Hall Direct, Trammell Crow, TCR Construction, TCR Condominiums, CS 101, and Jane Doe #1-5 (hereinafter collectively referred to as "TCR Defendants") comingled and combined their resources to develop, repair, market, sell, and place the One Belle Hall condominiums into the stream of commerce.

19. The TCR Defendants all use certain trade names interchangeably.

20. The TCR Defendants have been formed and operate so their legal distinction is blurred and they are amalgamated with each other and their principals.

21. Defendant First Exterior, LLC (hereinafter "First Exteriors") is a limited liability company organized and existing under the laws of the State of South Carolina. At all times relevant to this action, First Exteriors supplied materials, installed stucco and/or performed repairs, among other work, at One Belle Hall.

22. The address and identity of all John Doe Defendants are unknown at this time.

23. Defendants John Doe #1-60 (hereinafter "John Doe Defendants") are subcontractors and/or other entities involved in the design, development, marketing, construction, material manufacturing and/or supplying, repair, and/or sale of One Belle Hall.

24. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto and venue is proper in this forum.

FACTUAL ALLEGATIONS

25. This matter arises out of the design, development, construction, repair and sale of One Belle Hall.

26. At the time the Certificates of Occupancy were issued, One Belle Hall contained latent building defects.

27. Plaintiffs and class members have previously put the TCR Defendants on notice of some or many of the deficiencies. However, the TCR Defendants' repair attempts have failed.

28. The latent building defects in combination with fortuitous weather, repeated water intrusion and/or other events have resulted in consequential damage to other building components and other property.

29. A preliminary inspection of One Belle Hall evidences failure of one or more components the exterior building envelopes; water intrusion into and through the exterior building envelope; and resulting consequential damage to non-defective building components, structural members, and other property. Inspection also reveals failure of other various and sundry building components, with consequential damages resulting there from.

30. Defendants had a duty to design, develop, construct, and repair One Belle Hall in a workmanlike manner with suitable materials and free from all defects.

31. The aforementioned deficiencies and consequential damages evidence that Defendants breached their duties to Plaintiffs.

32. The Defendants' acts and omissions have resulted in building deficiencies, consequential damages, and partial loss of use and enjoyment.

33. Remedying the above-wrongs will result in additional consequential damages and loss of use.

34. As a direct and proximate result of Defendants' violation of their legal duties, Plaintiffs and class members have been proximately damaged in an amount to be determined by the trier of fact, and have had to incur a reasonable attorney's fees and costs for the retention of experts to determine the damage and the scope of work for repair.

35. Upon information and belief, the water intrusion and resulting consequential damages have occurred and have been occurring in each and every year since the completion of construction and constitute "occurrences" and "property damage" under the standard and/or typical general liability policies.

CLASS ACTION ALLEGATIONS

36. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Ramey brings this action both individually and as a proposed class action against Defendants on behalf of herself and all other similarly situated persons and entities, who own, per the class definition, a condominium within One Belle Hall (hereinafter collectively referred to as the "Class"). The Class is particularly defined as follows:

All persons and entities that own a condominium within One Belle Hall located in the Town of Mt. Pleasant, Charleston County, South Carolina.

Excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and their legal representatives, assigns and successors of Defendants and Defendants' current or former employees, investors, members, or officers and (c) all persons who properly execute and file a timely request for exclusion from the Class.

37. *Numerosity:* The Class is composed of in excess of fifty persons geographically dispersed throughout the State of South Carolina and the United States, 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 seventy members.

38. *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 construction and/or repair of One Belle Hall was defective;
- (b) Whether Defendants knew or should have known of the defects;
- (c) Whether Defendants successfully repaired building defects;
- (d) Whether Defendants know or should have known their repairs were unsuccessful;

- (e) Whether Defendants failed to disclose to purchasers and/or homeowners the defects and/or unsuccessful repairs;
- (f) Whether Defendants have acted or refused to act on grounds generally applicable to the Class;
- (g) Whether Defendants are financially responsible to pay the full costs and expenses of repair of said defective conditions;
- (h) Whether Defendants' expertise and superiority and financial interest in sales transactions gave rise to a duty to disclose the material facts which were concealed; thereby, giving rise to a claim for fraudulent concealment;
- (i) Whether Plaintiffs and the Class are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by other members of the Class for repair of their condominiums as well as repair/replacement of other property damage; (ii) temporary repairs and (iii) compensation for loss of use.
- (j) Whether Defendants negligently designed, developed constructed and/or repaired One Belle Hall;
- (k) Whether the Plaintiffs are entitled to prejudgment interest, attorneys' fees and costs from Defendants.

39. *Typicality*: Plaintiff's claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in designing, developing, constructing, repairing, and selling One Belle Hall, Ply Gem's conduct in concealing the defective condition of One Belle Hall, and Plaintiff's and Class Members' purchasing homes containing building defects.

40. *Adequate Representation*: Plaintiff Ramey will fairly and adequately protect the

interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff Ramey has retained counsel experienced in the prosecution of construction defect claims and complex litigation, including consumer class actions involving product liability and product design defects.

41. *Predominance and Superiority:* This class action is appropriate for certification because questions of law and fact common to the members of 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.

42. 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 One Belle Hall.

43. Plaintiff Ramey and the Class envision no unusual difficulty in the management of this action as a class action.

44. Each Class Member has an interest of more than \$100.00.

45. 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 AND TOLLING OF
APPLICABLE STATUTES OF LIMITATIONS**

46. Defendants are estopped from relying on any statutes of limitation or repose by virtue of its acts. Upon information and belief, Defendants should have known One Belle Hall was defectively constructed and failed to alert the Plaintiffs of One Belle Hall's defective condition.

47. Defendants had a duty to inform Plaintiffs of the defects described herein, which it should have known. Notwithstanding its duty, Defendants never disclosed the defects to Plaintiffs.

48. Despite exercising reasonable diligence, Plaintiffs could not have discovered the defective condition of One Belle Hall.

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

50. Defendants are further estopped from relying upon any statute of limitations as they have repeatedly represented to Plaintiffs that they are only responsible for correcting work for a period of one year after sale.

**ESTOPPEL FROM PLEADING ANY ANTI-SUIT PROVISIONS
CONTAINED IN ONE BELLE HALL'S MASTER DEED AND BY-LAWS**

51. The TCR Defendants are estopped from relying on any anti-suit provisions contained in One Belle Hall's Master Deed and By-Laws because said provisions are void pursuant to public policy and the Horizontal Property Regime Act and/or voidable as such constitutes a breach of the TCR Defendants' fiduciary duty to Plaintiffs.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

52. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

53. At all times relevant hereto, the Defendants, its agents, servants, employees, and subcontractors undertook and had a duty to Plaintiffs to exercise and use due care in the design, construction and repair of One Belle Hall in a good workmanlike manner and with suitable materials, in accordance with the applicable building codes, state law, good design, and in conformance with the prevailing industry standards.

54. Defendants breached their duties to Plaintiffs and the Class in a manner that was negligent, careless, reckless, willful, and wanton in the following particulars:

- (a) In designing, developing, constructing, repairing and selling, One Belle Hall with construction deficiencies including those previously identified;
- (b) In failing to construct One Belle Hall in accordance with due care and in accordance with standard building practices;
- (c) In failing to construct One Belle Hall in accordance with building code;
- (d) In failing to properly supervise the work and construction of One Belle Hall;
- (e) In failing to properly coordinate the subcontractors;
- (f) In failing to construct with an adequate exterior building envelope;
- (g) In failing to act as a reasonable person would in the circumstances then and there prevailing;
- (h) In covering up their own defective work and the defective work of others;
- (i) In failing to make proper repairs; and

(j) Such other failures to be proven at trial.

55. The violations of applicable building codes constitutes negligence *per se*.

56. Plaintiffs have been damaged as a direct and proximate result if the negligence, carelessness, recklessness, willfulness, and wantonness of the Defendants.

57. If it is shown that said failures were committed with gross negligence and/or reckless disregard for the rights of others, and/or constituted negligence *per se*, Plaintiffs are entitled to an award of punitive damages against the Defendants.

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

58. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

59. The design, construction, sale, and repair of One Belle Hall came with express and implied warranties that the work would be performed in a careful, diligent and workmanlike manner and that One Belle Hall would be constructed with suitable materials and components and free from all defects and be of superior quality befitting of an upscale condominium complex.

60. The design, construction, sale and/or repair of One Belle Hall, and the components used therein, came with implied warranties of fitness, merchantability, workmanship, and habitability.

61. Defendants have breached their warranties by constructing and/or repairing One Belle Hall in a defective manner as set forth above.

62. As a direct and proximate result of the Defendants' breach of the implied warranty, Plaintiff's have suffered actual and consequential damages.

FOR A THIRD CAUSE OF ACTION

(Strict Liability in Tort: *S.C. Code Ann. § 15-73-10 et seq.* as to First Exteriors and John Doe Defendants)

63. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

64. In manufacturing and supplying products for the construction of One Belle Hall, First Exteriors and the manufacturer and supplier John Doe Defendants placed products into the stream of commerce.

65. By introducing their products into the stream of commerce, First Exteriors and the manufacturer and supplier John Doe Defendants represented said products were safe and suitable for their foreseeable use.

66. In the manufacture and supply of products to One Belle Hall, First Exteriors and the manufacturer and supplier John Doe Defendants anticipate and expect that their products will reach the public in substantially the same condition in which they were designed, developed, constructed, and sold.

67. The John Doe Defendants have manufactured their products in a defective manner which has resulted in repeated water intrusion into and damage to One Belle Hall and other building deficiencies.

68. Plaintiffs could not have discovered the product defects through the exercise of reasonable care.

69. The cost of altering the design, construction, and/or repair of the products supplied to One Belle Hall was substantially less than the resulting damage, cost, and injury suffered by the Plaintiffs.

70. The design and manufacture of the products supplied to One Belle Hall was inherently defective as sold was a direct and proximate cause of the damages suffered by Plaintiffs.

71. First Exteriors and the manufacturer and supplier John Doe Defendants are therefore liable to Plaintiffs under the doctrine of strict liability in an amount to be determined by the trier of fact.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty as to TCR Defendants)

72. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

73. The TCR Defendants have a fiduciary relationship to the Plaintiff's by virtue of their capacity as the developer and steward of One Belle Hall and their former capacity controlling the POA.

74. The TCR Defendants promoted, created and maintained control of the POA and One Belle Hall for several years, and thus, had fiduciary duties they owed to the POA, its members and individual homeowners.

75. The TCR Defendants breached the fiduciary duties they owed to the Plaintiffs by:

- (a) failing to investigate defective conditions prior to handing over the property to the POA and the homeowners;
- (b) failing to disclose said defective conditions;
- (c) failing to properly repair said defective conditions prior to handing over the property to the POA and the homeowners; and

(d) turning over the property to the POA in said defective condition without depositing sufficient funds to the account of the POA to bring the elements up to a reasonable standard.

76. As a direct and proximate result of the TCR Defendants' breach of fiduciary duty, Plaintiffs have been damaged as hereinabove set forth and as to be further proven at trial.

FOR A FIFTH CAUSE OF ACTION
(Veil Piercing/Alter Ego/Amalgamation as to TCR Defendants)

77. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

78. The TCR Defendants are alter egos of each other, and therefore, liable for the actions of each other at One Belle Hall and any damages resulting from said actions.

79. The TCR Defendants operated together as joint venturers, partners, members, contractors and/or agents in the development, marketing, construction, repair and sale of One Belle Hall. As such, the TCR Defendant business entities are amalgamated in a manner in which they were all operating as one in the same.

80. The TCR Defendants were owned and operated by substantially the same principals and/or used the same trade names at all times relevant to the development, marketing, construction, repair and sale of One Belle Hall. Hence, the TCR Defendant business entities are amalgamated so as to blur the legal distinctions of said entities.

81. The corporate shield and identities of the TCR Defendants should be disregarded and personal liability imposed on the TCR Defendants' principals because no TCR Defendant is a bona fide business entity, but each exists merely as a shell to provide a personal shield to its principals.

82. The TCR Defendants failed to observe necessary corporate formalities, were undercapitalized, and/or were otherwise so intermingled that each has become and the alter ego of the other; that the corporations have never had nor do they now have any genuine or separate corporate existence, but have been used and exist for the primary purpose of permitting their principals to transact individual business under a corporate guise.

83. The TCR Defendants' conduct and abuse of the corporate form has resulted in fundamental unfairness to Plaintiffs.

84. As a result, the TCR Defendants' abuse of the corporate form makes it appropriate and just that any liability imposed on one TCR Defendant, be imposed upon the other Defendants and their principals.

FOR A SIXTH CAUSE OF ACTION
(Unfair Trade Practices as to TCR Defendants)

85. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

86. At all times relevant herein, the TCR Defendants engaged in the business of developing, designing, constructing, repairing and selling One Belle Hall into the stream of commerce.

87. The TCR Defendants were engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.

88. The TCR Defendants' above-described activities, including placing One Belle with defective design and construction into the stream of commerce, failing to properly repair defective conditions, failing to comply with the building code, and other acts to be shown through the course of discovery and at trial, constitute unfair and deceptive practices in the conduct of the TCR Defendants' trade.

89. The TCR Defendants' above-described acts are capable of repetition and adversely affect the public interest.

90. The TCR Defendants knew or should have known that their conduct was in violation of the S.C. Code Ann. § 39-5-20.

91. As a direct, foreseeable, and proximate result of the TCR Defendants' unfair trade practices in South Carolina, Plaintiffs have suffered significant damage.

FOR A SEVENTH CAUSE OF ACTION
(Declaratory Action/Reformation as to TCR Defendants)

82. Plaintiffs reallege the allegations, which are not inconsistent with this cause of action and are, contained in the above paragraphs as if fully set forth herein.

83. The anti-suit provisions of the One Belle Hall Master Deed are in violation of public policy, statutory law and/or provisions of the Constitution, and the TCR Defendants' fiduciary duties.

84. Plaintiffs are entitled to a declaration by this Court that the anti-suit provisions included within the Master Deed by the TCR Defendants are in violation of statutory law and/or provisions in the Constitution and are therefore void and/or require reformation to eliminate the subject provisions.

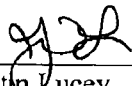
85. As the provisions in the Master Deed are severable, the Plaintiffs are entitled to a declaration by this Court that the anti-suit provisions are severable from the other terms of the Master Deed.

86. Plaintiffs are also entitled to have ambiguous and contradictory provisions in the Master Deed construed against the TCR Defendants and/or reformed by the Court to more accurately reflect the reasonable expectations of the POA and Homeowners.

WHEREFORE, Plaintiffs demand a trial by jury and pray actual and consequential damages; statutory or punitive damages expected to exceed ten million dollars; reasonable attorneys' fees; costs of suit; and prejudgment interest; declaration/reformation of the Master Deed; and granting such further relief as the Court deems just and proper.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By: 

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Dabny Lynn
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Post Office Box 806
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November 19, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ONE BELLE HALL PROPERTY OWNERS)
ASSOCIATION, INC. and BRANDY)
RAMEY, individually, and on behalf of all)
others similarly situated,)

Plaintiffs,)

vs.)

Trammell Crow Residential Company; TCR)
NC Construction I, LP; Belle Hall Direct 101,)
LP; TCR RLD Condominiums, Inc.; CS 101)
Belle Hall, LP; TCR Southeast, Inc.; TCR)
Carolina Properties, Inc.; TCR SE)
Construction, Inc.; TCR SE Construction II,)
Inc.; TCR Construction, a division of)
Trammell Crow Residential; TCR)
Development, a division of Trammell Crow)
Residential; Trammell Crow Residential)
Carolina, a division of Trammell Crow)
Residential; and Tauer Consulting Company,)
Inc., a division of Trammell Crow Residential,)
each individually, and collectively d/b/a)
"Trammell Crow Residential," "Trammell)
Crow" or "TCR"; Halter Properties, LLC;)
Halter Realty, LLC; and Halter Realty Group,)
LLC, each individually, and collectively d/b/a)
"Halter Companies"; Jane Doe 1-5; ABG)
Caulking & Waterproofing of Morristown, Inc.)
a/k/a ABG Caulking Contractors; Advanced)
Building Products & Services, LLC; BASF)
Corporation; Budget Mechanical Plumbing,)
Inc.; Builders First Source – Southeast Group,)
LLC; Builders Services Group, Inc.,)
individually, and d/b/a Gale Contractor)
Services, Inc.; Century Fire Protection, LLC;)
Cline Design Associates, P.A. and Gary D.)
Cline; Coastal Lumber & Framing, LLC;)
Dodson Brothers Exterminating Co., Inc. a/k/a)
Dodson Pest Control; First Exteriors, LLC;)
Flooring Services, Inc.; General Heating & Air)
Conditioning Company of Greenville, Inc.)

IN THE COURT OF COMMON PLEAS)
FOR THE NINTH JUDICIAL CIRCUIT)
CASE NO. 2012-CP-10-7594)

AMENDED COMPLAINT
(Defective Construction)

(Jury Trial Demanded)

FILED
2013 DEC 30 PM 1:45
JULIE L. ARMSTRONG
CLERK OF COURT

d/b/a General Heating and Air; Jimmy Warner,)
 individually, and d/b/a Warner Heating & Air;)
 Glazing Consultants, Inc.; GWC Roofing, Inc.,)
 individually, and d/b/a Southcoast Exteriors,)
 Inc.; Houston Stafford Electrical Contractors,)
 LP a/k/a IES Residential, Inc. d/b/a Houston)
 Stafford Electric; KMAC of the Carolinas,)
 Inc.; P&P Metal Sales Co., Inc. a/k/a P&P)
 Metal Sales, LLC a/k/a P&P Metal Sales, Inc.)
 a/k/a Carolina Metals; Pleasant Places, Inc.;)
 Raymond Building Supply Corporation d/b/a)
 Energy Saving Products of Florida, Inc. a/k/a)
 Energy Saving Products of Florida; Southern)
 Specialties, Inc.; Structural Contractors South,)
 Inc.; Superior Construction Services, Inc.,)
 individually, and d/b/a Superior Masonry)
 Unlimited, Inc.; TAMKO Building Products,)
 Inc. f/k/a TAMKO Roofing Products, Inc.;)
 VNS Corporation, individually, and d/b/a)
 Wholesale Building Products f/k/a Wholesale)
 Building Materials, Inc.; What Don't We Do;)
 and John Doe 1-25,)
)
 Defendants.)
)

The Plaintiffs, One Belle Hall Property Owners Association, Inc., and Brandy Ramey,
 individually, and on behalf of all others similarly situated, complaining of the Defendants named
 herein, would respectfully allege and show the Court as follows:

PARTIES AND JURISDICTIONAL STATEMENT

1. Plaintiff One Belle Hall Property Owners Association, Inc. ("POA") is a non-profit corporation organized and existing under the laws of the State of South Carolina.
2. The POA is the property owners association for the One Belle Hall Horizontal Property Regime.

3. The One Belle Hall Horizontal Property Regime is a Horizontal Property Regime ("One Belle Hall") which exists by virtue of a Master Deed dated December 11, 2006 and recorded December 12, 2006 in the RMC Office of Charleston County, SC in Book K608, Page 211.

4. One Belle Hall consists of fifty-nine (59) condominiums located in four (4) buildings and related common elements, which are located behind the Belle Hall shopping center in Mount Pleasant, South Carolina.

5. By virtue of governing documents and the South Carolina Horizontal Property Regime Act, S.C. Code § 27-31-10, *et. seq.*, the POA is charged with certain duties, powers, rights and authority in connection with One Belle Hall.

6. The POA is charged with, *inter alia*, the management and administration of One Belle Hall, the investigation, maintenance and repair of One Belle Hall's Common Elements and Areas of Responsibility, and has the right and obligation to bring this action on behalf of One Belle Hall, the POA, and the respective owners and members.

7. Plaintiff Ramey (hereinafter "Plaintiff Ramey") is a citizen of Charleston County, South Carolina and is an owner of a condominium within One Belle Hall more particularly described as 2100 Belle Isle Avenue, Unit 101, Mount Pleasant, South Carolina, 29464.

8. By virtue of property ownership in One Belle Hall, Plaintiff Ramey and the Class (hereinafter collectively referred to as "Plaintiffs") are members of the POA, have been members of the POA at all times relevant hereto, and have ownership and membership rights relating thereto.

9. Defendant Trammell Crow Residential Company is a company organized and existing under the laws of the State of Delaware.

10. Defendant TCR Carolina Properties, Inc. is a corporation organized under the laws of the State of Texas, and represented that it was an owner of the One Belle Hall project.

11. Defendant Belle Hall Direct 101, LP is a limited partnership organized and existing under the laws of the State of Texas. At all times relevant to this action, Belle Hall Direct 101, LP was a single purpose entity through which the TCR Defendants' attempted to coordinate their development efforts and was the named seller of One Belle Hall condominiums.

12. Defendant CS 101 Belle Hall, LP is a limited partnership organized and existing under the laws of the State of Texas, and is/was represented as a general partner of Belle Hall Direct 101, LP.

13. Defendant TCR RLD Condominiums, Inc. is a corporation organized and existing under the laws of the State of Texas, and is/was represented as a general partner of CS 101 Belle Hall, LP.

14. Defendant TCR SE Construction, Inc. is a company organized under the laws of the State of Texas, and is/was represented as a general partner of Belle Hall Direct 101, LP.

15. Defendant TCR NC Construction I, LP is a limited partnership organized and existing under the laws of the State of Texas. At all times relevant to this action, TCR NC Construction I, LP was the entity through which the TCR Defendants' attempted to effect their construction efforts and was the named general contractor for One Belle Hall.

16. Defendant TCR SE Construction II, Inc. is a company organized under the laws of the State of Texas, and is/was represented as a partner and/or agent of TCR NC Construction I, LP.

17. Defendant TCR Southeast, Inc. is a company organized under the laws of the State of Texas.

18. Defendant Tauer Consulting Company, Inc., a division of Trammell Crow Residential, is a corporation organized under the laws of the State of Georgia. At all times relevant to this action, Tauer Consulting Company, Inc. served as the punch supervisor and sales coordinator, among providing other services, for One Belle Hall.

19. Defendant Trammell Crow Residential Carolina is a division of Trammell Crow Residential and/or is an entity comprised of "TCR" employees, agents and/or affiliates.

20. Defendant TCR Construction is a division of Trammell Crow Residential and/or is an entity comprised of "TCR" employees, agents and/or affiliates.

21. Defendant TCR Development is a division of Trammell Crow Residential and/or is an entity comprised of "TCR" employees, agents and/or affiliates.

22. The foregoing Defendants, and their divisions and affiliates, operated under the trade names "Trammell Crow Residential," "Trammell Crow," "TCR," and similar names (herein collectively referred to as the "TCR Defendants"), and at all times relevant to this action, the TCR Defendants coordinated, performed, directed, managed, controlled, supervised and/or otherwise participated in the design, development, marketing, construction, sale and/or repair of One Belle Hall.

23. The TCR Defendants operated together as actual or *defacto* joint venturers, partners, and agents of each other in the design, development, marketing, construction, sale and/or repair of One Belle Hall (the design, development, marketing, construction, sale and/or repair of One Belle Hall hereinafter collectively referred to as the "One Belle Hall Project").

24. At all times material hereto, the TCR Defendants operated a joint enterprise for the common, for-profit purpose of the One Belle Hall Project.

25. The TCR Defendants acted as agents of each other in connection with the One Belle Hall Project.
26. The TCR Defendants have acted collectively and in such manner that the distinction between the TCR Defendants has been blurred and the TCR Defendants should be amalgamated as a single entity.
26. The TCR Defendants have failed to observe corporate formalities and their corporate shells should be disregarded and all TCR Defendants should be held liable for Plaintiffs' damage.
27. Defendant Halter Properties, LLC is a limited liability company organized and existing under the laws of the State of Georgia.
28. Defendant Halter Realty, LLC is a limited liability company organized and existing under the laws of the State of Georgia.
29. Defendant Halter Realty Group, LLC is a limited liability company organized and existing under the laws of the State of Georgia.
30. The foregoing Halter Defendants, their divisions and affiliates, operated under the trade name "Halter Companies" and similar names (herein collectively referred to as the "Halter Defendants"), and at all times relevant to this action, the Halter Defendants coordinated, performed, directed, managed, controlled, supervised and/or otherwise participated in the development and construction of One Belle Hall.
31. The Halter Defendants operated together as actual or *defacto* joint venturers, partners and agents of each other in the One Belle Hall Project.
32. At all times material hereto, the Halter Defendants operated a joint enterprise for the common, for-profit purpose of the One Belle Hall Project.

33. The Halter Defendants acted as agents of each other in connection with the One Belle Hall Project.

34. The Halter Defendants have acted collectively and in such manner that the distinction between the Halter Defendants has been blurred and the Halter Defendants should be amalgamated as a single entity.

35. The Halter Defendants have failed to observe corporate formalities and their corporate shells should be disregarded and all Halter Defendants should be held liable for Plaintiffs' damage.

36. The TCR Defendants and the Halter Defendants were actual or *de facto* joint ventures and/or partners, control persons, and/or agents of each other in the One Belle Hall Project.

37. Defendants Jane Doe #1-5 (hereinafter "Jane Doe Defendants") are other TCR and/or Halter affiliates which were actual or *de facto* joint venturers and/or partners, control persons, and/or agents of each other in the One Belle Hall Project, whose addresses and identities are unknown at this time.

38. The TCR Defendants, the Halter Defendants and Jane Doe #1-5 comingled and combined their resources to develop, repair, market, sell, and place the One Belle Hall condominiums into the stream of commerce.

39. Defendant Cline Design Associates, P.A. (hereinafter "Cline Design") is a professional corporation organized and existing under the laws of the State of North Carolina. At all times relevant to this action, Cline Design served as the architect for the construction of One Belle Hall.

40. Defendant Gary D. Cline (hereinafter "Gary Cline") is a registered architect in the State of South Carolina who executed and sealed the plans for the construction of One Belle Hall.

41. Defendant Glazing Consultants, Inc. (hereinafter "GCI") is a corporation organized and existing under the laws of the State of Florida. At all times relevant to this action, GCI provided consulting services and quality assurance inspections, among other work, at One Belle Hall.

42. Defendant ABG Caulking & Waterproofing of Morristown, Inc. a/k/a ABG Caulking Contractors (hereinafter "ABG") is a corporation organized and existing under the laws of the State of Tennessee. At all times relevant to this action, ABG supplied materials, installed caulking and/or performed repairs, among other work, at One Belle Hall.

43. Defendant BASF Corporation (hereinafter "BASF") is a corporation organized and existing under the State of Delaware. At all times relevant to this action, BASF supplied stucco, among other building components, at One Belle Hall.

44. Defendant Builders First Source – Southeast Group, LLC (hereinafter "BFS") is a limited liability company organized and existing under the laws of the State of Delaware. At all times relevant to this action, BFS supplied windows, among other building components, at One Belle Hall.

45. Defendant Builders Services Group, Inc., individually, and d/b/a Gale Contractor Services, Inc. (hereinafter "Gale") is a corporation organized and existing under the laws of the State of Florida. At all times relevant to this action, Gale supplied materials, installed garage doors and/or performed repairs, among other work, at One Belle Hall.

46. Defendant Budget Mechanical Plumbing, Inc. (hereinafter "Budget Plumbing") is a limited liability company organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Budget Plumbing supplied materials, installed plumbing, condensate lines and/or performed repairs, among other work, at One Belle Hall.

47. Defendant Century Fire Protection, LLC (hereinafter "Century Fire") is a limited liability corporation organized and existing under the laws of the State of Delaware. At all times relevant to this action, Century Fire provided and/or installed fire protection and firestopping, among other work, at One Belle Hall.

48. Defendant Coastal Lumber and Framing, LLC (hereinafter "Coastal Framing") is a limited liability company organized under the laws of the State of Florida. At all times relevant to this action, Coastal Framing supplied materials, framed structures and/or performed repairs, among other work, at One Belle Hall.

49. Defendant Advanced Building Products & Services, LLC (hereinafter "ABP&S") is a limited liability company organized under the laws of the State of Florida. At all times relevant to this action, ABP&S operated under a profit sharing agreement with Coastal Framing by which ABP&S was an actual or *de facto* joint venturer, partner, manager, and/or agent of Coastal Framing in the supply of materials, among other work, at One Belle Hall.

50. Defendant Dodson Brothers Exterminating Co., Inc. a/k/a Dodson Pest Control ("Dodson") is a corporation organized and existing under the laws of the State of Virginia. At all times relevant to this action, Dodson provided termite treatment, among other work, at One Belle Hall.

51. Defendant First Exterior, LLC (hereinafter "First Exteriors") is a limited liability company organized and existing under the laws of the State of South Carolina. At all times

relevant to this action, First Exteriors supplied materials, installed stucco and/or performed repairs, among other work, at One Belle Hall.

52. Defendant Flooring Services, Inc. (hereinafter "Flooring Services") is a limited liability company organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Flooring Services supplied materials, installed flooring and/or performed repairs, among other work, at One Belle Hall.

53. Defendant General Heating & Air Conditioning Company of Greenville, Inc. d/b/a General Heating and Air (hereinafter "General Heating") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, General Heating supplied materials, installed heating and air conditioning ("HVAC") and/or performed repairs, among other work, at One Belle Hall.

54. Defendant Jimmy Warner d/b/a Warner Heating & Air (hereinafter "Jimmy Warner") is a business entity with its principal place of business located in Rockhill County, South Carolina. At all times relevant to this action, Jimmy Warner was a subcontractor of General Heating and supplied materials, installed heating and air conditioning ("HVAC") and/or performed repairs, among other work, at One Belle Hall.

55. Defendant GWC Roofing Company, Inc., individually, and d/b/a Southcoast Exteriors, Inc. (hereinafter "GWC") is a corporation organized under the laws of the State of North Carolina. At all times relevant to this action, GWC supplied materials, installed roofing and/or performed repairs, among other work, at One Belle Hall.

56. Defendant Houston Stafford Electrical Contractors, LP a/k/a IES Residential, Inc. d/b/a Houston Stafford Electric (hereinafter "Houston Stafford") is a limited partnership organized and existing under the laws of the State of Texas. At all times relevant to this action,

Houston Stafford supplied materials, installed electrical systems and/or performed repairs, among other work, at One Belle Hall.

57. Defendant KMAC of the Carolinas, Inc. (hereinafter "KMAC") is a corporation organized and existing under the laws of the State of North Carolina. At all times relevant to this action, KMAC supplied materials, installed gypcrete and waterproofing and/or performed repairs, among other work, at One Belle Hall.

58. Defendant P&P Metal Sales Co., Inc. a/k/a P&P Metal Sales a/k/a P&P Metal Sales, Inc. d/b/a Carolina Metals, Inc. (hereinafter "P&P Metal") is a corporation organized and existing under the laws of the State of North Carolina. At all times relevant to this action, P&P Metal supplied materials, installed aluminum porch railings and/or performed repairs, among other work, at One Belle Hall.

59. Defendant Pleasant Places, Inc. (hereinafter "Pleasant Places") is a corporation organized under the laws of the State of South Carolina. At all times relevant to this action, Pleasant Places supplied materials, installed irrigation and landscaping and/or performed repairs, among other work, at One Belle Hall.

60. Defendant Raymond Building Supply Corporation d/b/a Energy Saving Products of Florida, Inc. a/k/a Energy Saving Products of Florida, a division of Raymond Building Supply Corporation (hereinafter "ESP") is a corporation organized under the State of Florida. At all times relevant to this action, ESP supplied windows, among other building components, at One Belle Hall.

61. Defendant RS Custom Homes, LLC (hereinafter "RS Custom") is a limited liability company organized and existing under the laws of the State of South Carolina. At all

times relevant to this action, RS Custom supplied materials, installed stucco and/or performed repairs, among other work, at One Belle Hall.

62. Defendant Southern Specialties, Inc. (hereinafter "Southern Specialties") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Southern Specialties supplied materials, installed insulation, gutters and downspouts and/or performed repairs, among other work, at One Belle Hall.

63. Defendant Structural Contractors South, Inc. (hereinafter "Structural Contractors") is a corporation organized and existing under the laws of the State of Florida. At all times relevant to this action, Structural Contractors supplied materials, performed punch labor and/or performed repairs, among other work, at One Belle Hall.

64. Defendant Superior Construction Services, Inc., individually, and d/b/a Superior Masonry Unlimited, Inc. (hereinafter "Superior") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Superior supplied materials, installed brick veneer and/or performed repairs, among other work, at One Belle Hall.

65. Defendant TAMKO Building Products, Inc. f/k/a TAMKO Roofing Products, Inc. (hereinafter "TAMKO") is a corporation organized and existing under the State of Missouri. At all times relevant to this action, TAMKO supplied shingles, among other building components, at One Belle Hall.

66. Defendant VNS Corporation, individually, and d/b/a Wholesale Business Products f/k/a Wholesale Building Materials, Inc. (hereinafter "VNS") is a corporation organized and existing under the laws of the State of Georgia. At all times relevant to this action, VNS supplied materials and installed interior finishes, accessories and/or bath fixtures, among other work, at One Belle Hall.

67. Defendant What Don't We Do (hereinafter "WDWD") is business entity with its principal place of business located in Horry County, South Carolina. At all times relevant to this action, WDWD supplied materials and/or performed window repairs, among other work, at One Belle Hall.

68. Defendants John Doe #1-25 (hereinafter "John Doe Defendants") are other subcontractors, professionals and/or other entities involved in the design, development, marketing, construction, material manufacturing and/or supplying, repair, and/or sale of One Belle Hall, whose addresses and identities are unknown at this time.

FACTUAL ALLEGATIONS

69. This matter arises out of the design, development, construction, repair and sale of One Belle Hall.

70. At the time the Certificates of Occupancy were issued, One Belle Hall contained latent building defects.

71. Plaintiffs and class members have previously put the TCR Defendants on notice of some or many of the deficiencies.

72. The TCR Defendants attempted to repair One Belle Hall's defective condition, but said attempts have failed and/or were otherwise negligently performed.

73. The latent building defects in combination with fortuitous weather, repeated water intrusion and/or other events have resulted in consequential damage to other building components and other property.

74. A preliminary inspection of One Belle Hall evidences failure of one or more components of the exterior building envelopes; water intrusion into and through the exterior building envelope; and resulting consequential damage to non-defective building components,

structural members, and other property. Inspection also reveals failure of other various and sundry building components, with consequential damages resulting there from.

75. Defendants had a duty to design, develop, construct, and repair One Belle Hall in a workmanlike manner with suitable materials and free from all defects.

76. The aforementioned deficiencies and consequential damages evidence that Defendants breached their duties to Plaintiffs.

77. The Defendants' acts and omissions have resulted in building deficiencies, consequential damages, and partial loss of use and enjoyment.

78. Remedying the above-wrongs will result in additional consequential damages and loss of use.

79. As a direct and proximate result of Defendants' violation of their legal duties, Plaintiffs and class members have been proximately damaged in an amount to be determined by the trier of fact, and have had to incur a reasonable attorney's fees and costs for the retention of experts to determine the deficiencies, damage and the scope of work for repair.

80. Upon information and belief, the water intrusion and resulting consequential damages have occurred and have been occurring in each and every year since the completion of construction and constitute "occurrences" and "property damage" under the standard and/or typical general liability policies.

CLASS ACTION ALLEGATIONS

81. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Ramey brings this action both individually and as a proposed class action against Defendants on behalf of themselves and all other similarly situated persons and entities, who own, per the class definition, a condominium within One Belle

Hall (hereinafter collectively referred to as the "Class"). The Class is particularly defined as follows:

All persons and entities that own a condominium within One Belle Hall located in the Town of Mt. Pleasant, Charleston County, South Carolina.

Excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and their legal representatives, assigns and successors of Defendants and Defendants' current or former employees, investors, members, or officers and (c) all persons who properly execute and file a timely request for exclusion from the Class.

82. *Numerosity:* The Class is composed of in excess of sixty persons geographically dispersed throughout the State of South Carolina, 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 seventy-five members.

83. *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 construction of One Belle Hall was defective;
- (b) Whether Defendants negligently designed, developed constructed and/or repaired One Belle Hall;
- (c) Whether Defendants knew or should have known of the defects;
- (d) Whether the Defendants' repair of One Belle Hall was defective;
- (e) Whether Defendants failed to disclose to purchasers and/or homeowners the defects and/or unsuccessful repairs;
- (f) Whether Defendants are financially responsible to pay the full costs and expenses of

repair of said defective conditions;

- (g) Whether Defendants' expertise and superiority and financial interest in sales transactions gave rise to a duty to disclose the material facts which were negligently concealed;
- (h) Whether Plaintiff and the Class are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by members of the Class for repair/replacement of other property damage; (ii) temporary repairs and (iii) compensation for loss of use; and
- (i) Whether the Plaintiff and the Class are entitled to prejudgment interest, attorneys' fees and costs from Defendants.

84. *Typicality*: Plaintiff's claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in designing, developing, constructing, repairing, and selling One Belle Hall, Defendants' conduct in concealing the defective condition of One Belle Hall, and Plaintiff's and Class Members' purchasing homes containing building defects.

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

86. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of 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.

87. 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 One Belle Hall.

88. Plaintiff and the Class envision no unusual difficulty in the management of this action as a class action.

89. Each Class Member has an interest of more than \$100.00.

90. The amount of money at stake for each Class Member may not be sufficient for each member to hire their own counsel and engineers and bring their own action.

**ESTOPPEL FROM PLEADING AND TOLLING OF
APPLICABLE STATUTES OF LIMITATIONS**

91. Defendants are estopped from relying on any statutes of limitation or repose by virtue of its acts. Defendants, in the exercise of required diligence, which negligently failed to occur, should have known One Belle Hall was negligently constructed and/or repaired and failed to alert the Plaintiffs of One Belle Hall's defective condition.

92. Defendants had a duty to inform Plaintiffs of the defects described herein, which

it should have known. Notwithstanding its duty, Defendants never disclosed the defects to Plaintiffs.

93. Despite exercising reasonable diligence, Plaintiffs could not have discovered the defective condition of One Belle Hall.

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

95. Defendants are further estopped from relying upon any statute of limitations as they have repeatedly represented to Plaintiffs that they are only responsible for correcting work for a period of one year after sale.

ESTOPPEL FROM PLEADING WARRANTY OBLIGATION

96. Defendants are also estopped from relying on any warranty obligation as a defense to Plaintiffs' claims.

97. By virtue of Defendants' acts, the work performed and/or materials supplied at One Belle Hall have not lived up to Defendants' warranties and representations, and given the defective condition of One Belle Hall and the premature deterioration of the life expectancy of One Belle Hall's building components that require unexpected maintenance, wear and/or replacement, the building components have not proven to be of value when compared to other building components.

98. Defendants in the exercise of required diligence, which negligently failed to occur, should have known that One Belle Hall was defective in design, construction and/or

repair, and its building components were not fit for their ordinary and intended use, were not merchantable, and failed to perform in accordance with the advertisements, marketing materials and warranties disseminated by Defendants or with the reasonable expectations of ordinary consumers such as Plaintiffs and the Class.

99. Accordingly, any warranty provided by Defendants fails its essential purpose because its purports to warrant that One Belle Hall and/or its building components will be free from defects for a limited period of time when in fact One Belle and/or its building components fail far short of the expected life cycle of the condominium buildings.

100. Moreover, Defendants' warranties are woefully inadequate to repair and replace failed building components, let alone reimburse for any damage suffered to the underlying structure due to the inadequate protection provided by the product. The remedies available Defendants' warranties are limited to such an extent that they do not provide a minimum adequate remedy.

101. As a result, any time limitations on the remedies encompassed within Defendants' warranties are unconscionable and unenforceable, and therefore, Defendants are estopped from relying on the same.

ESTOPPEL FOR PLEADING NOTICE OF OPPORTUNITY TO CURE

106. The TCR Defendants are further estopped from relying on the Notice of Opportunity to Cure Act to stay the progression of Plaintiffs' claims.

107. The TCR Defendants were put on sufficient notice of One Belle Hall's defective condition within any statutory period prescribed by the Act.

108. In addition, the TCR Defendants were provided an opportunity to cure One Belle Hall's defective condition previously, but failed to adequately perform.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

109. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

110. At all times relevant hereto, the Defendants, its agents, servants, employees, and subcontractors undertook and had a duty to Plaintiffs to exercise and use due care in the design, construction and repair of One Belle Hall in a good workmanlike manner and with suitable materials, in accordance with the applicable building codes, state law, good design, and in conformance with the prevailing industry standards.

111. Defendants breached their duties to Plaintiffs and the Class in a manner that was negligent, careless, reckless, and wanton in the following particulars:

- (a) In designing, developing, constructing, repairing and selling, One Belle Hall with construction deficiencies including those previously identified;
- (b) In failing to construct One Belle Hall in accordance with due care and in accordance with standard building practices;
- (c) In failing to construct One Belle Hall in accordance with building code;
- (d) In failing to properly supervise the work and construction of One Belle Hall;
- (e) In failing to properly coordinate the subcontractors;
- (f) In failing to construct with an adequate exterior building envelope;
- (g) In failing to act as a reasonable person would in the circumstances then and there prevailing;
- (h) In negligently covering up their own defective work and the defective work of others;

- (i) In failing to make proper repairs; and
- (j) Such other failures to be proven at trial.

112. Plaintiffs have been damaged as a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of the Defendants.

113. If it is shown that said failures were committed with gross negligence and/or reckless disregard for the rights of others, and/or constituted negligence per se, Plaintiffs are entitled to an award of punitive damages against the Defendants.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to All Defendants)

114. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

115. The design, construction, sale, and repair of One Belle Hall came with express and implied warranties that the work would be performed in a careful, diligent and workmanlike manner and that One Belle Hall would be constructed with suitable materials and components and free from all defects and be of superior quality befitting of an upscale condominium complex.

116. The design, construction, sale and/or repair of One Belle Hall, and the components used therein, came with implied warranties of fitness, merchantability, workmanship, and habitability.

117. Defendants have breached their warranties by designing, constructing, and/or repairing One Belle Hall in a defective manner as set forth above.

118. As a direct and proximate result of the Defendants' breach of the implied warranty, Plaintiffs have suffered actual and consequential damages.

FOR A THIRD CAUSE OF ACTION

(Strict Liability in Tort: *S.C. Code Ann. § 15-73-10 et seq.* as to BAFS, BFS, ESP and TAMKO)

116. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

117. Defendant ESP manufactured the windows installed during the construction and/or repair of One Belle Hall.

118. Defendant BFS supplied the ESP windows installed during the construction and/or repair of One Belle Hall.

119. Defendant TAMKO manufactured and/or supplied the shingles installed during the construction and/or repair of One Belle Hall.

120. Defendant BASF manufactured and/or supplied the stucco installed during the construction and/or repair of One Belle Hall.

121. In manufacturing and/or supplying products for the construction and/or repair of One Belle Hall, the aforementioned Defendants placed products into the stream of commerce.

122. By introducing their products into the stream of commerce, the aforementioned Defendants represented said products were safe and suitable for their foreseeable use.

123. In the manufacture and/or supply of products to One Belle Hall, the aforementioned Defendants anticipate and expect that their products will reach the public in substantially the same condition in which they were designed, developed, constructed, and sold.

124. The aforementioned Defendants have manufactured and/or sold products in a defective manner which has resulted in repeated water intrusion into and damage to One Belle Hall and other building deficiencies.

125. Plaintiffs could not have discovered the product defects through the exercise of reasonable care.

126. The cost of altering the design, construction, and/or repair of the products supplied to One Belle Hall was substantially less than the resulting damage, cost, and injury suffered by the Plaintiffs.

127. The design and manufacture of the products supplied to One Belle Hall was inherently defective as sold was a direct and proximate cause of the damages suffered by Plaintiffs.

128. The aforementioned Defendants are therefore liable to Plaintiffs under the doctrine of strict liability in an amount to be determined by the trier of fact.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty as to the TCR Defendants)

129. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

130. The TCR Defendants have a fiduciary relationship to the Plaintiffs by virtue of their capacity as the developer and steward of One Belle Hall and their former capacity controlling the POA.

131. The TCR Defendants promoted, created and maintained control of the POA and One Belle Hall for several years, and thus, had fiduciary duties they owed to the POA, its members and individual homeowners.

132. The TCR Defendants breached the fiduciary duties they owed to the Plaintiffs by:

- (a) failing to investigate defective conditions prior to handing over the property to the POA and the homeowners;
- (b) failing to disclose said defective conditions;

- (c) failing to properly repair said defective conditions prior to handing over the property to the POA and the homeowners; and
- (d) permitting TCR to turn over the property to the POA in said defective condition without depositing sufficient funds to the account of the POA to bring the elements up to a reasonable standard.

133. As a direct and proximate result of the TCR Defendants' breach of fiduciary duty, Plaintiffs have been damaged as hereinabove set forth and as to be further proven at trial.

FOR A FIFTH CAUSE OF ACTION

(Veil Piercing/Joint Venture/Agent/Alter Ego/Amalgamation as to the TCR Defendants)

134. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

135. The TCR Defendants are alter egos of each other, and therefore, the actions of one constitute the actions of all, and each is liable for the entirety of Plaintiffs' damages.

136. The TCR Defendants operated together as actual or *de facto* joint venturers and partners in the development, marketing, construction, repair and sale of One Belle Hall and each are liable for the entirety of Plaintiffs' damages.

137. The TCR Defendants have acted as agents for one another, and each is liable for as a principal for the acts of the agents; and each agent is additionally liable for its misfeasance, malfeasance, and nonfeasance occurring during the performance of its principal's business.

138. The TCR Defendants operated in such a manner as the distinction between them is blurred, and they are/should be amalgamated as a single entity.

139. The TCR Defendants were owned and operated by substantially the same principals, used the same trade name, failed to observe necessary corporate formalities, were undercapitalized, and/or were otherwise so intermingled that they do not have any genuine or

separate corporate existence, such that all corporate veils should be pierced and each held liable for the whole of Plaintiffs' damages.

140. The TCR Defendants' conduct and abuse of the corporate form has resulted in fundamental unfairness to Plaintiffs.

141. As a result, the TCR Defendants' abuse of the corporate form makes it appropriate and just that any liability imposed on one TCR Defendant, be imposed upon the other TCR Defendants and their principals.

FOR A SIXTH CAUSE OF ACTION

(Veil Piercing/Joint Venture/Agent/Alter Ego/Amalgamation as to the Halter Defendants)

142. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

143. The Halter Defendants are alter egos of each other, and therefore, the actions of one constitute the actions of all, and each is liable for the entirety of Plaintiffs' damages.

144. The Halter Defendants operated together as actual or *de facto* joint venturers and partners in the development, marketing, construction, repair and sale of One Belle Hall and each are liable for the entirety of Plaintiffs' damages.

145. The Halter Defendants have acted as agents for one another, and each is liable for as a principal for the acts of the agents; and each agent is additionally liable for its misfeasance, malfeasance, and nonfeasance occurring during the performance of its principal's business.

146. The Halter Defendants operated in such a manner as the distinction between them is blurred, and they are/should be amalgamated as a single entity.

147. The Halter Defendants were owned and operated by substantially the same principals, used the same trade name, failed to observe necessary corporate formalities, were undercapitalized, and/or were otherwise so intermingled that they do not have any genuine or

separate corporate existence, such that all corporate veils should be pierced and each held liable for the whole of Plaintiffs' damages.

148. The Halter Defendants' conduct and abuse of the corporate form has resulted in fundamental unfairness to Plaintiffs.

149. As a result, the Halter Defendants' abuse of the corporate form makes it appropriate and just that any liability imposed on one Halter Defendant, be imposed upon the other Halter Defendants and their principals.

FOR A SEVENTH CAUSE OF ACTION
(Unfair Trade Practices as to TCR Defendants)

150. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

151. At all times relevant herein, the TCR Defendants engaged in the business of developing, designing, constructing, repairing and selling One Belle Hall into the stream of commerce.

152. The TCR Defendants were engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.

153. The TCR Defendants' above-described activities, including placing One Belle with defective design and construction into the stream of commerce, failing to properly repair defective conditions, failing to comply with the building code, and other acts to be shown through the course of discovery and at trial, constitute unfair and deceptive practices in the conduct of the TCR Defendants' and the Halter Defendants' trade.

154. The TCR Defendants' above-described acts are capable of repetition and adversely affect the public interest.

155. The TCR Defendants knew or should have known that their conduct was in violation of the S.C. Code Ann. § 39-5-20.

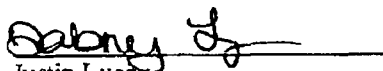
156. As a direct, foreseeable, and proximate result of the TCR Defendants' unfair trade practices in South Carolina, Plaintiffs have suffered significant damage.

WHEREFORE, Plaintiffs demand a trial by jury and pray for judgment, joint and several, against the Defendants; actual and consequential damages; statutory or punitive damages expected to exceed twelve million dollars; reasonable attorneys' fees; costs of suit; and prejudgment interest; and granting such further relief as the Court deems just and proper.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By:


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December 23, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2012-CP-10-7594
	)	
	)	
ONE BELLE HALL PROPERTY	)	
OWNERS ASSOCIATION, INC.	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
TRAMMELL CROW RESIDENTIAL,	)	
et al	)	
	)	
Defendants	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

June 25, 2014
Charleston, South Carolina

B E F O R E:

THE HONORABLE J. C. NICHOLSON, JUDGE

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

DABNY LYNN, ESQ.
Attorney for the Plaintiff

RICHARD HOOD WILLIS, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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No exhibits were introduced

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1 PROCEEDINGS

2 THE COURT: One Belle Hall Property Owners
3 Association versus Trammell Crow Residential.

4 MR. WILLIS: Good afternoon, Your Honor.

5 THE COURT: Who is here -- there are 24 lawyers on
6 the defense side so who is here?

7 MR. WILLIS: Your Honor, this is my motion. I'm
8 Dick Willis with Bowman and Brooke in Columbia.

9 THE COURT: Hang on a second. Let me find it on
10 this long list.

11 MR. WILLIS: I represent TAMKO.

12 [Whereupon, the court reviews documents]

13 THE COURT REPORTER: I'm sorry; the name again.

14 MR. WILLIS: Dick Willis. I'm on probably the
15 second page, Your Honor.

16 THE COURT: You're the very last one. Who do you
17 represent?

18 MR. WILLIS: TAMKO Building Products. They are a
19 shingle manufacturer.

20 THE COURT: TAMKO?

21 MR. WILLIS: T-A-M-K-O. TAMKO. And it's all in
22 capital letters for some reason that I can't fathom.

23 THE COURT: All right. Anybody else on the
24 defense side?

25 [No response]

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1 THE COURT: Whose here for the plaintiff?

2 MR. LYNN: Your Honor, that would be myself. Dabny
3 Lynn with Justin Lucey here for the plaintiffs.

4 THE COURT REPORTER: I'm sorry; could I get your
5 name again?

6 MR. LYNN: Dabny Lynn.

7 THE COURT: All right. Its five motions.
8 Apparently y'all settled two of them, is that correct?

9 MR. WILLIS: Your Honor, the main one is a motion
10 to compel arbitration. And then ---

11 THE COURT: --- which one is that?

12 MR. WILLIS: My other motion is a motion for a
13 protective order but I think that motion will be mooted
14 by Your Honor's ruling on the motion to compel
15 arbitration whether you grant it or deny it. Those are
16 the only two motions we have.

17 THE COURT: I've got five on the roster.

18 MR. LYNN: Your Honor, KMAC's motion has been
19 dismissed, withdrawn by KMAC earlier, as well as Budget
20 Mechanical. Budget Mechanical actually filed two motions
21 that were similar. All of those have been withdrawn.
22 TAMKO's motion is the only motion that should currently
23 be on the roster.

24 THE COURT: Unfortunately, my roster doesn't tell
25 me who filed. I'm got number 25 on the roster has been

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1 completed. I've got number 27 on the roster as being
2 completed.

3 [Whereupon, the court reviews documents]

4 THE COURT: Who's got a copy of the motion?
5 Apparently it hasn't made it to the Clerk's file or at
6 least we don't have it up here. Do you have a copy of
7 your motion?

8 MR. WILLIS: I do, Your Honor. I have it in a
9 notebook and I'm happy to share it with you and all my
10 case law as well. It will be the first one on there;
11 TAMKO's motion.

12 [Whereupon, Mr. Willis provides documents to the
13 court]

14 MR. WILLIS: And then the plaintiff's submitted a
15 brief yesterday.

16 [Whereupon, the court reviews documents]

17 THE COURT: Who did TAMKO sell the shingles to?

18 MR. WILLIS: Your Honor, they sold them to the
19 general contractor who built the One Bell Hall
20 Condominium ---

21 THE COURT: --- who was who?

22 MR. WILLIS: That would be Trammell Crow.

23 THE COURT: Okay. I'll be glad to hear you.

24 MR. WILLIS: Thank you, Your Honor. Again, my name
25 is Dick Willis. I'm with Bowman and Brooke and I

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1 represent TAMKO. They are the shingle manufacturer.
2 This lawsuit is a large construction case, Your Honor.
3 TAMKO was named in an amended complaint. It involves the
4 One Belle Hall Condominium project in Mount Pleasant. It
5 is a large project; I believe three large buildings,
6 claims of multiple construction problems. And the
7 complaint was amended at the end of December of 2013 to
8 add a number of defendants including TAMKO.

9 TAMKO is a shingle manufacturer; Your Honor that is
10 located is Joplin, Missouri. That's where their
11 headquarters is. They sell residential and commercial
12 shingles all over the United States and internationally
13 as well. And they sell through distributors to builders
14 and to roofers. They have multiple manufacturing
15 locations. I believe these shingles were manufactured as
16 best we could tell from the documents in Frederick,
17 Maryland at their plant.

18 It appears that the shingles were applied in 2006.
19 The reason we believe that is there is a warranty signed
20 by the roofer that is sort of the 2006 version of the
21 shingle warranty that accompanies the shingles. In 2010,
22 in February of 2010 a representative of the developer
23 called TAMKO and reported a warranty claim. They
24 reported blistering shingles. And as part of TAMKO's
25 normal procedure when they get in a claim they sent them

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1 what is called a warranty kit. And that warranty kit
2 asks them to take samples of the shingles, send them in,
3 take some photographs, fill out a form and that would
4 sort of initiate the warranty process as described in the
5 warranty. TAMKO never heard back from that person who
6 had called for that representative. And then after 90
7 days they inactivated the warranty plan and they didn't
8 hear anything else about One Belle Hall until three years
9 later when they were sued for defective shingles.

10 The plaintiff's complaint states the cause of action
11 for breach of warranty, both expressed and implied. It
12 states a cause of action for negligence under strict
13 liability against TAMKO. There are other causes of
14 action in the complaint but those are the only three
15 against TAMKO.

16 And so because there is a mandatory arbitration
17 provision in the warranty TAMKO answered the complaint,
18 raised the standard defenses that were available to it
19 and then moved to dismiss and/or compel arbitration. I
20 realize that is familiar territory for Your Honor.
21 You've got a couple of cases dealing with arbitrations
22 that the parties sought to compel; one involving Ms.
23 Lynn's law firm interestingly and then one involving a
24 bank. And so, Your Honor if I am repeating myself or
25 going over the law that you already know please stop me.

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1 This is the first time interesting I've ever argued a
2 motion to compel arbitration. And I was surprised at the
3 wealth of law out there on this issue in the Court of
4 Appeals, South Carolina Supreme Court because the federal
5 arbitration act also applies and supersedes; actually
6 preempts the South Carolina arbitration act.

7 There is a wealth of federal law on it even
8 including U.S. Supreme Court cases so there is a lot of
9 law. So I want to go over a little bit of that law and
10 then proceed to what I've tried to distill down to as few
11 questions as possible that I think the court has to
12 answer in order to decide whether or not to compel this
13 arbitration. And I think there are five questions.

14 But before I get to that let me just give Your Honor
15 a background in sort of the context that the law implies
16 that Your Honor has to apply to the case. As Your Honor
17 knows the case law is pretty clear that South Carolina
18 courts favor arbitration if there is any rational way of
19 construing the contract to require arbitration. And
20 there is a strong policy in favor of that. And that most
21 recently has been sent down in your case. That was the
22 Landers case versus FDIC, which is a South Carolina
23 Supreme Court case February 27th, 2013.

24 THE COURT: That was just a case on whether it was
25 interstate commerce or intrastate commerce, okay. But go

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1 ahead ---

2 MR. WILLIS: --- I've a copy of the case here ---

3 THE COURT: --- I'm familiar with the case. Go
4 ahead.

5 MR. WILLIS: In that case the court decided sort of
6 a number of principles of law. It's the policy of the
7 state and federal law to favor arbitration. Any doubts
8 concerning the scope of arbitrable issues should be
9 resolved in favor of arbitration.

10 THE COURT: Let me just ask you a question.

11 MR. WILLIS: Yes?

12 THE COURT: I'm familiar with the law, okay.

13 MR. WILLIS: That's why I asked what ---

14 THE COURT: --- the question I want to ask you is
15 this. The plaintiff in this case wasn't a party to the
16 contract. They didn't negotiate the contract, they
17 didn't negotiate for arbitration.

18 MR. WILLIS: That's correct.

19 THE COURT: Okay. So how does arbitration apply
20 other than some type of theory of third party
21 beneficiaries?

22 MR. WILLIS: That's the theory ---

23 THE COURT: --- do you have any cases on third
24 party beneficiaries?

25 MR. WILLIS: Yes, sir.

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1 THE COURT: Okay. Where are they? Point me to
2 those two.

3 MR. WILLIS: The question of whether a signatory
4 can compel a non-signatory to arbitrate is basically what
5 Your Honor is ---

6 THE COURT: --- there is no way the plaintiff One
7 Belle Hall Property Owners Association negotiated
8 arbitration in this claim.

9 MR. WILLIS: That's right, Your Honor. In fact
10 this isn't even negotiable. This is a contract of
11 adhesion. We acknowledge that. All material warranties
12 are. You can't go negotiate with Toyota when you buy a
13 car as to what kind of warranty you get. This is the
14 warranty that comes with the product.

15 So there is not a dispute that this is a take it or
16 leave it type contract. Of course, that's not the only
17 inquiry. Your Honor, the leading case on whether or not
18 a signatory can enforce a non-signatory to arbitrate
19 against their will is the Pearson v Hilton Head
20 [phonetic] case.

21 THE COURT: What's the ---

22 MR. WILLIS: --- I've got a copy of it here. I'll
23 be happy to hand it up.

24 THE COURT: Hand it up please.

25 [Whereupon, Mr. Willis provides documents to the

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1 court]

2 MR. WILLIS: It's not mentioned in plaintiff's
3 brief, Your Honor, but its -- I think you so rarely find
4 a case on point and this one is pretty close on point.
5 Now it's not a materials contract, this is an employment
6 contract. But this case talks extensively about when a
7 signatory to an arbitration agreement can enforce the
8 agreement against a non-signatory.

9 THE COURT: In the case what language are you
10 referring to?

11 MR. WILLIS: Just bear with me just a moment, Your
12 Honor. There's one other case that is on point as well.

13 THE COURT: Let's talk about this case first.
14 Where are you pointing me to? What language?

15 [Whereupon, Mr. Willis reviews documents]

16 MR. WILLIS: Your Honor, if you'll look at page
17 four of the case. It's under head note 287 and it begins
18 with law and analysis.

19 THE COURT: Okay.

20 MR. WILLIS: It says, the hospital contends the
21 Circuit Court erred in denying it's motion to compel
22 arbitration because Doctor Pearson's claims fall within
23 the arbitration agreement he signed with Locum
24 [phonetic]. That's the first question. And then the
25 second one is the question Your Honor raises. Federal

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1 law recognizes the right to compel non-signatories to
2 arbitrate and for non-signatories to compel signatories
3 to arbitrate. Then it goes on to explain how that can be
4 because it's a little bit counterintuitive. How can I
5 enforce a contract against somebody who hasn't signed the
6 contract?

7 What the court's -- what Judge Konduros held in this
8 case consistent with what the Fourth circuit had held in
9 the International Paper case that I'm also going to hand
10 up in a moment is that where a party is a third party
11 beneficiary of a warranty, and One Bell Halle as the
12 property owners association would be the third party
13 beneficiary to this warrant, they get the warranty when
14 they buy the building; the same with the individual
15 homeowner who is named as the representative plaintiff in
16 a purported class.

17 They would be -- she would be a third party
18 beneficiary as well, where a third party beneficiary's
19 acquired benefit from the contract, the warranty, and in
20 this case the benefit would be the shingles on their roof
21 and the 25 year warranty that accompanies it, where they
22 obtained the benefit and where they have sought to
23 enforce that benefit by suing for breach of warranty,
24 which is what the plaintiff's have sued for here among
25 other things, then they are estopped from repudiating the

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1 other provisions of the contract. And so it's basically
2 an estoppel argument where you received the benefit you
3 are estopped from saying well wait a minute; I didn't
4 sign the agreement.

5 And this Hilton Head case is fairly analytical on
6 that issue, Your Honor, and it talks about the pros and
7 cons of it, it talks about the difference between
8 enforcing it against the signatory as opposed to
9 enforcing it against the non-signatory and frankly it can
10 be enforced against both if a benefit has been inferred
11 and I think there clearly has been one here or if the
12 plaintiff, in this case One Belle Hall, is asserting a
13 breach of warranty.

14 If Your Honor will look at the amended complaint,
15 which was in the notebook that you handed back to me one
16 of their causes of action is clearly for breach of
17 expressed and implied warranty. And so that's the reason
18 why the arbitration should be compelled against the non-
19 signatory. Your Honor, the other case that is talked
20 about in Judge Konduros's decision is the International
21 Paper case. Let me see if I can lay my hands on that
22 right now.

23 [Whereupon, Mr. Willis reviews documents]

24 MR. WILLIS: But it's basically a Fourth Circuit
25 case, Your Honor that says essentially the same thing.

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1 And I'll submit that to the court once I -- here it is,
2 Your Honor.

3 [Whereupon, Mr. Willis provides documents to the
4 court]

5 MR. WILLIS: Thank you, Your Honor. So that's the
6 issue there, Your Honor. That's one of the five and I'm
7 happy to go through the others ones if Your Honor wants
8 me to. The first issue is whether or not the transaction
9 that is the subject of the arbitration clause involves
10 interstate commerce. Here we've submitted an affidavit
11 that lays out the interstate commerce aspects of this
12 transaction.

13 THE COURT: I don't think there is any question its
14 interstate commerce.

15 MR. WILLIS: I agree with Your Honor.

16 THE COURT: Go on to something else.

17 MR. WILLIS: I think Your Honor is correct about
18 that. And the Bentley [phonetic] case I was going to
19 talk about basically says that. So the second issue then
20 Your Honor is in involves interstate commerce then does
21 the arbitration agreement cover the dispute? Does the
22 dispute arise out of the contract that includes the
23 arbitration agreement? And the courts -- both the Court
24 of Appeals and the South Carolina Supreme Court have said
25 that when you are dealing with a very broad arbitration

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1 clause like we have here when it simply says anything,
2 any dispute arising from the shingles is mandatory
3 arbitration is required. That's what the warranty says
4 so it's as broad as possible. Where you've got a broad
5 one like that the question is does -- is the dispute
6 related to, is it substantially involved with, does it
7 touch upon the matters in the contract? And here clearly
8 it does because you've got a claim for breach of warranty
9 and this is a warranty.

10 Now in an effort to get out from under that argument
11 the plaintiffs raised a couple of things in the brief
12 that they filed yesterday and I want to address those
13 briefly. They first say well, wait a minute now. We're
14 suing you for other things in addition to breach of
15 warranty. We're suing you for torts, negligence and
16 strict liability, and they're claiming there was some
17 sort of misrepresentation that TAMKO represented to the
18 public that they made good shingles but in fact they make
19 bad shingles.

20 Now they haven't sued us for fraud, they haven't
21 sued us for violation of the South Carolina Unfair Trade
22 Practices act. So this deception or misrepresentation is
23 just basically we say we make good shingles, they say
24 they don't. Now that's not the sort of outrageous tort
25 that the case law talks about as taking a dispute outside

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1 the provisions of the arbitration agreement. There are
2 three cases that the plaintiff cites in their brief.
3 They cite a case called Partain [phonetic] which involves
4 a fellow who went down to buy a Nissan truck, a used
5 truck, and he signed the papers and he went back a few
6 days later and he picked up the truck and there was
7 something different about it.

8 Then when he got home he realized that the
9 dealership had sold him another car. They had baited and
10 switched it. They did not give him the car that he had
11 bought. Then they lied about that and attempted to cover
12 it up. So he sued them for fraud and for violation of
13 the South Carolina Unfair Trade Practices act and other
14 causes of action.

15 And there the court said well, that's outrageous.
16 That's a tort that isn't really related to the
17 arbitration agreement in the sales agreement that applied
18 to the sale of the vehicle that he never got. And in
19 that case the court talks -- the court basically says,
20 look we're not saying that every intentional tort takes
21 the case outside the arbitration agreement; just the most
22 outrageous ones. And of course here we don't have any
23 intentional torts. There is another case that the
24 plaintiffs cite in their brief called Aiken [phonetic].
25 Aiken [phonetic] involves someone who applied for

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1 consumer credit. In the consumer credit application they
2 filled out contained an arbitration provision. They got
3 the loan; I believe it was 2,000 dollars, they paid the
4 loan off and then two years later they discovered that
5 the consumer credit company was wrongfully using their
6 private information and wrongfully selling their private
7 information and distributing that out to the public, so
8 they sued them for that.

9 The consumer company came in and said wait a minute,
10 you have to arbitrate because you signed an arbitration
11 agreement as part of the loan and the court said no that
12 that's the intentional infliction of emotional stress,
13 the violation of the consumer credit act because they
14 postdate the payoff of the loan aren't covered by the
15 arbitration agreement. Again, outrageous torts that
16 aren't alleged here.

17 And the last one, Your Honor, is a case called
18 Cheserow v Golden Pools [phonetic] I believe or some kind
19 of pool company. In the Cheserow [phonetic] case a pool
20 company came in and put a swimming pool in someone's
21 backyard. They weren't happy with it, they quit paying
22 for it so the pool company then started harassing them
23 calling them on the phone making defamatory statements
24 about them to neighbors, spying on them and talking bad
25 about them in the community. So the plaintiffs in that

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1 case sued for defamation and for intentional infliction
2 of emotional distress. And in that case the court said
3 no, we're not going to compel arbitration because that
4 tort is outrageous and it's outside the contract.

5 Here what we've got is just a standard repair and
6 replace warranty; no different from any warranty that you
7 would get with shingles. And the claim is you breached
8 the warranty so it clearly arises from or touches on the
9 dispute -- the dispute arises from or touches on the
10 contract that contains the warranty provisions. And
11 again, Your Honor, if you remember the last case I talked
12 about earlier talks about that as well. So we believe
13 it's no question that the case arises from the contract
14 that contains the arbitration agreement.

15 The next question, Your Honor is the issue you
16 jumped right to, which is can a signatory enforce an
17 arbitration agreement on a non-signatory? And I believe
18 because of the cases we handed up and the estoppel issues
19 the benefit inferred and the causes of action in the
20 complaint that the answer to that is yes.

21 The next question Your Honor then is let's look at
22 the arbitration provision itself. Is it unconscionable?
23 And that's really a two step process. Some courts, the
24 Muneo [phonetic] case for example of the South Carolina
25 Supreme Court said all you do is look at the arbitration

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1 provisions and decide whether the arbitration provisions
2 are unconscionable. Other courts look at both the
3 arbitration provisions and the underlying contract to
4 determine whether that's unconscionable.

5 Either way, Your Honor that's for you to decide as a
6 question of law and obviously it's our position that this
7 is a standard contract, there's nothing unconscionable
8 about it. First as to the arbitration provisions of the
9 contract in a case called Carson [phonetic] I believe
10 versus South Carolina Coatings --

11 [Whereupon, Mr. Willis reviews documents]

12 MR. WILLIS: Carlson, Your Honor. This is my --
13 I'm happy to give you my only copy; I've written all over
14 it, Carlson v South Carolina State Plastering.

15 THE COURT: Okay. If you could hand it up. I
16 don't care if you've written on it.

17 MR. WILLIS: Thank you.

18 [Whereupon, Mr. Willis provides documents to the
19 court]

20 MR. WILLIS: Your Honor that case Judge Williams
21 authored that opinion. It's a Court of Appeals case.
22 And basically he says if an arbitration provision is
23 fair, if it provides for a neutral to decide the case, if
24 it's designed to achieve a fair and impartial result then
25 it's not unconscionable. It talks a little bit about

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1 mutuality and here we've got mutuality. Some arbitration
2 provisions don't have mutuality. Some arbitration
3 provisions say to the consumer well, you have to
4 arbitrate but if you don't make payments we, the company,
5 don't have to and ours doesn't say that. So we have
6 mutuality here as well as fairness.

7 This is a standard triple A arbitration reference.
8 In other words if we're going to have arbitration we'll
9 do it under the Triple A rules with a Triple A
10 arbitrator. So I don't think the court can find that
11 that is in any way unconscionable because there are
12 Triple A arbitrations that go on in South Carolina every
13 day.

14 So once the court decides well the arbitration
15 provision in the contract is not unconscionable what
16 about the underlying contract? Is it unconscionable in
17 any way? If it is then the court can either decline to
18 enforce it all together or the court can come in and
19 sever the provisions in the contract that it deems to be
20 unconscionable.

21 And so in determining whether this underlying
22 contract is unconscionable there are really two questions
23 the court has to answer. Number one; is it a contract of
24 adhesion? The answer is yes, it is. You can't negotiate
25 this; it is what it is and it says what it says. And

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1 then number two, are the terms so oppressive and so one-
2 sided that no reasonable person would ever agree to it
3 and no honest person would ever ask it. And Your Honor,
4 this -- so Your Honor has to decide whether this is a
5 reasonable contract.

6 So how do you decide whether something is
7 reasonable? Well, number one is it consistent with South
8 Carolina law? Yes, it is. The U-C-C clearly says that
9 the issuer of the warranty can limit the warranty. The
10 issuer of the warranty can exclude implied warranties.
11 The issuer of a warranty can exclude consequential and
12 incidental damages, and that the issuer of the warranty
13 can otherwise limit its terms to repair and replace.

14 Your Honor, the statutes that say that are -- and
15 I'm sure Your Honor is familiar with this; it's basic
16 U-C-C law, its 36-2-719 and 36-2-316.

17 [Whereupon, Mr. Willis provides documents to the
18 court]

19 THE COURT: Thank you, sir.

20 MR. WILLIS: So, Your Honor unlike the Simpson
21 [phonetic] case where the court said that a car dealer
22 contract that says well you can't get treble damages and
23 you can't get double damages and you can't get punitive
24 damages and therefore thwarts the South Carolina Unfair
25 Trade Practices act or thwarts the South Carolina car

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1 dealer act. In this case the limitations aren't
2 thwarted. They don't thwart any South Carolina law. In
3 fact, they are expressly permitted by South Carolina law.
4 So how can they be heard to be unconscionable?

5 Now, the plaintiffs complain in their brief about
6 how one-sided they are as if this warranty is the worst
7 thing since Mein Kamph. And so after I read the brief
8 Your Honor I said to myself well, is this any different
9 from any other shingle manufacturer warranty out there?
10 I mean is this just a lousy warranty or is this
11 consistent with what other shingle manufacturers in the
12 industry are providing?

13 And I looked at that last night and I have an
14 affidavit to that effect. And sure enough as I suspected
15 -- Your Honor I'll give you my copy because I've got the
16 original and I'll file it with the clerk.

17 [Whereupon, Mr. Willis provides documents to the
18 court]

19 MR. WILLIS: And as I suspected, if Your Honor will
20 turn to the back page, which is this comparison table
21 that we put together last night which compares the TAMKO
22 warranty to every other significant shingle manufacturer
23 in the United States, G-A-F, Owens Corning, Certain Teed,
24 IKO, Malarkey; this is as the court can see the TAMKO
25 warranty is very consistent with these other warranties.

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1 It provides a twenty year duration. It attempts to limit
2 the warranty to the expressed warranty only and attempts
3 to exclude implied warranty just as the other ones do.
4 It excludes incidental or consequential damages just as
5 the other ones do.

6 Now is that a reasonable thing for a company to try
7 to exclude? Your Honor, I'm not going to sell you
8 shingles if a leaky shingle could damage your priceless
9 Picasso or your priceless Oriental rug. And so you see
10 the exclusion of incidental and consequential damages in
11 all material warranties. And you see the limitation to
12 repair or replace, which is essentially what the TAMKO
13 warranty is.

14 All the other warranties are also limited to repair
15 and replace. All the other warranties have time limits
16 in which you must act. If you discover there is
17 something wrong with your shingles you have to tell the
18 shingle manufacturer. You can't just let them sit on
19 your roof for years and years and years and deteriorate.

20 But interesting, Your Honor the warranty itself says
21 look, if any of these provisions are inconsistent with
22 the law that might apply to you in your jurisdiction then
23 it doesn't apply to you. So if South Carolina had a law
24 that said you can't exclude implied warranties then the
25 warranty would not exclude that. And in fact South

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1 Carolina does have a law that says you can't limit
2 contractually the statute of limitations. You can't --
3 it's -- under contract it's three years. The TAMKO
4 warranty says we're going to limit it to one year but if
5 there is a provision in your state law that doesn't allow
6 that then this will not apply.

7 So that would be the effect that we have here. Now
8 in my opinion it's reasonable to say if there is
9 something wrong with your shingles and you find out about
10 it you have to tell me within a year because that runs
11 afoul of South Carolina law. So under the terms of the
12 warranty that would not be applicable. And in all other
13 respects Your Honor this is a standard materials
14 warranty. It's not unconscionable.

15 If Your Honor was to rule it was unconscionable then
16 every roofing warranty out there would be unconscionable.
17 And so I think that the unconscionability analysis. It's
18 certainly can't be said that these provisions are so
19 onerous that no reasonable person would agree to them or
20 no reasonable person would ask for them when the entire
21 industry is using them and when the U-C-C expressly
22 permits the remedy to be restricted to repair and
23 replace, which is essentially what this one does. Now
24 let me point out and I'm sure this was unintentional on
25 the part of the plaintiffs but in their brief they quote

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1 the TAMKO warranty and they misquote it. And it took me
2 a couple of hours last night to figure out where that
3 came from but in their brief they quote from exhibit B,
4 which is the TAMKO warranty. But what they did I think
5 was pull the language off of the new warranty, which is
6 on the Internet and the new warranty is different from
7 the old warranty.

8 The warranty that we're dealing with here is the
9 warranty that was issued along with the shingles in 2006,
10 2007 timeframe. And because it's important that we get
11 the record right because if Your Honor denies this motion
12 then we have a right to an immediate appeal it's
13 important that we have the right warranty that we're
14 arguing about; not the current one, the current one does
15 not imply.

16 And then the current one is the one that they
17 compare to -- is the warranty that the plaintiffs compare
18 to the D.R. Horton warranty. And the D.R. Horton case is
19 a bad case for me. That's the case that I've got to get
20 around. And in that case, I've got a copy of that as
21 well, Judge Short, Court of Appeals basically construed
22 the D.R. Horton warranty, it was a homeowner's warranty,
23 and he basically said he found it unconscionable because
24 it was too one-sided and he declined to go in and sever
25 out any of the unconscionable provisions in the warranty.

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1 The name of that case is Smith v D.R. Horton and I've got
2 a copy of it here.

3 [Whereupon, Mr. Willis provides documents to the
4 court]

5 MR. WILLIS: And what the plaintiffs tried to do in
6 their brief is say well the TAMKO warranty mirrors the
7 D.R. Horton warranty and in fact it does not, Your Honor
8 because they compared the wrong warranty. The warranty
9 that they need to look at is contained in their exhibit
10 79, which is the signed TAMKO warranty that has been
11 identified in prior depositions. And I'll hand up a copy
12 of that as well.

13 [Whereupon, Mr. Willis provides documents to the
14 court]

15 MR. WILLIS: So it's important that we get the
16 right warranty. And I don't think there was any
17 deliberate misrepresentation there but we want to make
18 sure -- it took me a while to figure out where that
19 language had come from. I think it's on the third or
20 fourth page of that document, Your Honor.

21 THE COURT: This is which -- this is the current
22 warranty or the old warranty?

23 MR. WILLIS: This is the old warranty. This is the
24 warranty that was applied to these shingles.

25 THE COURT: That's the same one that's in your

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1 exhibits that you gave to me right?

2 MR. WILLIS: That's correct.

3 THE COURT: Okay.

4 MR. WILLIS: It's on the second or third page of
5 that exhibit. So that's the warranty that we're dealing
6 with. And so I've asked the court to spend some time and
7 read that warranty and compare that to the warranty in
8 the D.R. Horton case and I'll think you'll find that it
9 is different. The TAMKO warranty doesn't exclude all
10 monetary damages as the D.R. Horton warranty attempts to.
11 Basically it's a repair or replace warranty. It says ---

12 THE COURT: --- well it includes everything else
13 except the repair and replace.

14 MR. WILLIS: That's correct, Your Honor.

15 THE COURT: Your warranty does.

16 MR. WILLIS: Your Honor, it speaks for itself.

17 THE COURT: I understand. That's why I was
18 reading it.

19 MR. WILLIS: It's a repair or replace warranty.

20 THE COURT: I think that's the only thing it
21 mentions is repair and replace.

22 MR. WILLIS: That's correct. On the fourth page of
23 the warranty, Your Honor it says exclusions from
24 coverage. And item number two it excludes damage to any
25 building either exterior or interior or any property

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1 contained therein or for injuries or damages of any kind
2 whatsoever. And then in the -- and the arbitration
3 provisions are on the second page.

4 THE COURT: Arbitration ---

5 MR. WILLIS: --- and so Your Honor my point ---

6 THE COURT: --- where ---

7 MR. WILLIS: --- is it's no different from any
8 other warranty that applies.

9 THE COURT: Where's the arbitration provisions in
10 the warranty is what I was looking for.

11 MR. WILLIS: It would be on the third page of that
12 exhibit that I handed up, Your Honor. And it's also
13 attached as exhibit A to our motion. It's hard to read
14 in this particular copy but at the top it says mandatory
15 arbitration.

16 THE COURT: Well, I doubt if I could read that with
17 a magnifying glass.

18 MR. WILLIS: Let me see if I can find a better
19 copy, Your Honor.

20 THE COURT: It's absolutely illegible.

21 [Whereupon, Mr. Willis reviews documents]

22 THE COURT: You got a magnifying glass? Let's see
23 if you can read this.

24 MR. WILLIS: Your Honor, I can read it.

25 THE COURT: You can read this what you gave me?

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1 MR. WILLIS: No, sir. Let me hand you ---

2 THE COURT: --- you can read what you handed me
3 paperwork?

4 MR. WILLIS: Yes sir, I can.

5 THE COURT: You can read that?

6 MR. WILLIS: I sure can.

7 THE COURT: Okay.

8 [Whereupon, Mr. Willis provides documents to the
9 court]

10 MR. WILLIS: But that's a better one and I'm sure
11 the court can read that as well.

12 THE COURT: Okay.

13 MR. WILLIS: And Your Honor if you want me to
14 submit a blown up version of it ---

15 THE COURT: --- no, you don't need to ---

16 MR. WILLIS: --- so you could read it better ---

17 THE COURT: --- this is a lot better copy than the
18 one you gave me.

19 MR. WILLIS: And it's attached to our motion, Your
20 Honor.

21 THE COURT: Okay.

22 MR. WILLIS: So that's the unconscionability
23 argument. The plaintiffs raise a couple of other
24 arguments in their brief that I saw for the first time
25 yesterday. One is that somehow compelling the property

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1 owners association to arbitrate would violate the
2 Horizontal Property Regime act, which says the property
3 owners can sue -- property owners association have the
4 power to sue or be sued on behalf of the homeowners. And
5 so somehow the language sue or be sued it would be
6 violated if we compelled arbitration. But arbitration is
7 just another way to resolve the dispute and I think it's
8 included in the concept of sue or be sued. But, Your
9 Honor frankly I haven't had an opportunity to drill down
10 into that argument. I saw it for the first time
11 yesterday.

12 THE COURT: Okay.

13 MR. WILLIS: So if Your Honor is concerned about
14 that I'd ask for an opportunity to just submit a
15 supplemental brief on that issue and I think I can get
16 you one in a few days.

17 THE COURT: Okay. What else you got?

18 MR. WILLIS: There are some other arguments that
19 are made dealing with ambiguity and severability but I
20 really don't think they're essential. I think I've made
21 my point and I'm happy to answer any questions the court
22 might have.

23 THE COURT: That's fine. I'll be glad to hear from
24 the plaintiff.

25 MS. LYNN: Your Honor, I would just like to address

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1 some of counsel's arguments prior to moving forward with
2 our arguments. The first point I'd like to note for the
3 record is that the supplemental brief is untimely and we
4 are not any of these warranties at issue here, the TAMKO
5 warranty and that's the issue before the court.

6 And I'd also like to note that at least three of
7 these five warranties included aren't being litigated and
8 they are not in arbitration. Regarding unconscionability
9 TAMKO admits that D.R. Horton is a problem for it because
10 it is. You can't read TAMKO's warranty and TAMKO's
11 warranty contrary to anything TAMKO says to the contrary
12 excludes recovery of all damages of any kind whatsoever.

13 This was not misstated in plaintiff's brief. It's
14 actually located in paragraph two under exclusions from
15 coverage which specifically says TAMKO shall not be
16 liable under any circumstances for damage to any building
17 either exterior or interior or any property contained
18 therein or for injuries or damages of any kind
19 whatsoever.

20 And regarding unconscionability and I believe this
21 goes back to your non-signatory point earlier, Your Honor
22 it is important to note that warranties such as this are
23 subject to considerable skepticism because of the
24 disparity that exists between the bargaining power of a
25 roofing manufacturer and that of a consumer not in the

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1 roofing business and who is in this transaction ---

2 THE COURT: --- on the estoppel theory there is no
3 bargaining.

4 MS. LYNN: Exactly.

5 THE COURT: He didn't bargain for anything. The
6 contractor may have but you did.

7 MS. LYNN: We did not bargain for anything and we
8 should not be forced ---

9 THE COURT: --- but the case says if you're going
10 to benefit from it you can't benefit on one side and
11 refuse to accept the other part of it.

12 MS. LYNN: We have no benefit.

13 THE COURT: Pardon?

14 MS. LYNN: We have no benefit.

15 THE COURT: You got the shingles on your roof.

16 MS. LYNN: We have no warranty protection for those
17 shingles as purported by TAMKO.

18 THE COURT: Well other than replacement and --
19 repair and or replacement; that's what the warranty says.

20 MS. LYNN: But then any repair or replacement
21 would not be effective ultimately because essentially
22 what would happen is that they would issue a coupon for
23 labor that they are not going to provide because it's
24 excluded under the warranty. That is no recovery. On
25 one hand TAMKO can't say that its warranty purports to

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1 provide a remedy through its terms and conditions
2 ultimately negates the very damages that TAMKO separately
3 classified, calculated, and contemplated under its
4 warranty. On one hand TAMKO can't say there is a remedy
5 and then include terms and conditions which nullify that
6 very remedy. That is a lack of mutuality.

7 That is exactly what the Court of Appeals held in
8 D.R. Horton in 2013 and the warranty provisions that D.R.
9 Horton found mirror exactly the warranty provisions that
10 are in TAMKO. TAMKO's warranty like D.R. Horton purports
11 to be the only warranty that extends. TAMKO's warranty
12 like D.R. Horton disclaims all other implied, expressed
13 warranties, any obligations, any guarantees, any
14 liability whatsoever; that is in the written word.

15 TAMKO's warranty like D.R. Horton's warranty also
16 tries to say that all disputes of any kind are subject to
17 binding arbitration in a separate paragraph apart from
18 this legal remedy paragraph. And most importantly
19 TAMKO's warranty, specifically paragraph two just like
20 D.R. Horton's warranty purports to prevent TAMKO from
21 having any liability from any damages whatsoever. The
22 D.R. Horton court specifically found that these
23 provisions usually operate so that the entire warranty is
24 unconscionable and you can't sever these provisions
25 because they purveyed the warranty; it's unconscionable

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1 as its whole. And most interesting D.R. Horton and the
2 decision called York [phonetic], which actually TAMKO
3 does cite in their supporting memorandum, were decided
4 the same year. And if you read York in detail it
5 actually supports the very propositions that plaintiff
6 advances.

7 York actually admits that unconscionability does
8 survive post inception. York actually found that one in
9 the four consumer arbitration agreements at issue in that
10 case was unconscionable because of two oppressive
11 provisions. And what's so important is York's reasoning.
12 York recognized that it had to find those two oppressive
13 provisions unconscionable because the Simpson court --
14 South Carolina Supreme Court decision in 2007 found those
15 same provisions unconscionable.

16 Now applying that same reasoning here we have a
17 warranty that a previous court has found the terms of
18 essentially unconscionable. That is the same case here.
19 That should be the same ruling here. This is --
20 unconscionable; it is unenforceable and void in this
21 entire -- and I'll be more than happy to hand up the
22 decision, the D.R. Horton decision of 2013 ---

23 THE COURT: --- I think we already have a copy of
24 it.

25 MS. LYNN: And in addition to that we do absolutely

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1 maintain that the warranty is inherently unfair. There
2 is a case that was issued out of the Court of Appeals in
3 1994 called Isle of Palms v Monticello pest control.
4 It's in the insurance contract but the holding in that
5 case is very pertinent because it states that an insurer
6 cannot include coverage that by putting in an exclusion
7 that exclusion then nullifies it.

8 That's essentially exactly what is happening here.
9 And the warranty which purports to provide a remedy but
10 later on they're going to include terms and conditions
11 which nullify that very remedy or the ultimate effect of
12 that very remedy. And in addition TAMKO's warranty is
13 violative of South Carolina law. The Horizontal Property
14 Regime act specifically states that it is the bylaws that
15 govern the administration of a property owners
16 association such as One Belle Hall. The bylaws do not
17 contain anything or any restriction as to how a property
18 owner's association can sue.

19 Moreover, the Horizontal Property Regime act
20 specifically forbids the division of common elements,
21 which if you read TAMKO's warranty and the unconscionable
22 terms together is exactly what TAMKO's warranty tries to
23 do. It tries to require individuals to enter
24 individualized arbitration a.k.a. dividing common and
25 limited elements, which the Horizontal Property Regime

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1 act expressly prohibits. Moreover, the non-profit
2 corporation act allows P.O.A.'s, which is a non-profit
3 corporation, the power without limitation to sue and be
4 sued in its own name. There is nothing about
5 arbitration; there is nothing in that regard.

6 So any affect of this warranty that precludes those
7 statutory rights cannot be enforced by this court. I
8 mean moreover TAMKO is right; there are claims involving
9 misrepresentations in material admissions. It's also
10 well recognized in South Carolina jurisprudence that when
11 a party engages in deceptive conduct they waive their
12 right to enforce arbitration.

13 Any one of these arguments supports plaintiff's
14 claims. We have unconscionability, we have inherent
15 ambiguity, we have violations of South Carolina law, and
16 then we have TAMKO's own conduct. And we request this
17 court deny their motion for arbitration. Any one of
18 those four reasons much less applying all four
19 sufficiently supports our position.

20 THE COURT: Thank you very much. Anything very
21 briefly now.

22 MR. WILLIS: Yes, Your Honor. I find it
23 interesting that I got a brief yesterday and then they're
24 telling me that my submittal to you today is untimely.
25 It's not ---

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1 THE COURT: --- I'm not worried about that, okay.

2 MR. WILLIS: Thank you, Your Honor. Your Honor,
3 the -- you've got the warranty you can read it; you don't
4 have to take my word for it or plaintiff's counsel word
5 for it. But the repair and replace provisions of the
6 warranty aren't nullified by any other terms in the
7 warranty. This is a typical repair and replace warranty;
8 and that's all it is. And the U-C-C permits that under
9 the provisions I handed up.

10 Under those circumstances it cannot be
11 unconscionable as a matter of law if the U-C-C
12 specifically provides for it. And if it is a violation
13 of South Carolina law, which it isn't, but if it is then
14 the provisions in the contract says it won't apply to
15 you. So that can't be the stick that plaintiffs use to
16 characterize this as unconscionable. Either it's
17 consistent with South Carolina law or if it's not it
18 doesn't apply.

19 I've got a copy of the York case. Your Honor, I
20 think the York case helps us and I'm happy to hand it up
21 to the court. And that's also the case that said it's
22 perfectly okay for a warranty to say you can't aggregate
23 claims in a class action, which is what plaintiff's have
24 attempted to do here. TAMKO's warranty says that these
25 claims have to be made individualized. They can't be

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1 aggregated in a class. In the York case and the AT&T
2 Mobility case ---

3 THE COURT: --- is this a class action? Did
4 somebody certify this as a class?

5 MR. WILLIS: Not yet, Your Honor, but it has been
6 pled as a class.

7 THE COURT: Okay. Well, still if it's not
8 certified as a class yet ---

9 MR. WILLIS: --- which is -- which is, Your Honor
10 the reason we want to arbitrate this. We don't want to
11 get tied up in a lawsuit where we don't have -- in a
12 class action where the only issue as far as we're
13 concerned is were the shingles defective or not? Was
14 there a manufacturing defect? If there was then they are
15 entitled to repair and replace. If there wasn't they are
16 not. That's a simple issue and to get that all tied up
17 in a class action is really what our motivation is -- the
18 argument that somehow by requiring the property owners
19 association to arbitrate that violates the Horizontal
20 Regime Act that's the issue I would just like to brief
21 supplemental Your Honor because I don't think that's a
22 proper reading of the act.

23 THE COURT: You can do that.

24 MR. WILLIS: All right. But TAMKO is not trying
25 to break these up into individual claims. The property

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1 owners association can assert a claim for defective
2 shingles on each building. They are -- I mean my
3 understanding is that the roof would be a common element.
4 These aren't individual condominiums. This is three big
5 buildings with big roofs on the buildings.

6 So the homeowners association, the property owners
7 association would be the one responsible for maintaining
8 that common element. They are the third party
9 beneficiary of the warranty. That warranty is
10 transferrable to a subsequent owner if they sell it under
11 the terms of the warranty.

12 So Your Honor, take a look at that warranty. It's
13 not internally inconsistent. It doesn't take away the
14 repair or replace aspect and that repair or replace
15 aspect is in the provision of the warranty that talks
16 about -- that's on page two of the warranty under TAMKO
17 full start period.

18 THE COURT: What's the cert situation on the
19 Pearson case?

20 MR. WILLIS: Your Honor, I don't believe cert was
21 sought. I'll be happy to shepardize it but I think that
22 case is about a year old so I don't think it's on appeal
23 but I'll check ---

24 THE COURT: --- it was decided on October the 3rd
25 of 2012 it's almost a year and a half ago.

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1 MR. WILLIS: I'll be happy to check, Your Honor,
2 and see if it's ---

3 THE COURT: --- do you know -- does anybody know?
4 Was cert requested or denied or does anybody know?

5 MS. LYNN: I would have to double check ---

6 THE COURT: --- pardon?

7 MS. LYNN: I will double check, Your Honor.

8 THE COURT: All right. Let me know ---

9 MR. WILLIS: --- I'll include that in the brief ---

10 THE COURT: --- about that in a supplemental brief,
11 okay.

12 MR. WILLIS: Your Honor, one other thing if I can
13 belabor the court one more time.

14 THE COURT: You get to the point where you are
15 belaboring.

16 MR. WILLIS: I know. This is my last point.

17 THE COURT: Because you keep repeating yourself.
18 You've said the same thing a couple of times but go
19 ahead.

20 MR. WILLIS: I apologize. Your Honor, one more
21 case.

22 [Whereupon, Mr. Willis provides documents to the
23 court]

24 MR. WILLIS: This is Judge Traxler's case upholding
25 the exclusion of limited warranties, upholding the

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1 exclusion of consequential damages in an
2 unconscionability analysis involving an industrial
3 machine.

4 THE COURT: Okay.

5 MR. WILLIS: That's all I have. Thank you, Your
6 Honor.

7 THE COURT: Thank you so very much. I appreciate
8 it.

9 *****END OF TRANSCRIPT OF RECORD*****
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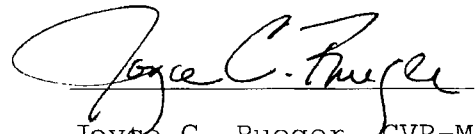
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 25th day of June, 2014.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

November 21, 2014

A handwritten signature in cursive script, reading "Joyce C. Rueger", written over a horizontal line.

Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

ONE BELLE HALL PROPERTY OWNERS)
ASSOCIATION, INC. and BRANDY RAMEY,)
individually, and on behalf of all others similarly)
situated,)

CASE NO. 2012-CP-10-7594

Plaintiffs,)

vs.)

**DEFENDANT TAMKO
BUILDING PRODUCTS, INC'S
MOTION TO DISMISS AND
COMPEL ARBITRATION**

Trammell Crow Residential Company; TCR NC)
Construction I, LP; Belle Hall Direct 101, LP;)
TCR RLD Condominiums, Inc.; CS 101 Belle)
Hall, LP; TCR Southeast, Inc.; TCR Carolina)
Properties, Inc.; TCR SE Construction, Inc.;)
TCR SE Construction II, Inc.; TCR)
Construction, a division of Trammell Crow)
Residential; TCR Development, a division of)
Trammell Crow Residential; Trammell Crow)
Residential Carolina, a division of Trammell)
Crow Residential; and Tauer Consulting)
Company, Inc., a division of Trammell Crow)
Residential, each individually, and collectively)
d/b/a "Trammell Crow Residential," "Trammell)
Crow" or "TCR"; Halter Properties, LLC;)
Halter Realty LLC; and Halter Realty Group,)
LLC, each individually, and collectively d/b/a)
"Halter Companies"; Jane Doe 1-5; ABG)
Caulking & Waterproofing of Morristown, Inc.)
a/k/a ABG Caulking Contractors; Advanced)
Building Products & Services, LLC;)
BASF Corporation; Budget Mechanical)
Plumbing, Inc.; Builders First Source -)
Southeast Group, LLC; Builders Services)
Group, Inc., individually, and d/b/a Gale)
Contractor Services, Inc.; Century Fire)
Protection, LLC; Cline Design Associates, P.A.)
and Gary D. Cline; Coastal Lumber & Framing,)
LLC; Dodson Brothers Exterminating Co.,)
Inc. a/k/a Dodson Pest Control; First Exteriors,)
LLC; Flooring Services, Inc.; General Heating)
& Air Conditioning Company of Greenville,)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 FEB 28 AM 11:58

FILED

Inc. d/b/a General Heating and Air; Jimmy)
 Warner, individually, and d/b/a Warner)
 Heating & Air; Glazing Consultants, Inc.;)
 GWC Roofing, Inc., individually, and)
 d/b/a Southcoast Exteriors, Inc.; Houston)
 Stafford Electrical Contractors, LP a/k/a)
 IES Residential, Inc. d/b/a Houston)
 Stafford Electric; KMAC of the Carolinas,)
 Inc.; P&P Metal Sales Co., Inc. a/k/a)
 P&P Metal Sales, LLC a/k/a P&P Metal)
 Sales, Inc. a/k/a Carolina Metals;)
 Pleasant Places, Inc.; Raymond Building)
 Supply Corporation d/b/a Energy Saving)
 Products of Florida, Inc. a/k/a Energy)
 Saving Products of Florida; Southern)
 Specialties, Inc.; Structural Contractors)
 South, Inc.; Superior Construction)
 Services, Inc., individually, and d/b/a)
 Superior Masonry Unlimited, Inc.;)
 TAMKO Building Products, Inc. f/k/a)
 TAMKO Roofing Products, Inc.; VNS)
 Corporation, individually, and d/b/a)
 Wholesale Building Products f/k/a)
 Wholesale Building Materials, Inc.;)
 What Don't We Do; and John Doe 1-25,)
)
 Defendants.)
)

Defendant TAMKO Building Products, Inc. ("TAMKO") hereby moves, pursuant to Rule 12, SCRCP, for an order compelling arbitration of Plaintiffs' claims against TAMKO.

I. Introduction and Factual Background

Plaintiffs One Belle Hall Property Owners Association, Inc. and Brandy Ramey¹ have brought claims for negligence, breach of warranty, and strict products liability

¹ In addition to suing in an individual capacity, Ms. Ramey seeks to be the class representative for alleged similarly situated individuals. While the class action litigation issues are beyond the scope of the instant motion, the parties' arbitration agreement requires individualized arbitration. Exhibit A (TAMKO warranty). The South Carolina

against a host of defendants, including TAMKO, for multiple alleged problems arising from the construction of the One Belle Hall condominiums in Mount Pleasant, South Carolina. TAMKO is a manufacturer and supplier of roof shingles and related products, and Plaintiffs allege damage-causing defects in certain TAMKO shingles that were installed on One Belle Hall properties. TAMKO denies its shingles were defective.

The TAMKO shingles were sold pursuant to a limited warranty that included an express provision requiring all disputes related to the shingles be submitted to mandatory binding arbitration. Exhibit A at p. 5 (TAMKO warranty). Specifically, the contract provides:

MANDATORY BINDING ARBITRATION: EVERY CLAIM, CONTROVERSY, OR DISPUTE OF ANY KIND WHATSOEVER INCLUDING WHETHER ANY PARTICULAR MATTER IS SUBJECT TO ARBITRATION (EACH AN "ACTION") BETWEEN YOU AND TAMKO (INCLUDING ANY OF TAMKO'S EMPLOYEES AND AGENTS) RELATING TO OR ARISING OUT OF THE SHINGLES OR THIS LIMITED WARRANTY SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION, REGARDLESS OF WHETHER THE ACTION SOUNDS IN WARRANTY, CONTRACT, STATUTE OR ANY OTHER LEGAL OR EQUITABLE THEORY. TO ARBITRATE AN ACTION AGAINST TAMKO, YOU MUST INITIATE THE ARBITRATION IN ACCORDANCE WITH THE APPLICABLE RULES OF ARBITRATION OF THE AMERICAN ARBITRATION ASSOCIATION (WHICH ARE AVAILABLE ONLINE AT www.adr.org OR BY CALLING THE AMERICAN ARBITRATION ASSOCIATION AT 1-800-778-7879) AND PROVIDE WRITTEN NOTICE TO TAMKO BY CERTIFIED MAIL AT P.O. BOX 1404, JOPLIN, MISSOURI 64802 WITHIN THE TIME PERIOD PRESCRIBED IMMEDIATELY BELOW.

Exhibit A (bold and capitals in original).

Court of Appeals recently held, with reference to United States Supreme Court authority, such a provision to be valid and enforceable. See *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 749 S.E.2d 139, 151-53 (Ct. App. 2013) (citing *AT&T Mobility LLC v. Concepcion*, 131 S.Ct. 1740 (2011)). For this reason, the viability of the class Ms. Ramey seeks to represent for claims against other defendants is irrelevant to the arbitration of disputes with TAMKO.

Neither One Belle Hall Property Owners Association, Inc. nor Brandy Ramey initiated arbitration in accordance with this provision. After service of the Amended Complaint on TAMKO, defense counsel wrote to counsel for plaintiffs pointing out the arbitration requirement and offering this remedy. No response to the letter has been received. Because the arbitration agreement is valid and enforceable, this Court is required to issue an order compelling arbitration of each Plaintiffs' claims² against TAMKO, and dismissing Plaintiffs' suit against TAMKO.

II. The Arbitration Agreement Should be Enforced Under The Federal Arbitration Act

Prior to 1925, there had been resistance to the enforcement of arbitration agreements, leading Congress to enact The Federal Arbitration Act ("FAA") to govern such agreements for transactions "involving commerce." *Concepcion*, 131 S.Ct. at 1745. The United States Supreme Court has explained that the FAA "reflected both a liberal federal policy favoring arbitration, and the fundamental principle that arbitration is a matter of contract." *Id.* (internal citations omitted). "The 'principal purpose' of the FAA is to 'ensur[e] that private arbitration agreements are enforced according to their terms.'" *Id.* at 1748 (quoting *Volt Inf. Sciences v. Stanford Univ.*, 489 U.S. 468, 478 (1989)). As the South Carolina Court of Appeals has succinctly explained, state policy is in harmony with this federal goal: "South Carolina favors arbitration." *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 126, 647 S.E.2d 249, 251 (Ct. App. 2007); see also *Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 399, 540 S.E.2d 864, 865 (Ct.

² As discussed in Footnote 1, the contract specifically provides for individualized arbitration.

App. 2000) ("The policy of the United States and this State is to favor arbitration of disputes.").

The FAA provides that contractual arbitration agreements "shall be valid, irrevocable, and enforceable," unless there are grounds to revoke the contract. 9 U.S.C. § 2. The grounds for revocation of an arbitration agreement have been described by the Supreme Court as "generally applicable contract defenses, such as fraud, duress, or unconscionability, but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." *Concepcion*, 131 S.Ct. at 1746 (internal citations omitted).

Plaintiffs are third party beneficiaries of a valid and enforceable contract concerning the sale of shingles. See S.C. Code Ann. § 36-2-313 (creation of express warranties); S.C. Code Ann. § 36-2-318 (third party beneficiaries of warranties). The transaction involved interstate commerce and, among other provisions, the contract included a mutually binding agreement to arbitrate any and all disputes related to the shingles or their limited warranty. See Affidavit of W. Kent Blanchard, attached hereto as Exhibit B. Thus, the FAA applies to Plaintiffs' claims against TAMKO, and those claims must therefore be arbitrated.

A) The Transaction Involved Interstate Commerce³

³ South Carolina has its own Arbitration Act, but insofar as the provisions of that statute would invalidate an arbitration agreement involving interstate commerce, the FAA preempts such provisions. *Blanton v. Stathos*, 351 S.C. 534, 539-540, 570 S.E.2d 565, 567-68 (Ct. App. 2002); see also *Concepcion*, 131 S.Ct. 1740. Thus, although the South Carolina Arbitration Act has certain notice requirements for arbitration provisions, a failure to meet those requirements does not invalidate an arbitration agreement that is governed by the FAA. *Blanton*, 351 S.C. at 539-40, 570 S.E.2d at 567-68; see also *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 590-96, 553 S.E.2d 110, 115-18 (2001); *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 730 S.E.2d 312 (2012).

Absent a contrary agreement, "the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 538-39, 542 S.E.2d 360, 363 (2001) (internal citations omitted). Though each case's facts will ultimately determine whether the transaction in question involved interstate commerce, the United States Supreme Court has explained that the FAA's language "signal[ed] 'an intent to exercise Congress' commerce power to the full[est].'" *Lucey v. Meyer, et. al.*, 401 S.C. 122, 133-34, 736 S.E.2d 274, 280 (Ct. App. 2012) (internal citations omitted).

TAMKO, a Missouri corporation, has its principal place of business in Joplin, Missouri. (Exhibit B, affidavit). It has several manufacturing facilities across the country, none of which are located in South Carolina. (Exhibit B, affidavit). TAMKO shingles are sold to the public through a network of distributors, and for business in South Carolina, shingles are shipped from out of state to a warehouse facility Rock Hill before being sold to a distributor. (Exhibit B, affidavit). Payments for shingles are received and processed by TAMKO's Accounts Receivable Department in Joplin, Missouri. The sale of the TAMKO shingles installed in the One Belle Hall project involved interstate commerce. *Munoz*, 343 S.C. at 538-39, 542 S.E.2d at 363; *Lucey*, 401 S.C. at 134-135, 736 S.E.2d at 280 (surveying South Carolina cases considering the issue of interstate commerce for FAA purposes); see also *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 277 (1995) (concluding that the FAA reaches the full extent of Congress's power to regulate interstate commerce).

B) The Arbitration Agreement is Mutually Binding on the Parties

The question of whether there has been an agreement to arbitrate is governed by ordinary principles of state contract law. *Towles v. United Healthcare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 843-44 (Ct. App. 1999). "There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy in favor of arbitration. *Id.* 338 S.C. at 37, 524 S.E.2d at 844 (internal citations omitted). "Therefore, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability. *Motions to compel arbitration should not be denied unless the arbitration clause is not susceptible of any interpretation that would cover the asserted dispute.*" *Id.* 338 S.C. at 41-42, 524 S.E.2d at 846 (emphasis added).

Because the arbitration clause is a part of TAMKO's warranty, it is governed by S.C. Code Ann. § 36-2-318, which provides that "[a] seller's warranty whether express or implied extends to any natural person who may be expected to use, consume or be affected by the goods and whose person or property is damaged by breach of the warranty." The South Carolina Supreme Court has explained that "[t]he plain language of the foregoing section dispenses with the necessity of privity as to any natural person who may be expected to use, consume or be affected by the product, and extends third party beneficiary protection to this class of person[.]" *Gasque v. Eagle Machine Co., Ltd.*, 270 S.C. 499, 503, 243 S.E.2d 831, 832 (1978). One Belle Hall property owners can be "expected" to be "affected" by the shingles on their roofs, and thus, by statute, the TAMKO warranty provides them the possibility of recovery, regardless of whether Plaintiffs directly contracted with TAMKO.

As beneficiaries of an express contractual warranty, Plaintiffs' claims against TAMKO are governed by the language of that contract, which is clear and unambiguous: "Every claim, controversy, or dispute of any kind whatsoever...between you and TAMKO or arising out of the shingles or this limited warranty shall be resolved by final and binding arbitration, whether the action sounds in warranty, contract, statute or any other legal or equitable theory." Exhibit A (emphasis added). All of Plaintiffs' claims against TAMKO relate to the shingles at the heart of this contract.

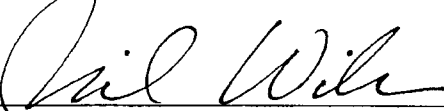
As beneficiaries of an express contractual warranty, Plaintiffs have an avenue for recovery against TAMKO that is exclusive of this lawsuit. As such, their remedies must be sought according to the terms of the warranty. Those terms unambiguously require that all disputes related to these shingles be addressed through arbitration.

Conclusion

Both South Carolina and the United States favor the enforcement of arbitration agreements. The terms of the agreement at issue are unambiguous and apply to Plaintiffs' claims against TAMKO. TAMKO therefore respectfully moves for an order dismissing TAMKO from the present action, tolling Plaintiffs' statute of limitations for these claims against TAMKO pending the outcome of arbitration⁴, and compelling Plaintiffs to individually arbitrate their claims against TAMKO.

⁴ In a recent case, a defendant sought to enforce an arbitration agreement by way of a motion to dismiss or stay the trial court's proceedings and to compel arbitration. See *Widener v. Fort Mill Ford*, 381 S.C. 522, 674 S.E.2d 172 (Ct. App. 2009). The trial court dismissed, but the Court of Appeals reversed and remanded for entry of an order staying the action, reasoning that the dismissal had the potential to create statute of limitations issues in the event the arbitration failed to dispose of all the claims. *Id.* However, a more recent Court of Appeals affirmed a trial court's grant of a motion to dismiss and compel arbitration. See *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 749 S.E.2d 139 (Ct. App. 2013). Because of the breadth of the arbitration clause in the

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Attorneys for Tamko Building Products, Inc.

Columbia, South Carolina

2-26, 2014

instant case, there is no *Widener*-like potential that the arbitration will not address all of the potential claims so dismissal is appropriate, but an order tolling of the statute of limitations while the arbitration is pending will in any event address the concerns discussed in that case.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ONE BELLE HALL PROPERTY OWNERS)
ASSOCIATION, INC. and BRANDY RAMEY,)
individually, and on behalf of all others similarly)
situated,)

Plaintiffs,)

vs.)

Trammell Crow Residential Company; TCR NC)
Construction I, LP; Belle Hall Direct 101, LP; TCR)
RLD Condominiums, Inc.; CS 101 Belle Hall, LP;)
TCR Southeast, Inc.; TCR Carolina Properties, Inc.;)
TCR SE Construction, Inc.; TCR SE Construction)
II, Inc.; TCR Construction, a division of Trammell)
Crow Residential; TCR Development, a division of)
Trammell Crow Residential; Trammell Crow)
Residential Carolina, a division of Trammell Crow)
Residential; and Tauer Consulting Company, Inc., a)
division of Trammell Crow Residential, each)
individually, and collectively d/b/a "Trammell)
Crow Residential," "Trammell Crow" or "TCR";)
Halter Properties, LLC; Halter Realty, LLC; and)
Halter Realty Group, LLC, each individually, and)
collectively d/b/a "Halter Companies"; Jane Doe 1-)
5; ABG Caulking & Waterproofing of Morristown,)
Inc. a/k/a ABG Caulking Contractors; Advanced)
Building Products & Services, LLC; BASF)
Corporation; Budget Mechanical Plumbing, Inc.;)
Builders First Source – Southeast Group, LLC;)
Builders Services Group, Inc., individually, and)
d/b/a Gale Contractor Services, Inc.; Century Fire)
Protection, LLC; Cline Design Associates, P.A. and)
Gary D. Cline; Coastal Lumber & Framing, LLC;)
Dodson Brothers Exterminating Co., Inc. a/k/a)
Dodson Pest Control; First Exteriors, LLC;)
Flooring Services, Inc.; General Heating & Air)
Conditioning Company of Greenville, Inc. d/b/a)
General Heating and Air; Jimmy Warner,)
individually, and d/b/a Warner Heating & Air;)
Glazing Consultants, Inc.; GWC Roofing, Inc.,)
individually, and d/b/a Southcoast Exteriors, Inc.;)
Houston Stafford Electrical Contractors, LP a/k/a)

IN THE COURT OF COMMON PLEAS)
FOR THE NINTH JUDICIAL CIRCUIT)
CASE NO. 2012-CP-10-7594)

**PLAINTIFFS' MEMORANDUM IN)
OPPOSITION TO DEFENDANT)
TAMKO'S MOTION TO DISMISS)
AND COMPEL ARBITRATION)**

IES Residential, Inc. d/b/a Houston Stafford)
 Electric; KMAC of the Carolinas, Inc.; P&P Metal)
 Sales Co., Inc. a/k/a P&P Metal Sales, LLC a/k/a)
 P&P Metal Sales, Inc. a/k/a Carolina Metals;)
 Pleasant Places, Inc.; Raymond Building Supply)
 Corporation d/b/a Energy Saving Products of)
 Florida, Inc. a/k/a Energy Saving Products of)
 Florida; RS Custom Homes, LLC; Southern)
 Specialties, Inc.; Structural Contractors South, Inc.;)
 Superior Construction Services, Inc., individually,)
 and d/b/a Superior Masonry Unlimited, Inc.;)
 TAMKO Building Products, Inc. f/k/a TAMKO)
 Roofing Products, Inc.; VNS Corporation,)
 individually, and d/b/a Wholesale Building)
 Products f/k/a Wholesale Building Materials, Inc.;)
 What Don't We Do; and John Doe 1-25,)
)
 Defendants.)

The Plaintiffs, One Belle Hall Property Owners Association and Brandy Ramey, individually, and on behalf of all others similarly situated (hereinafter collectively referred to as "Plaintiffs"), by and through their undersigned counsel, hereby submit this Memorandum in Opposition to Defendant's, TAMKO Building Products, Inc. f/k/a TAMKO Roofing Products, Inc. (hereinafter "TAMKO"), Motion to Dismiss and Compel Arbitration.

SUMMARY OF ARGUMENT

This Court should deny TAMKO's Motion to Dismiss and Compel Arbitration because, regardless of whether governed by the FAA or the South Carolina Arbitration Act, the arbitration and other anti-suit provisions contained in TAMKO's Warranty are wholly unconscionable, contrary to South Carolina law, inherently ambiguous, and thus, unenforceable. Moreover, Plaintiffs are not parties to the warranty agreement, and thus, the terms of TAMKO's limited warranty are not applicable to Plaintiffs. Additionally, Plaintiffs' claims relate to material misrepresentations and omissions promulgated by TAMKO and arbitration cannot be enforced in connection with claims related to deceptive conduct.

STANDARD OF REVIEW

The question of the arbitrability of a claim is an issue for judicial determination. *AT & T Techs., Inc. v. Communications Workers of America*, 475 U.S. 643, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986) (citations omitted); *Partain v. Upstate Automotive Group*, 386 S.C. 488, 689 S.E.2d 602 (2010) (“The question of arbitrability of a claim is an issue for the courts.”). In deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims. *AT & T Techs.*, 475 U.S. at 649, 106 S. Ct. at 1419. Moreover, as arbitration is a matter of contract, a party cannot be required to submit to arbitration any dispute which he has not agreed to submit. *Simmons v. Lucas & Stubbs Assocs., Ltd.*, 283 S.C. 326, 322 S.E.2d 467 (Ct. App. 1984) (noting arbitration rests on the agreement of the parties, and the range of issues that can be arbitrated is restricted by the terms of the agreement). Further, general contract defenses such as fraud, duress and unconscionability apply to a court’s evaluation of the enforceability of an arbitration clause governed by the FAA. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 364 (2001). Thus, if a court as a matter of state law finds any clause of a contract unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause, or so limit its application so as to avoid any unconscionable result. S.C. Code § 36-3-302(1) 2003.

FACTUAL SUMMARY AND PROCEDURAL BACKGROUND

A.) Introduction

The present case arises out of numerous defective conditions existing within the One Belle Hall Condominiums (“One Belle Hall”) located in Charleston County, South Carolina. One Belle Hall is a condominium complex consisting of four, three-story buildings featuring 59 individual condominium units located within walking distance of the Belle Hall Shopping Center on Long Point Road in Mt. Pleasant, South Carolina. Certain Defendants’ failures to properly

design and manufacture the building components installed at One Belle Hall, coupled with the other Defendants' failures to correctly design, construct, repair and/or supervise One Belle Hall have resulted in significant deficiencies including, but not limited to, improper exterior claddings, windows, doors, balconies, flooring, HVAC systems, waterproofing and water infiltration as well as compromised structural members and prematurely failing roofing materials. The majority of these defects have resulted in moisture damage, water intrusion, wood decay, and active termite infestation affecting each of the four One Belle Hall buildings, and all of above-referenced defects and resulting damages will require repair and replacement.

B.) TAMKO'S Elite Glass Seal (AR) Shingles

TAMKO is a Missouri Corporation which manufactures a diverse selection of roofing products for commercial and residential markets, and specifically, manufactures the Elite Glass-Seal (AR) 3-Tab Asphalt Shingles (the "Shingles") installed upon each of the One Belle Hall buildings. TAMKO designed, manufactured, marketed and sold its Elite Glass Shingles (the "Shingles"), and represented, advertised and warranted them to be durable, reliable, free from defects and compliant with ASTM standards appropriate for use at One Belle Hall. Specifically, TAMKO represented and warranted, through various marketing materials, that its Shingles were in compliance with all building codes and ASTM standards including ASTM D 6381, Class H; ASTM D 3161, Type 1, Class F; ASTM D 7158, Class H; ASTM D 3462 and ASTM E 108. *See* Elite Glass-Seal Product Data Sheets and Installation Instructions attached hereto as Exhibit "A".

In contrast to TAMKO's warranties and representations concerning the Shingles, the Shingles are defective and problematic at the time of sale and thereafter. They blister and crack, leading to early granule loss, increased moisture absorption, and reduced life expectancy. Moreover, the Shingles do not perform as warranted and represented and allow for resulting damage to other property and building components. As a result of TAMKO's defective Shingles,

Plaintiffs have suffered and continues to suffer extensive damages.

At no time relevant hereto, did TAMKO ever disclose to Plaintiffs the risks inherent in the defective Shingles such as the significant probability of blistering, cracking, leakage and consequential damages. To the contrary, TAMKO sold the Shingles to the public based upon false representations and warranties which fail to disclose these inherent deficiencies. As noted above, each of the four buildings which comprise One Belle Hall contain the defective Shingles designed, manufactured, marketed and warranted by TAMKO. Due to the defects inherent in the Shingles, defects which TAMKO failed to disclose, Plaintiffs have suffered and continue to suffer resulting damage including, but not limited to, damage to Plaintiffs' other property.

C.) TAMKO'S Limited Warranty

As evidenced by the record, TAMKO's Shingles are sold with an express warranty that is: (a) limited in duration; (b) limited in compensation; (c) limited in transferability; and (d) limited in available recovery avenues.¹ See TAMKO Warranty attached hereto as Exhibit "B". Given its very "limited" nature and TAMKO's knowledge that its Shingles often will fail during their useful life, TAMKO's warranty does not provide adequate coverage for residences which incorporate the Shingles, such as One Belle Hall. Not only does TAMKO's Warranty provide insufficient coverage, it also wrongfully attempts to disclaim TAMKO's liability for the same and unconscionably restricts recovery avenues through its arbitration and related "legal remedies" provisions. Specifically, these provisions provide, in pertinent part, as follows:²

¹ Specifically, TAMKO expressly warrants the Shingles are free from manufacturing defects that "cause [the] Shingles to fail to perform their intended purpose of shedding water" for a period of *twenty-five years*. TAMKO also warrants that its Shingles will resist high winds for a period of *60 months* after the Shingles have had the opportunity to "seal down". TAMKO further warrants it will provide "cleaning" cost should its Shingles "become significantly stained" during *the 120 months* following purchase. *Id.* Moreover, TAMKO limits any recovery to only the cost of replacement shingles after the five-year period following purchase and limits warranty transferability to one time only during the two year period following purchase.

²For ease of reading purposes, the notable sections of TAMKO's Warranty are extracted and referenced specifically below. However, the exact format of these extracted sections does not mirror the format of said sections as written in TAMKO's warranty as certain items are in different color, bolded or otherwise varied.

Mandatory Binding Arbitration: Every claim, controversy, or dispute of any kind whatsoever (each an “action”) between you and TAMKO (including any of TAMKO’s employees and agents) relating to or arising out of the product shall be resolved by final and binding arbitration, regardless of whether the action sounds in warranty, contract, statute or any other legal or equitable theory. To arbitrate an action against TAMKO, you must initiate the arbitration in accordance with the applicable rules of arbitration of the American Association (which are available online at www.adr.org or by calling the American Arbitration Association at (800-778-7879), the judicial arbitration and mediation service or other arbitration service agreed to in writing by TAMKO, and provide written notice to TAMKO by certified mail at P.O. Box 1404, Joplin, Missouri 64802 within one year following the discovery of the leak.

Any action brought by you against TAMKO will be arbitrated (or, if arbitration of the action is not permitted by law, litigated) individually and you will not consolidate, or seek class treatment for, any action unless previously agreed to in writing by both TAMKO and you.

Legal Remedies: Remedies for breach of this limited warranty or any implied warranty are exclusive and represent the sole remedies available to the owner or any other person or entity, including any mortgagee, insurer, or other party in interest. Obligations contained in this limited warranty are expressly in lieu of any other obligations, guarantees, warranties, and conditions expressed or implied, including any implied warranty or condition of merchantability or fitness for a particular purpose, and of any other obligations or liability on the part of TAMKO Building Products, Inc. In no event shall TAMKO be liable for direct or indirect economic damages, or for consequential or incidental damages of any kind including without limitation, damages to the interior or exterior of any building whether for breach of this warranty, negligence, strict liability in tort or for any other cause.

One Year Statute of Limitations. No action for breach of this limited warranty or any other action against TAMKO relating to or arising out of the product, its purchase or this transaction shall be brought later than one year after any cause of action has accrued.

D.) Procedural Overview

On November 19, 2012, Plaintiffs commenced this action by filing an Initial Complaint which asserted a number of claims including negligence, breach of warranty, unfair trade practices, strict liability, amalgamation and breach of fiduciary duty against the parties responsible for One Belle Hall’s defective condition. Subsequently, Plaintiffs filed an Amended

Complaint on December 30, 2013 primarily for the purpose of naming additional parties, one of which is TAMKO.³ On February 14, 2014 TAMKO filed an Answer to Plaintiffs' Amended Complaint, and thereafter, TAMKO filed the instant Motion requesting this Court dismiss Plaintiffs' claims against TAMKO and compel arbitration as to the same based upon purported arbitration provisions contained in TAMKO's Warranty governed by the FAA.

ARGUMENT

A.) South Carolina Law and Prevailing Equitable Principles Can Operate to Invalidate TAMKO's Arbitration Provisions

Even assuming the Federal Arbitration Act, 9 U.S.C. 1, *et seq.* ("FAA") applies to the instant case, the FAA provides arbitration clauses are unenforceable when state law or equitable principles invalidate clause provisions. 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.")). In other words, where state law governs issues concerning the validity, revocability and enforcement of contracts generally, state law also governs issues concerning the validity, revocability and enforcement of arbitration clauses.⁴⁵

Thus, in South Carolina, a party may effectively challenge the arbitrability of a given claim based upon general contract defenses including fraud, duress and unconscionability. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 363-64 (2001) (noting general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause governed by the FAA).

³ Plaintiffs' claim against TAMKO include negligence, breach of warranty and strict liability.

⁴ As aptly noted by Justices Breyer, Ginsburg, Sotomayor and Kagan in their dissenting opinion to *AT&T Mobility, LLC v. Concepcion*: "even though contract defenses, e.g., duress and unconscionability, slow down the dispute resolution process, *federal arbitration law normally leaves such matters to the States.*" 131 S.Ct. 1740, 1760 (2011) (emphasis added); *Rent-A-Center*, 130 S.Ct. at 2775 (2010) (arbitration agreements "may be invalidated by 'generally applicable contract defenses'"); *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 363-64 (2001) ("General contract principles of state law apply to arbitration clauses governed by the FAA").

⁵ According to South Carolina law, a party may seek revocation of a contract under "such grounds as exist at law or in equity," including fraud, duress, and unconscionability. S.C. Code § 15-48-10(a).

When such questions of arbitrability arise, the trial court, not the arbitrator, decides whether a matter should be resolved through arbitration. *See Granite Rock Co. v. Int'l Bhd. Of Teamsters*, 561 U.S. 287, 296, 130 S.Ct. 2847, 2859, 177 L.Ed.2d 567 (2010); *AT & T Tech., Inc. v. Comm'n Workers of Am.*, 475 U.S. 643, 651, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986). This 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, 644 S.E.2d 663 (2007) (noting where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place.); *Smith v. D.R. Horton, Inc.*, 403 S.C. 10, 742 S.E.2d 37 (Ct. App. 2013) (“When deciding a motion to compel arbitration under the SCUAA or the FAA, the court should look to the state law that ordinarily governs the formation of contracts in determining whether a valid arbitration agreement arose between the parties.”); *see also* S.C. Code § 15-48-20 (a) (providing arbitration will be denied if a court determines no agreement to arbitrate existed).

Here, Plaintiffs did not and do not consent to arbitration and assert a number of state-specific grounds challenging the legitimacy of TAMKO’s arbitration provisions. In addition to its unconscionable nature, TAMKO’s arbitration clause is exculpatory in nature, contrary to South Carolina law, and violates public policy. Accordingly, TAMKO’s arbitration clause is unenforceable, and this Court should deny TAMKO’s Motion to Dismiss and Compel Arbitration (hereinafter “the Motion” or TAMKO’s Motion”).

B.) TAMKO’s Warranty Provisions are Unconscionable and Unenforceable

First, this Court should deny TAMKO’s Motion based upon the wholly unconscionable terms contained in TAMKO’s Warranty, and specifically, its arbitration and legal remedies provisions. Given the absence of meaningful choice necessarily involved in connection with

TAMKO's Warranty, coupled with the one-sided nature of its "remedial" provisions, this Court should find said provisions unenforceable, and thus, refuse to compel arbitration regardless of the FAA's applicability. S.C. Code § 15-48-20(a); *see also D.R. Horton*, 403 S.C. 10, 17, 742 S.E.2d 37, 41 (2013) *citing* S.C. Code § 36-2-302(1) (2003) ("[South Carolina] legislation permits this Court to refuse to enforce any unconscionable clause in a contract or to limit its application so as to avoid an unconscionable result.") (internal citations omitted).

Under our jurisprudence, "unconscionability" is defined to include both an absence of meaningful choice as well as oppressive, one-sided contractual provisions. *Simpson v. MSA of Myrtle Beach*, 373 S.C. 14, 25 644 S.E.2d 663, 668-69 (2007); *Carolina Care Plan, Inc. v. United Health Care Servs., Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004) (defining unconscionability 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.").

1.) Absence of Meaningful Choice

"Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue." *Id.* (citations omitted). "In determining whether a contract was 'tainted by an absence of meaningful choice,' courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause." *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669 (citations omitted). "[U]nder general principles of state contract law, an adhesion contract is a standard form contract offered on a 'take-it-or-leave-it' basis with terms that are not negotiable." *Id.* at 373 S.C. at 26-27, 644 S.E.2d at 669. In circumstances involving adhesion

contracts, an absence of meaningful choice is readily apparent based upon the lack of bargaining power. Accordingly, adhesion contracts, such as commercial sales agreements and manufacturer warranties, are subject to “considerable skepticism” due to the disparity in bargaining positions of the parties. *Id.* at 27, 644 S.E.2d at 669. Consequently, “the presumption in favor of arbitration is substantially weaker when there are strong indications that the contract at issue is an adhesion contract, and the arbitration clause itself appears to be adhesive in nature. In this situation, there arises considerable doubt that any true agreement ever existed to submit disputes to arbitration.” *Id.* at 26, 644 S.E.2d at 669 (citations omitted).

Here, Plaintiffs had *no choice* and *zero input* as to *any aspect* of TAMKO’s Warranty, including the Warranty’s arbitration and legal remedies provisions. Plaintiffs were not parties to the Warranty agreement, were never consulted in connection with the Warranty agreement, and were never provided the opportunity to negotiate the Warranty’s terms. Furthermore, the Plaintiffs are non-merchant consumers, and therefore, this case is distinguishable from (a) cases where the parties were sophisticated business entities in an arms-length negotiation; and (b) cases where the parties were also sophisticated and had the opportunity to negotiate terms.

Given Plaintiffs are unsophisticated, lacked bargaining power and presented with TAMKO’s Warranty on a take it or leave it basis, there is clearly an absence of meaningful choice. *Simpson*, 373 S.C. at 27, 644 S.E.2d at 670 (“Applying the factors considered by the Fourth Circuit in analyzing arbitration clauses, we also acknowledge Simpson’s claim that she did not possess the business judgment necessary to make her aware of the implications of the arbitration agreement. . . .”); *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 394, 498 S.E.2d 898, 901 (Ct. App. 1998) (recognizing a contract of adhesion is generally thought of as a standard form contract, offered on a take-it-or-leave-it basis, containing non-negotiable terms. This is even more the case given TAMKO’s arbitration and remedial-related provisions result in

(a) the loss of the right to a jury trial; (b) the loss of the ability to maintain a class action; and (c) the loss of other certain remedies otherwise allowed by South Carolina law including the recovery of monetary damages. *See* Exhibit B.

As such, this Court cannot ignore the “adhesive” nature of these provisions - non-negotiable provisions which were drafted by TAMKO on a take it or leave it basis - and which functioned to contract away certain significant rights and remedies otherwise lawfully available to Plaintiffs. *Simpson*, 373 S.C. at 25, 644 S.E.2d at 668-69 (“Although this Court acknowledges that parties are always free to contract away their rights, we cannot, under the circumstances, ignore the inconspicuous nature of a provision, which was drafted by the superior party, and which functioned to contract away certain significant rights and remedies otherwise available to Simpson by law. . .”).

2.) Oppressive/One-Sided Terms

Specifically as to oppressive terms, the South Carolina Court of Appeals in *Smith versus D.R. Horton* recently affirmed a trial court’s decision finding the arbitration provision contained in a D.R. Horton purchase contract unconscionable and unenforceable due to the “cumulative effect” of partisan provisions. *Smith v. D.R. Horton, Inc.*, 403 S.C. 10, 15, 742 S.E.2d 37, 40 (Ct. App. 2013). The trial court, confronted with a motion to compel arbitration brought by D.R. Horton, viewed the warranties and arbitration section of the purchase contract as a whole, finding it “referenced that certain disputes are to be resolved by mandatory binding arbitration along with an entire host of attempted waivers of important legal remedies. . .” *Id.* Per its review, the trial court held the sections’ collective attempt to disclaim implied warranty claims was oppressive and unconscionable. *Id.* The trial court further found “perhaps even more stark [were] the provisions in the Limitations of Liability. . .” in which D.R. Horton claimed it could not be liable for monetary damages of any kind. *Id.* Based upon the foregoing, the trial court

concluded, and our Court of Appeals subsequently affirmed, the arbitration provision was “wholly unconscionable and unenforceable based on the cumulative effect of a number of oppressive and one-sided provisions.” *Id.*

Here, a review of TAMKO’s Warranty reveals strikingly similar warranty limitations and disclaimers to those addressed, and ultimately rejected, by the *D.R. Horton* Court. For example, TAMKO’s Warranty provides:

Mandatory Binding Arbitration: Every claim, controversy, or dispute of any kind whatsoever (each an “action”) between you and TAMKO (including any of TAMKO’s employees and agents) relating to or arising out of the product shall be resolved by final and binding arbitration, regardless of whether the action sounds in warranty, contract, statute or any other legal or equitable theory.

Any action brought by you against TAMKO will be arbitrated (or, if arbitration of the action is not permitted by law, litigated) individually and you will not consolidate, or seek class treatment for, any action unless previously agreed to in writing by both TAMKO and you.

“Perhaps even more stark,” the “Legal Remedies” Section of TAMKO’s Warranty further provides, in pertinent part, as follows:

Remedies for breach of this limited warranty or any implied warranty are exclusive and represent the sole remedies available to the owner or any other person or entity. . . Obligations contained in this limited warranty are expressly in lieu of any other obligations, guarantees, warranties, and conditions expressed or implied, including any implied warranty or condition of merchantability or fitness for a particular purpose, and of any other obligations or liability on the part of Tamko Building Products, Inc.

In no event shall Tamko be liable for direct or indirect economic damages, or for consequential or incidental damages of any kind including without limitation, damages to the interior or exterior of any building whether for breach of this warranty, negligence, strict liability in tort or for any other cause.

See Exhibit “B”.

In other words, TAMKO’s Warranty contains arbitration and remedial provisions which mirror the provisions found unconscionable in *D.R. Horton*:

D.R. Horton's Warranty	TAMKO's Warranty
Warranty Purported to Be Only Warranty Extended by Horton (except for warranties which cannot be disclaimed by law)	Warranty Purports to Be Only Warranty Extended by TAMKO (except for warranties which cannot be disclaimed by law)
Purported to Disclaim All Other Warranties, Express or Implied, as to Quality, Fitness for Particular Purpose, Merchantability and Habitability.	Purports to Disclaim All Other Obligations, Guarantees, Warranties, and Conditions, Express or Implied, Including Any Implied Warranty or Condition of Merchantability or Fitness for Particular Purpose, and of Any Other Obligations or Liability on the Part of TAMKO
Provided All Disputes, of Any Kind, Subject to Binding Arbitration	Provides All Disputes, of Any Kind, Subject to Binding Arbitration
Provided Horton Shall Not be Liable for Monetary Damages of Any Kind, Including Secondary, Consequential, Punitive, General, Special or Indirect Damages.	Provides TAMKO Shall Not be Liable for Direct or Indirect Economic Damages, or for Consequential or Incidental Damages of Any Kind Including Without Limitation Damages to the Interior or Exterior of Any Building Whether for Breach of the Warranty, Negligence, Strict Liability or for Any Other Cause.
Provided Exclusions to Warranty for Landscaping	Provides, among other exclusionary clauses, that TAMKO Shall Not Be Liable for Damage to Any Building or Any Property Contained Therein Also Provides that Exposure of TAMKO Shingles at any time to winds in excess of 60 mph Extinguishes TAMKO's Liability.

Not only does the unconscionable language of TAMKO's Warranty mirror that of D.R. Horton's Warranty, TAMKO Warranty contains two additional provisions which further operate to wrongfully deprive consumer rights. Specifically, TAMKO's Warranty also purports to (1) preclude class actions and (2) restrict the Statute of Limitations to one year. *See Exhibit B.*

Clearly, under our state law principles of contract interpretation, such limitations offered on a take it or leave it basis and which serve to wrongfully deprive substantial rights while concomitantly eviscerating all means of recovering any damages are unconscionable. Indeed, as noted by our Supreme Court in *Simpson*:

The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution. . . [T]his arbitration clause violates statutory law because it prevents Simpson from receiving the mandatory statutory remedies to which she may be entitled. . . Therefore, under the general rule, this provision in the arbitration clause is unenforceable. . . In conjunction with Simpson's lack of meaningful choice in agreeing to arbitrate, this provision is an unconscionable waiver of statutory rights, and therefore, unenforceable.

Simpson, 373 S.C. at 29-30, 644 S.E.2d at 671 (emphasis added).

Subsequently, the *D.R. Horton* Court reached a similar conclusion:

Relying on the supreme court's analysis in Simpson, we affirm the trial court's finding of unconscionability, particularly in light of the lack of mutuality of remedy imposed by Section 14(i), which purported to exempt Horton from liability for monetary damages.

D.R. Horton, 403 S.C. at 15, 742 S.E.2d at 40-41 (emphasis added).

As applied to One Belle Hall, TAMKO's Warranty provisions negates the very damages separately classified, calculated and contemplated as available under the Warranty's terms. Thus, contrary to TAMKO's contention, the TAMKO Warranty does not provide the Plaintiffs "the possibility of recovery" – there is no recovery to be had per the Warranty provisions drafted by TAMKO. Rather, The Warranty provisions create an internal inconsistency within the Warranty itself by negating all meaningful warranty coverage for the primary risk associated with said Warranty – damage arising out of or to TAMKO's Shingles. Like the defendants in both *D.R. Horton* and *Simpson*, TAMKO takes the position its Warranty relieves *TAMKO of all liability for this very damage under any conceivable set of circumstances*. Clearly, this renders the Warranty

(a) void of its essential purpose; (b) lacking in mutuality; and (c) procedurally and substantively unconscionable.⁶

Given such unconscionable provisions are unenforceable according to South Carolina law, this Court should deny TAMKO's Motion so as to avoid any unconscionable result irrespective of the FAA. *Id. citing* S.C. Code § 36–2–302(1) (2003) (“If a court as a matter of law finds any clause of a contract to have been unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause, or so limit its application so as to avoid any unconscionable result. . . .”); *see also* TAMKO Supporting Memorandum, p. 5 (noting the grounds for revocation of an arbitration agreement include “generally applicable contract defenses, such as fraud, duress or unconscionability. . .”).

3.) The Warranty Provisions are Not Severable

Moreover, while Courts are permitted to “sever” unconscionable, contractual provisions, the purported agreement between Plaintiffs and TAMKO is not a proper candidate for the application of this remedy. South Carolina Courts, and a host of other Courts throughout the nation, “recognize severability if 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. . . .” *Simpson*, 373 S.C. at 34, 542 S.E.2d at 673; *D.R. Horton, supra*, (“We conclude the arbitration clause in this case should not be severed

⁶ Under our jurisprudence, such internal inconsistencies render TAMKO's Warranty inherently ambiguous and unconscionable, and therefore, this Court should refuse to enforce the same. In the insurance context, for example, the South Carolina Court of Appeals in *Isle of Palms Pest Control Company versus Monticello Insurance Company*, directly confronted a similar “internal inconsistency” issue, concluding as follows:

[T]he internal inconsistency created by [a policy exclusion] which *purports to bar coverage for claims arising out of the very operation sought to be insured* renders [the policy] *ambiguous in favor of coverage*.

319 S.C. 12, 19, 459 S.E.2d 318, 321 (Ct. App. 1994), *reh'g denied*, (Aug. 4, 1995 (emphasis added)); *see also Hooters of Augusta, Inc. v. American Global Ins. Co.*, 272 F. Supp.2d 1365, 1378 (S.D. Ga. 2003) (noting “[i]nsurers must not deceive insurance purchasers into believing they have coverage only to have an exclusionary provision entirely nullify it”).

from the numerous unconscionable provisions and particularly [D.R.] Horton’s attempt to waive any seller liability for monetary damages of any kind, including secondary, consequential, punitive, general, special or indirect damages.”) (internal citations omitted) (emphasis added); *see also Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165, 1180 (9th Cir. 2003) (finding arbitration agreement wholly unenforceable because of an “insidious pattern” of unconscionable provisions, and therefore “any earnest attempt to ameliorate the unconscionable aspects of [the] arbitration agreement would require [the] court to assume the role of contract author rather than interpreter”); *In re Cotton Yarn Antitrust Litig.*, 406 F.Supp.2d 585, 604 (M.D.N.C. 2005)(“[W]here, as here, multiple provisions of the arbitration clauses are inconsistent with Plaintiffs’ ability to effectively vindicate their statutory rights. . .the Court finds that the better course of action in this case is to excise the arbitration clauses altogether.”).

Similar to *Simpson* and *D.R. Horton*, TAMKO’s arbitration clause is “made unconscionable” by oppressive provisions which pervade the Warranty, thereby rendering “severability” impractical, if not impossible. Thus, in line with South Carolina jurisprudence, all unconscionable provisions contained within TAMKO’s Warranty should be read together, and ultimately rejected together by this Court. *Id.*

C.) TAMKO’s Warranty Provisions are Contrary to the Horizontal Property Regime Act

The Horizontal Property Regime Act (“HPRA”) mandates that the administration of the property shall be governed by the By-Laws. *See* S.C. Code Ann. § 27–31–150 (“[t]he administration of the property constituted into horizontal property. . .shall be governed by bylaws which shall be inserted in or appended to and recorded with the master deed or lease.”); *Ortega v. Kingfisher Homeowners Association, Inc.*, 314 S.C. 180, 442 S.E.2d 202 (Ct. App. 1994) (nothing horizontal property regimes are administered by bylaws inserted in or appended to the Master Deed.). The HPRA further provides:

The bylaws must necessarily provide for at least the following:

- (a) Form of administration, indicating whether this shall be in charge of an administrator or of a board of administration, or otherwise, and specifying the powers, manner of removal and, where proper, the compensation thereof;
- (b) Method of calling or summoning the co-owners to assemble; that a majority of at least fifty-one percent is required to adopt decisions; who is to preside over the meeting and who will keep the minutes book wherein the resolutions shall be recorded;
- (c) Care, upkeep and surveillance of the property and its general or limited common elements and services. . .

The sole owner of the property or, if there be more than one, the co-owners representing two thirds of the total value of the property, may at any time modify the system of administration, but each one of the particulars set forth in this section shall always be embodied in the bylaws. . .

S.C. Code § 27-31-160 (emphasis added).

Because the Bylaws govern the POA's administration of the Regime, any limitation on the POA's power to so administrate that is not included in the Bylaws violates the HPRA. Here, the purported arbitration provision which operates to limit the POA's power to "administrate" was not contained in the Bylaws, and thus, this purported limitation violates the HPRA.

Moreover, the One Belle Hall Master Deed conveys ownership of common elements to the Regime, but each owner owns an undivided interest in the Regime property. Pursuant to Section 27-31-70 of the HPRA, the common elements, *both general and limited, shall remain undivided* and shall *not* be the object of *an action for partition or division of the co-ownership. Any covenant to the contrary shall be void*. TAMKO's arbitration provisions, when read in conjunction with the other anti-suit provisions, attempts to "divide" the ownership of the common and limited common elements by purporting to require "each owner" to represent its own interest in the same. The division of such interests, in this manner, is precluded by the HPRA.

Further, the HPRA stipulates Plaintiffs must strictly comply with the bylaws and provisions of the Master Deed: “Each co-owner shall comply strictly with the bylaws. . .and with the covenants, conditions, and restrictions set forth in the master deed. . .” S.C. Code § 27-31-170 (emphasis added). However, the One Belle Hall Bylaws have no limitation on Plaintiffs’ right to sue, and it’s the Bylaws which govern the administration of the One Belle Hall Regime. Because the Bylaws contain no limitations on Plaintiffs’ right to sue, any provision contained in TAMKO’s warranty which purportedly precludes this right creates an ambiguity which this Court must construe in favor of Plaintiffs.⁷

D.) Plaintiffs Are Not Parties to TAMKO’s Warranty and Did Not Bargain for the Warranty’s Limitations and Disclaimers

In addition, this Court should deny TAMKO’s Motion because Plaintiffs were never parties to an arbitration agreement with TAMKO, and thus, any arbitration-related terms are not applicable to Plaintiffs. Indeed, “arbitration is available only when the parties involved contractually agree to arbitrate.” *General Drivers, Warehousemen and Helpers Local Union No. 509 v. Ethyl Corp.*, 68 F.3d 80, 83 (4th Cir. 1995); *see also Arrants v. Buck*, 130 F.3d 636, 640 (4th Cir. 1997) (“Courts decide whether there is an agreement to arbitrate according to common law principles of contract law.”); *Johnson v. Circuit City Stores*, 148 F.3d 373, 377 (4th Cir. 1998) (In determining whether an agreement to arbitrate exists, “the court should apply ordinary state-law principles that govern the formation of contracts.”). Similarly stated, “where there has been no agreement to arbitrate, a party cannot be forced into compulsory arbitration.” *Hilton*

⁷ Additionally, the Plaintiff POA, as a non-profit corporation, has the powers conferred upon it by the statutory provisions allowing its very existence and delineating its powers. Section 33-31-302 of the South Carolina Code endows all non-profit corporations with the powers described in subsection (1) – (18) of that statute which reads, in pertinent part, as follows:

. . .[E]very corporation has. . .the same powers as an individual to do all things necessary or convenient to carry out its affairs including, WITHOUT LIMITATION, power: (1) To sue and be sued, complaint and defendant in its corporate name. . .

In other words, non-profit corporations such as the POA possess the power, without limitation, to sue.

Head Resort Four Seasons Ctr. Horizontal Prop. Regime Council v. Resort Inv. Corp., 311 S.C. 394, 397–98, 429 S.E.2d 459, 462 (Ct. App. 1993) (citation omitted).

In the present case, Plaintiffs did not purchase the shingles directly from TAMKO, but were provided the shingles along with the construction and/or repair of One Belle Hall. As such, Plaintiffs were unable to review or negotiate any terms with TAMKO, and thus, obviously were not parties to any contract, warranty or otherwise, in connection with the Shingles installed at One Belle Hall. Given Plaintiffs were not parties to TAMKO's Warranty Agreement, any limitations or disclaimers included within said Agreement, do not bind Plaintiffs.

Moreover, under South Carolina law, warranty limitations or disclaimers must be a part of the basis of the bargain *between the parties* to a transaction to be effective. In this regard, South Carolina Courts adopt the view that “a disclaimer printed on a label or other document and given to the buyer at the time of delivery of the goods is *ineffective* if a bargain has already arisen.” *Gold Kist v. The Citizens and Southern Nat. Bank. Of S.C.*, 286 S.C. 272, 277, 333 S.E.2d 67, 71 (Ct. App. 1985) (emphasis added).⁸ Just as our courts found Gold Kist's disclaimers ineffective, so too should this Court find TAMKO's disclaimers ineffective given there is no evidence to suggest said disclaimers formed a basis of the Shingle purchase transaction.

Further, as non-parties to TAMKO's Warranty Agreement, Plaintiffs should not be estopped from avoiding the Warranty's arbitration provisions. Indeed, the distinction between parties to a purchase transaction and non-parties to the same is important to ensure the Court

⁸ *Gold Kist* concerned a dispute between Gold Kist and buyers over an unpaid account. The buyers purchased corn seed from Gold Kist's representatives based on the representatives' advice and quality assurances. When the seed failed to meet the quality standards, the buyers refused to pay and claimed that the seed was defective. Gold Kist claimed it had disclaimed implied warranties and limited its liability because it included a disclaimer on a label printed on the seed bags delivered to the buyers. The matter went to trial and the jury returned a verdict for the supplier in an amount substantially less than the amount owed on the account. The supplier made a post-trial motion seeking a judgment notwithstanding the verdict in its favor for the amount owed on the account. In affirming the jury verdict, the Court of Appeals found that “the disclaimer [was] invalid because it amount[ed] to a post-contract, unbargained-for unilateral attempt by Gold Kist to limit its obligations under the contract.” *Id.*

does not ignore the “non-party” status based solely on the interrelatedness of the claims alleged.

As aptly noted by the Second Circuit:

As these cases indicate, the circuits have been willing to estop a *signatory* from avoiding arbitration with a non-signatory when the issues the non-signatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed. As the district court pointed out, however, [t]he situation here is inverse: E & S, as signatory, seeks to compel Thomson, a non-signatory. While E & S suggests that this is a non-distinction, the nature of arbitration makes it important. Arbitration is strictly a matter of contract; if the parties have not agreed to arbitrate, *the courts have no authority to mandate that they do so*. In the line of cases discussed above, the courts held that the parties were estopped from avoiding arbitration because they had entered into written arbitration agreements, albeit with the affiliates of those parties asserting the arbitration and not the parties themselves. Thomson, however, cannot be estopped from denying the existence of an arbitration clause to which it is a signatory because no such clause exists. *At no point did Thomson indicate a willingness to arbitrate with E & S. Therefore, the district court properly determined these estoppel cases to be inapposite and insufficient justification for binding Thomson to an agreement that it never signed.*

Thomson-CSF, S.A. v. Am. Arbitration Ass’n, 64 F.3d 773, 779 (2nd Cir.1995) (internal citations omitted) (emphasis added).

Nevertheless, to the extent TAMKO avers Plaintiffs are bound by the terms of its Warranty Agreement as third-party beneficiaries, a third-party beneficiary will *only* be bound by the terms of the underlying contract where a “significant relationship” exists between the claims asserted by that beneficiary and the contract in which the arbitration clause is contained. *Long v. Silver*, 248 F.3d 309, 316 (4th Cir. 2001).

Moreover, TAMKO’s Warranty Agreement is *expressly limited in transferability*, a limitation which TAMKO will likely exploit at arbitration in an attempt to characterize Plaintiffs as non-beneficiaries. TAMKO simply cannot have it both ways and should not be permitted to discretely embrace Plaintiffs’ third-party beneficiary status to compel arbitration then expressly reject Plaintiffs’ third-party beneficiary status during arbitration.

E.) TAMKO Cannot Enforce its Warranty's Limitations and Disclaimers Based Upon Its Conduct.

Finally, this Court should deny TAMKO's Motion because Plaintiffs' claims relate to material misrepresentations and omissions promulgated by TAMKO and arbitration cannot be enforced in connection with claims related to deceptive conduct. Indeed, our Supreme Court refuses to interpret arbitration agreements to apply to illegal or outrageous acts unforeseen by reasonable persons:

Because even the most broadly-worded arbitration agreements still have limits founded in general principles of contract law, this Court will refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings.

Chassereau v. Global Sun Pools, 373 S.C. 168, 172, 644 S.E.2d 718, 720 (2007).

Here, the claims asserted by Plaintiffs against TAMKO are related to TAMKO's misrepresentations and material omissions concerning the Shingles. TAMKO never disclosed to anyone the risks inherent in the Shingles such as the significant probability of blistering, cracking, leakage and consequential damages. To the contrary, TAMKO sold the Shingles to the public based upon false representations and warranties which fail to disclose these inherent deficiencies. Clearly, TAMKO's actions constitute "illegal and outrageous" acts which are unforeseeable to a reasonable consumer in the context of normal business dealings. No party or third-party beneficiary to a contract can "foresee" that another party to the contract will misrepresent or omit material terms. *See, e.g., Partain v. Upstate Automotive Group*, 386 S.C. 488, 494, 689 S.E.2d 602, 605 (2010) ("[Plaintiff] cannot be held to have contemplated that, in signing the arbitration clause, he was agreeing to arbitrate claims arising from allegedly fraudulent conduct."). Furthermore, it is uniformly accepted in this State that a party, such as TAMKO, who engages in deceptive conduct, has waived its right to invoke an arbitration clause. *Partain v. Upstate Automotive Group*, 386 S.C. 488, 494 689 S.E.2d 602, 605 (2010)

(arbitration clause held to be unenforceable where auto dealership's fraudulent conduct of substituting lesser quality car was unforeseeable to purchaser); *Aiken v. World Fin. Corp. of South Carolina*, 373 S.C. 144, 151, 644 S.E.2d 705, 709 (2007) ("because even the most broadly-worded arbitration agreements still have limits founded in general principles of contract law, this Court will refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings."); *Chassereau v. Global Sun Pools*, 373 S.C. 168, 172, 644 S.E.2d 718, 720 (2007) (noting same).

CONCLUSION

In sum, this Court should deny TAMKO's Motion because Plaintiffs were never parties to any arbitration agreement with TAMKO, and therefore, are not subject to any arbitration-related terms. *Partain v. Upstate Automotive Group*, 386 S.C. 488, 494, 689 S.E.2d 602, 605 (2010) ("[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit."). To the extent this Court finds Plaintiffs third-party beneficiaries of TAMKO's Warranty provisions, this Court should still deny TAMKO's Motion given (a) the lack of a significant relationship between Plaintiffs' claims and the Warranty; (b) TAMKO's deceptive conduct; and (c) the unconscionability of its arbitration and related remedial provisions.

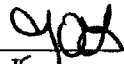
Indeed, South Carolina courts cannot enforce a contract which unconscionable or violative of statutory law, even if premised under the FAA. *Carolina Care Plan*, 361 S.C. at 555, 606 S.E.2d at 758. Nothing in the FAA permits parties to render unchallengeable otherwise unconscionable and unenforceable contract provisions by merely placing the provisions under an "arbitration" heading. Here, the one-sided provisions contained throughout TAMKO's Warranty, coupled with the purported application of its arbitration provision, "cumulatively" violate statutory law because they prevent Plaintiffs from receiving damages to which they are entitled

in their underlying claims. Moreover, these provisions are cumulatively unconscionable, and thus, should be construed together so that, as a whole, these provisions are not severable from each other, and thus, rejected as one. Just as the *Simpson* and *D.R. Horton* Courts refused to enforce such unconscionable terms, so too should this Court refuse to enforce the unconscionable terms contained in TAMKO's Warranty.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By:


Justin Lucey
Dabny Lynn
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

June 24, 2014
Charleston, South Carolina

DIVISION 7 – THERMAL AND MOISTURE PROTECTION

ROOFING – GWC ROOFING

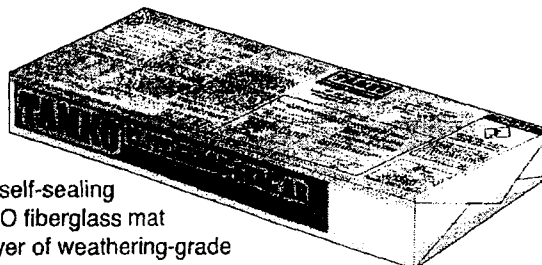


TAMKO® Elite Glass-Seal® AR

THREE-TAB ASPHALT SHINGLES

PRODUCT DATA

Manufactured in Frederick, MD



TAMKO® ELITE GLASS-SEAL® AR self-sealing 3-tab shingles are made with TAMKO fiberglass mat coated on both sides with a thick layer of weathering-grade asphalt and surfaced with ceramic granules.

USES

For application to roof decks with inclines of not less than 2 inches per foot. For slopes between 2 inches and 4 inches per foot, refer to wrapper instructions.

ADVANTAGES

- 25-year limited warranty, 3-year FULL START, limited transferability, winds up to 60 MPH.
- Superior fire resistance compared to organic shingles.
- 10-year Algae-Relief (AR) limited warranty that provides for cleaning of discoloration caused by certain algae growth that may occur in areas with high humidity.

CERTIFICATIONS/REPORTS

Listed by UL for:
Class A Fire Rating
Wind Resistance
ASTM D 3462

Tested in compliance with:
UL 790/ASTM D 3018, Type I; ASTM E 108, Class A
UL 997/ASTM D 3161, Type I, Class F (110 mph)
TAS 100-95 Wind and Wind Driven Rain

Fed. Spec.: Exceeds SS-S-001534,
Class A, Type I

Miami Dade County Florida NOA 05-0311.03,
Expiration Date 04/11/2007

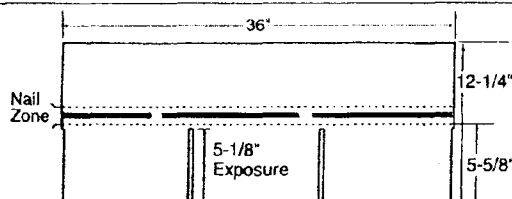
COLORS

Colors:

- | | | |
|------------------|----------------------|-------------------|
| • White | • Weathered Wood | • Rustic Cedar |
| • Grey Blend | • Tweed Blend | • Slatestone Grey |
| • Rustic Redwood | • Pastel Green | • Pastel Brown |
| • Pastel Red | • Empire Green Blend | • Tile Red Blend |
| • Antique Slate | • Rustic Black | |

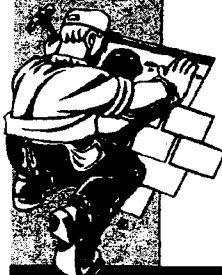
PRODUCT DATA*

Shingle size 12-1/4" X 36"
Exposure 5-1/8"
Shingles per square 78
Bundles per square 3



*All values stated as nominal

CAUTION: The National Institute for Occupational Safety and Health (NIOSH) has concluded that fumes of heated asphalt are a potential occupational carcinogen. Do not heat or burn this product.



TAMKO
ROOFING PRODUCTS

TAMKO Logo, Roofer Logo, Elite Glass-Seal® and TAMKO® are registered trademarks of TAMKO® Roofing Products, Inc.

For information regarding a copy of TAMKO's limited warranty, contact your local TAMKO representative, visit us online at www.tamko.com, or call us at 800-641-4691.

08/2005

Central District	220 West 4th St., Joplin, MO	64801	800-641-4691
Northeast District	4500 Tamko Dr., Frederick, MD	21701	800-368-2055
Southeast District	2300 35th St., Tuscaloosa, AL	35401	800-228-2656
Southwest District	7910 S. Central Exp., Dallas, TX	75216	800-443-1834
Western District	5300 East 43rd Ave., Denver, CO	80216	800-530-8868

[illegible]

LEGAL NOTICE: BOWEN'S WAREHOUSE IS HEREBY NOTIFIED BY LAW THE
 (a) COALITION CONTRACTING COMPANY, INC. HAS BEEN FORMED TO SUCCEED TO THE
 IN ALL ASPECTS OF ITS OBLIGATIONS AND TO SUCCEED TO THE COMPANY'S ASSETS,
 AND CONTRACTS ENTERED INTO OR MADE, INCLUDING ANY AND ALL
 AND FINANCIAL OBLIGATIONS OF INDEBTEDNESS OR OTHERWISE FOR A
 LIABILITY OF THE PART OF YAGI, COALITION CONTRACTING COMPANY, INC. IN THE
 EVENT THAT BOWEN'S WAREHOUSE IS LIQUIDATED OR REORGANIZED, COALITION CONTRACTING COMPANY, INC. IN THE
 DEMAND OF ANY AND ALL CREDITORS TO JOIN IN ANY SUCH LIQUIDATION OR
 OR TAKE ACTION ON PAID-UP WARRANTIES OR INSURANCE POLICIES OR
 CONTRACTS OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY AND ALL
 EXCLUSIONS MAY NOT BE APPLICABLE TO THE ABOVE MENTIONED
 IT IS HEREBY WARRANTED BY ANY OF THE ABOVE MENTIONED BREACH OF
 REQUIRED TO COMPLY WITH OR TO RECOVER, THEIR PAST AND
 OR THIS INFORMATION SHALL BE AVAILABLE LATER THAN THE YEAR
 WHERE STATUTE OF ACTION HAS BEEN ADOPTED IN JURISDICTIONS
 WHERE STATUTE OF LIMITS IS ADOPTED IN JURISDICTIONS
 CONDITIONS DO NOT EXIST, BOWEN'S WAREHOUSE AND
 IMPLIED WARRANTIES AND CONDITIONS AGAINST DEFECTS, INCLUDING
 FOR BOWEN'S WAREHOUSE IN THE EVENT OF A YEAR OF SUCH LIQUIDATION
 PARTIAL OR FULLY FINANCED BY AFFILIATE LAWYER AFTER THE
 DATE THE FUND HAS BEEN FORMED AND THE FUND HAS BEEN FORMED
 WARRANTIES ON THE PART OF BOWEN'S WAREHOUSE TO THE FUND
 LAISE BE THE ABOVE LIMITATION MAY NOT APPLY TO YOU
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 AND PROVIDED THAT THE ABOVE LIMITATION IS NOT APPLICABLE TO STATE
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ANY ACTION BROUGHT BY YOU AGAINST US TAKEN WILL BE ABANDONED
(OR IF ABANDONMENT OF THE ACTION IS NOT DEEMED TO BE LAWFUL
LITIGATE) (INCLUDING AND YOU WILL NOT CONSIDERATE OR
SUE CLAIMS THEREFOR, ANY ACTION UNLESS EXPLICITLY
AGREED TO IN WRITING BY BOTH OF US AND YOU.

NO REPRESENTATIVE, EMPLOYEE OR OTHER AGENT OF TANKO, OR ANY PERSON OTHER THAN TANKO'S PRESIDENT, HAS AUTHORITY TO ASSUME FOR TANKO AN ADDITIONAL LIABILITY OR RESPONSIBILITY IN CONNECTION WITH THE BRUGGS EXCEPT AS DESCRIBED ABOVE.

THIS FORM IS NOT TO BE COPIED OR REPRODUCED IN ANY MANNER.
THIS LIMITED WARRANTY IS VALID ONLY IN THE UNITED STATES.
(EXCLUSIONS UNDER FEDERAL, STATE AND MUNICIPAL (INCLUDING CHIEF
AND NEW MEXICO) ALL SALES INTO JURISDICTIONS WHERE THIS
LIMITED WARRANTY DOES NOT APPLY ARE "AS IS" AND WITHOUT
WARRANTY OF ANY KIND. THIS LIMITED WARRANTY APPLIES TO
TANALOG PREMIUM CLASS BOW-GLE SOLD ON OR AFTER SEPTEMBER 16,
2006 AND SUPERSEDES ALL PREVIOUS PUBLISHED WARRANTIES.

TAMKO®
BUILDING PRODUCTS

WARRANTY INFORMATION
(To be completed by Owner and Contractor)

Owner's Name _____

Address Where Applied _____

City _____

Slate _____ Zn _____

Type of TANK used: _____

[illegible]

Number of Sources 527.66

Colby STATE BRILL

Date of application of shingles 5/10/66 - 10/13/66

Total cost of shingles \$18,451.00

Total cost of a single projection ^{*} 15.000

Contractor's Name Blue Power Home Care, Inc.

Contractor's Signature

Date 1/2/03

**RETAIN THIS WARRANTY WITH CONTRACTORS
RECEIPT FOR FUTURE REFERENCE**



**BUILDING PRODUCTS FOR
THE PROFESSIONAL.**

Since 1944, building professionals and homeowners have looked to TAMKO for quality products that are built to perform. Our extensive line of residential products includes: Laminate composite shingles, Metalworks steel shingles, Heritage series laminated asphalt shingles, 3-tab shingles, EverGrain and Elements composite decking & railing, Tam-Rail railing, rolled roofing products, waterproofing materials, ventilation products and asbestos-free cements and coatings. Each of these products delivers TAMKO quality, performance and durability.



P.O. Box 1404
Joplin, MO 64802 USA
www.tamko.com

TAMKO®
BUILDING PRODUCTS

Heritage® 50
Heritage® 50 AR
Heritage® XL AR
Heritage® 30
Heritage® 30 AR

Elite Glass-Seal®
Elite Glass-Seal AR

Glass-Seal
Glass-Seal AR

**FIBERGLASS SHINGLES
LIMITED WARRANTY**



The Owner may transfer this limited warranty one time during the first two years of the Term to a Purchaser. No other transfers are permitted.

FIBERGLASS/ASPHALT SHINGLE LIMITED WARRANTY

In this limited warranty certain capitalized words have specific meanings:

"TAMKO" means TAMKO Building Products, Inc.

"Term" means the period of time this limited warranty lasts. The Term begins on the date of Purchase and continues, unless sooner terminated, for the number of months set forth in Table 1.

"Owner" means the owner of the building at the time the Shingles are installed on that building. If you purchase a new residence and are the first person to occupy the residence, TAMKO will consider you to be the Owner even though the Shingles were already installed.

"Shingles" means the TAMKO shingles identified in this limited warranty which were installed on a building owned by the Owner.

"Purchase" means the retail purchase of the Shingles.

"Full Start Period" means the initial period of the Term during which TAMKO's obligation is not prorated. The length of the Full Start Period is listed in Table 1.

"Maximum Liability" means the obligation of TAMKO described in the paragraphs titled "TAMKO Full Start Period" and "After the Full Start Period," whichever is applicable.

"Labor Payment Certificate" means a certificate issued by TAMKO that may be redeemed to pay some or all of the cost of labor for roof repairs.

"Material Certificate" means a certificate issued by TAMKO and redeemable at participating distributors for a stated quantity of replacement shingles of the same type and color as the Shingles which are to be replaced. If shingles of the same type or color are no longer available, the certificate will be for the closest TAMKO substitute available.

"AR" means Shingles which are covered by a warranty that provides for clearing of discoloration caused by certain algae growth. "AR" appears as part of the name or description on the wrapper of AR designated shingles, such as "Glass Seal AR" or "Heritage 30 AR." Only AR designated shingles are covered by an Algae Cleaning Limited Warranty.

"Square" means 100 square feet for most shingles. For Heritage 50 and Heritage XL, "Square" means 98.4 square feet.

"High Wind Application" means application of shingles in accordance with application instructions appearing on the shingle wrapper, with TAMKO Hip and Ridge shingles installed on all hips and ridges. Some local building codes may require additional fasteners and Heritage 30 and 30AR shingles qualify for High Wind Application only if the shingles are installed with six (6) fasteners in the locations specified for mansard applications. See local building codes for proper nailing application.

PAGE 1

TABLE 1

SHINGLE	TERM	FULL START PERIOD	STD APPLICATION WIND WARRANTY MPH	HIGH WIND APPLICATION WARRANTY MPH	DOLLAR LIMIT PER SQUARE
Glass Seal	240 months	3 years	60	—	US \$25.00
Glass Seal AR	240 months	3 years	60	—	US \$25.00
Elite Glass Seal	300 months	3 years	60	—	US \$30.00
Elite Glass Seal AR	300 months	3 years	60	—	US \$30.00
Heritage 30	360 months	5 years	70	80	US \$40.00
Heritage 30 AR	360 months	5 years	70	80	US \$40.00
Heritage XL AR	480 months	7 years	80	90	US \$45.00
Heritage 50	600 months	7 years	90	110	US \$55.00
Heritage 50 AR	600 months	7 years	90	110	US \$55.00

TAMKO Full Start Period: If, during the Full Start Period, Shingles that have been installed in strict accordance with the instructions printed on the wrapper are determined to have manufacturing defects which have directly caused leaks, TAMKO will provide the Owner with a Material Certificate for replacement shingles (or, at TAMKO's option, the Dollar Limit Per Square identified in Table 1) and a Labor Payment Certificate that may be used to pay the reasonable cost of installing replacement shingles, according to the terms of this limited warranty. This is TAMKO's Maximum Liability during the Full Start Period.

After the Full Start Period: If, after the end of the Full Start Period, Shingles that have been installed in strict accordance with the instructions printed on the wrapper are determined to have manufacturing defects which have directly caused leaks, TAMKO's obligation is limited to providing the Owner with a Material Certificate for replacement shingles or, at TAMKO's option, the Dollar Limit Per Square identified in Table 1. The Dollar Limit Per Square and the quantity of replacement shingles will be prorated over the life of this limited warranty. This is TAMKO's Maximum Liability after the Full Start Period. TAMKO is not responsible for the cost of labor for installing replacement shingles after the Full Start Period. Proration shall be determined by dividing the number of months remaining in the Term by the total number of months of the Term. For example, if TAMKO is notified of a warranty claim at a time when 100 months remain in a 300 month warranty Term, TAMKO's Maximum Liability is to provide a Certificate for one third of the replacement shingles or, at TAMKO's option, payment of one third of the Dollar Limit Per Square identified in Table 1. The remaining cost shall be the responsibility of the Owner.

Both during and after the Full Start Period, the extent of replacement is at the sole discretion of TAMKO. TAMKO is not responsible for the cost of flashings or metal work or for the cost of removing or disposing of Shingles which are to be replaced. Replacement shingles will be warranted only for the remainder of the original Term. Tender of payment of the prorated Dollar Limit Per Square shall extinguish all liability of TAMKO under this limited warranty and all applicable implied warranties and conditions.

Notification to TAMKO: The Owner must notify TAMKO by certified mail at P.O. Box 1404, Joplin, Missouri 64802 of any claims under this limited warranty within thirty (30) days following discovery of the problem with the Shingles. The notice must include documentary proof of Purchase. Failure of the Owner to notify TAMKO as provided herein shall extinguish all liability of TAMKO under this limited warranty and all applicable implied warranties and conditions.

PAGE 2



Right of Inspection and Time for Payment: TAMKO shall have a reasonable time after notification to inspect the Shingles. The Owner shall provide TAMKO with reasonable access to the Shingles for purposes of inspection. If requested by TAMKO, the Owner must complete and deliver to TAMKO, at the Owner's expense, a warranty questionnaire, photographs of the roof and samples of the Shingles. If reasonable access is denied or made subject to unreasonable conditions by the Owner, or if the Owner fails or refuses to cooperate in TAMKO's investigation of the complaint (such as by failing to provide sample Shingles or photographs or a completed warranty questionnaire), TAMKO's obligation under this limited warranty shall immediately terminate. If TAMKO determines there are manufacturing defects covered by this limited warranty, TAMKO will have up to ninety (90) days after receipt of notification to process the Owner's claim.

120 Month Algae Cleaning Limited Warranty: If, during the initial 120 months of the Term, Shingles designated AR become stained by certain algae growth, including blue-green algae, TAMKO will issue to the Owner a Labor Payment certificate that may be used to pay the reasonable cost of cleaning the shingles (up to a maximum of \$15 per square). TAMKO shall have no liability or responsibility for cleaning shingles with algae growth: (a) after the initial 120 months of the Term for Shingles which are designated AR, or (b) at any time for Shingles that are not designated AR.

60 Month Limited Wind Warranty: The Shingles are also covered by a 60 month limited warranty against damage from wind up to the designated wind velocity per product identified in Table 1. This Limited Wind Warranty applies only if: (a) the Shingles were installed according to the instructions printed on the wrapper and (b) the Shingles have had the opportunity to seal down. Shingles that are installed in cool seasons may not seal until weather conditions are adequate to allow the seal down strip to activate. If conditions (a) and (b) have been met and during the first 60 months of the Term the Shingles are damaged or blown off by wind up to the designated wind velocity for the product as a result of a manufacturing defect, TAMKO will process the Owner's claim in accordance with the sections titled "TAMKO Full Start Period" or "After the Full Start Period," whichever is applicable. Alternatively, TAMKO may, solely at its option, provide the Owner with a Labor Payment Certificate that may be used to pay the reasonable cost of manually sealing unsealed Shingles and replacing Shingles which have blown off and a Material Certificate for the number of shingles that have blown off. Shingles will be conclusively deemed to have been exposed to winds in excess of the designated wind velocity for the product if the National Weather Service or other reputable weather agency records winds in excess of the designated wind velocity for the product in the county, parish, regional district or municipality where the Shingles are installed or in any adjoining county, parish, regional district or municipality. Exposure of the shingles at any time to winds in excess of the designated wind velocity for the product shall extinguish all liability of TAMKO under this limited warranty and all applicable implied warranties and conditions.

PAGE 3

Exclusions from Coverage: TAMKO shall not be liable under any circumstances for:

1. Faulty or improper application of the Shingles, inadequate ventilation of the Shingles or Shingles not installed or applied in accordance with TAMKO written instructions to the installer on the packaging or leaks or damages resulting from any one or more of such causes.
2. Damage to any building, either exterior or interior, or any property contained therein or for injuries or damages of any kind whatsoever.
3. Tear-off, removal, or disposal of any Shingles, or for any costs related to such tear-off, removal, or disposal.
4. Removal or abatement of any asbestos present in the roof to which the Shingles are applied, or for any costs related to such removal or abatement.
5. Shading or discoloration from any cause whatsoever, including, but not limited to algae, moss or staining from overhanging trees, except as provided in the Algae Cleaning Limited Warranty set forth above.
6. Damage caused by Algae, fungus, or other biological growth.
7. Leaks or damages resulting from Acts of God (including, but without limitation, lightning, wind (except as set forth in the Limited Wind Warranty), hurricane, tornado, hail, or other violent storm or casualty), impact of objects or damage to a roof due to settlement, distortion, failure or cracking of the roof deck, walls or foundation of a building, or for any defect in or failure of material used as a roof base over which the Shingles are applied, or for damage by traffic on the roof.
8. Chemical attack on the Shingles as a result of exposure to chemicals including, but not limited to, aliphatic or aromatic solvents, chlorinated hydrocarbons, turpentine, oils or organic or inorganic polar materials.
9. Leaks or damage to the Shingles from any cause other than inherent manufacturing defect in the Shingle.

Transferability: The Owner may transfer this limited warranty one (1) time during the first two (2) years of the Term to a purchaser of the building upon which the Shingles are installed (a "Purchaser"). The transfer must occur simultaneously with the sale of the building. To transfer this limited warranty, the Owner must provide TAMKO with written notice within thirty (30) days after the transfer. The written notice must include the names of the Owner and the Purchaser, the address of the building upon which the Shingles are installed, the date the Shingles were installed, and the date of the transfer. The Owner may transfer this limited warranty only one (1) time. Except for one transfer to a Purchaser during the first two (2) years of the Term, this limited warranty may not be sold, assigned or transferred in any manner whatsoever. Neither a Purchaser nor any other person may transfer this limited warranty. Except as set forth in this paragraph, any assignment, sale or transfer of this limited warranty or the building to which the TAMKO Shingles are applied shall immediately terminate all liability of TAMKO for the Shingles, all warranties contained herein or hereunder and any applicable implied warranties and conditions including warranties or conditions of merchantability and fitness for a particular purpose.

PAGE 4



ELITE GLASS-SEAL AR

3-TAB AR FIBERGLASS ASPHALT SHINGLES

Heavier than our Glass-Seal product, Elite Glass-Seal AR shingles are our finest fiberglass 3-tabs. They are coated with asphalt and finished with ceramic mineral granules. A 10-year Algae-Relief (AR) limited warranty provides for cleaning of discoloration caused by certain algae growth that may occur in areas with high humidity.

- 25-year limited warranty, full start 3, limited transferability
- 10-year Algae-Relief (AR) limited warranty
- U.L. listed for Class A fire resistance
- U.L. listed for wind resistance
- Reinforced with strong fiberglass mat to conform to ASTM D 3462 at time of manufacture

GLASS-SEAL

3-TAB FIBERGLASS ASPHALT SHINGLES

These 3-tab shingles are constructed with a durable fiberglass mat and are coated with asphalt and finished with ceramic mineral granules.

- 20-year limited warranty, full start 3, limited transferability
- U.L. listed for Class A fire resistance
- U.L. listed for wind resistance
- Reinforced with strong fiberglass mat to conform to ASTM D 3462 at time of manufacture



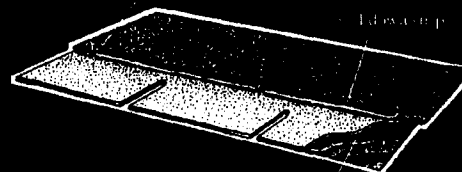
Our products for the professional.

TAMKO has manufactured a full line of quality roofing products for over 60 years. Today, our dedication to roofing and relentless quality improvement continues to make our products the best available.

In 1997, TAMKO founded TAMKO, a company dedicated to making the best roofing products available. Through the generations of leadership, TAMKO has never wavered from the corporate focus. It helped TAMKO become the nation's premier independent roofing products manufacturer and the only one to produce a full line of premium shingles and asphalt membrane products for both commercial and residential roofing applications. Our customers are the benefit of TAMKO's specific attention to quality products, competitive prices, and outstanding service and support. The TAMKO product line is available in a variety of formats from standard to custom.

AN INSIDE LOOK AT TAMKO 3-TAB QUALITY CONSTRUCTION

Continuous Reinforcement



14" Overlap

Heavy duty asphalt membrane through core

Weathering grade asphalt coating

TAMKO

ROOFING PRODUCTS

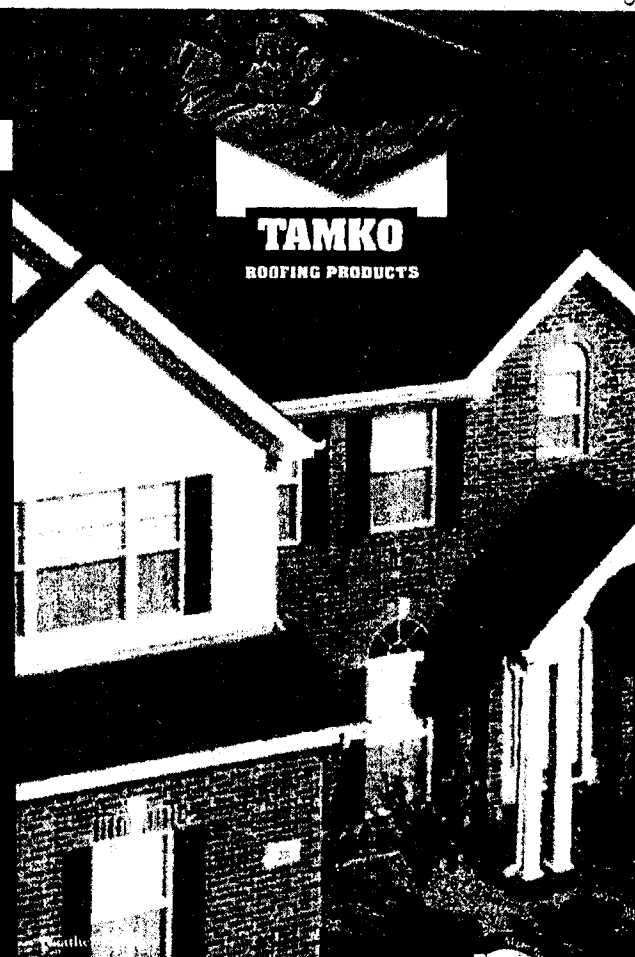
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ELITE GLASS-SEAL® AR GLASS-SEAL

Shingles by TAMKO

ANTIQUE SLATE ♦♦

PASTEL RED ●

TILE RED BLEND ●

RUSTIC REDWOOD ●

SLATETONE GREY ●

PASTEL BROWN ●

PASTEL GREEN ●

WHITE ♦♦

RUSTIC CEDAR ♦♦

TWEED BLEND ♦♦

GREY BLEND ●

WEATHERED WOOD ♦♦

EMPIRE GREEN BLEND ●

RUSTIC BLACK ♦♦

This Class Seal Blend is available in both 1/2" and 1" sizes.
 This Class Seal Blend is available in both 1/2" and 1" sizes.

THESE ARE THE ONLY TWO TYPES OF SEALS THAT ARE USED IN THE
 FREDERICKS AND LINDSAY'S FREDERICKS AND LINDSAY'S FREDERICKS
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We do not want to see any of our customers who are not happy with
 our products and we do not want to see any of our customers who are not



Application Instructions for

• Glass-Seal • Elite Glass-Seal® AR THREE-TAB ASPHALT SHINGLES

Instructions apply to
shingles manufactured in
Frederick, MD. ONLY!

THESE ARE THE MANUFACTURER'S APPLICATION INSTRUCTIONS FOR THE ROOFING CONDITIONS DESCRIBED. TAMKO ROOFING PRODUCTS, INC. ASSUMES NO RESPONSIBILITY FOR LEAKS OR OTHER ROOFING DEFECTS RESULTING FROM FAILURE TO FOLLOW THE MANUFACTURER'S INSTRUCTIONS.

THIS PRODUCT IS COVERED BY A LIMITED WARRANTY, THE TERMS OF WHICH ARE PRINTED ON THE WRAPPER. IN COLD WEATHER (BELOW 40°F), CARE MUST BE TAKEN TO AVOID DAMAGE TO THE EDGES AND CORNERS OF THE SHINGLES.

IMPORTANT: It is not necessary to remove the plastic strip from the back of the shingles.

1. ROOF DECK

These shingles are for application to roof decks capable of receiving and retaining fasteners, and to inclines of not less than 2 in. per foot. For roofs having pitches 2 in. per foot to less than 4 in. per foot, refer to special instructions titled "Low Slope Application". Shingles must be applied properly. TAMKO assumes no responsibility for leaks or defects resulting from improper application, or failure to properly prepare the surface to be roofed over.

NEW ROOF DECK CONSTRUCTION: Roof deck must be smooth, dry and free from warped surfaces. It is recommended that metal drip edges be installed at eaves and rakes.

PLYWOOD: All plywood shall be exterior grade as defined by the American Plywood Association. Plywood shall be a minimum of 3/8 in. thickness and applied in accordance with the recommendations of the American Plywood Association.

SHEATHING BOARDS: Boards shall be well-seasoned tongue-and-groove boards and not over 6 in. nominal width. Boards shall be a 1 in. nominal minimum thickness. Boards shall be properly spaced and nailed.

2. VENTILATION

Inadequate ventilation of attic spaces can cause accumulation of moisture in winter months and a build up of heat in the summer. These conditions can lead to:

1. Vapor Condensation
2. Buckling of shingles due to deck movement.
3. Rotting of wood members.
4. Premature failure of roof.

To insure adequate ventilation and circulation of air, place louvers of sufficient size high in the gable ends and/or install continuous ridge and soffit vents.

FHA minimum property standards require one square foot of net free ventilation area to each 150 square feet of space to be vented, or one square foot per 300 square feet if a vapor barrier is installed on the warm side of the ceiling or if at least one half of the ventilation is provided near the ridge. If the ventilation openings are screened, the total area should be doubled.

IT IS PARTICULARLY IMPORTANT TO PROVIDE ADEQUATE VENTILATION.

3. FASTENING

NAILS: TAMKO recommends the use of nails as the preferred method of application.

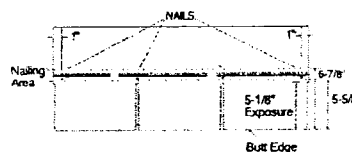
WIND CAUTION: Extreme wind velocities can damage these shingles after application when proper sealing of the shingles does not occur. This can especially be a problem if the shingles are applied in cooler months

or in areas on the roof that do not receive direct sunlight. These conditions may impede the sealing of the adhesive strips on the shingles. The inability to seal down may be compounded by prolonged cold weather conditions and/or blowing dust. In these situations, hand sealing of the shingles is recommended. Shingles must also be fastened according to the fastening instructions described below.

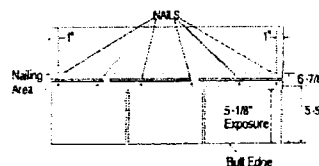
Correct placement of the fasteners is critical to the performance of the shingle. If the fasteners are not placed as shown in the diagram and described below, this will result in the termination of TAMKO's liabilities under the limited warranty. TAMKO will not be responsible for damage to shingles caused by winds in excess of the applicable mph as stated in the limited warranty. See limited warranty for details.

FASTENING PATTERNS: Fasteners must be placed above or below the factory applied sealant in an area between 5-5/8" and 6-7/8" from the butt edge of the shingle. Fasteners should be located horizontally according to the diagram below. Do not nail into the sealant. TAMKO recommends nailing below the sealant whenever possible for greater wind resistance.

1) Standard Fastening Pattern. (For use on decks with slopes 2 in. per foot to 21 in. per foot.) One fastener 1 in. back from each end and one 12 in. back from each end of the shingle for a total of 4 fasteners. (See standard fastening pattern illustrated below).



2) Mansard or High Wind Fastening Pattern. (For use on decks with slopes greater than 21 in. per foot.) One fastener 1 in. back from each end and one fastener 10-1/2 in. back from each end and one fastener 13-1/2 in. back from each end for a total of 6 fastener per shingle. (See Mansard fastening pattern illustrated below.)



NAILS: TAMKO recommends the use of nails as the preferred method of application. Standard type roofing nails should be used. Nail shanks should be made of minimum 12-gauge wire, and a minimum head diameter of 3/8 in. Nails should be long enough to penetrate 3/4 in.

(Continued)

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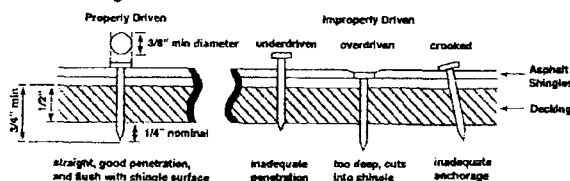
TAMKO
ROOFING PRODUCTS

(CONTINUED from Pg. 1)

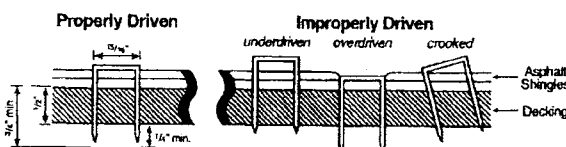
• Glass-Seal
• Elite Glass-Seal® AR
THREE-TAB ASPHALT SHINGLES

Instructions apply to
shingles manufactured in
Frederick, MD. ONLY!

into the roof deck. Where the deck is less than 3/4 in. thick, the nails should be long enough to penetrate completely through plywood decking and extend at least 1/8 in. through the roof deck. Drive nail head flush with the shingle surface.



STAPLES: If staples are used in the attaching process, follow the above instructions for placement. All staples must be driven with pneumatic staplers. The staple must meet the following minimum dimensional requirements. Staples must be made from a minimum 16 gauge galvanized wire. Crown width must be at least 15/16 in. (staple crown width is measured outside the legs). Leg length should be a minimum of 1-1/4 in. for new construction and 1-1/2 in. for reroofing thus allowing a minimum deck penetration of 3/4 in. The crown of the staple must be parallel to the length of the shingle. The staple crown should be driven flush with the shingle surface. Staples that are crooked, underdriven or overdriven are considered improperly applied.



CAUTION: DO NOT FASTEN INTO THE FACTORY APPLIED ADHESIVE.

4. UNDERLAYMENT

UNDERLAYMENT: An underlayment consisting of asphalt saturated felt must be applied over the entire deck before the installation of TAMKO shingles. Failure to add underlayment can cause premature failure of the shingles which is not covered by TAMKO's limited warranty. Apply the felt when the deck is dry. On roof decks 4 in. per foot and greater apply the felt parallel to the eaves lapping each course of the felt over the lower course at least 2 in. Where ends join, lap the felt 4 in. If left exposed, the underlayment felt may be adversely affected by moisture and weathering. Laying of the underlayment and the shingle application must be done together.

Products which are acceptable for use as underlayment are:

- TAMKO No. 15 Asphalt Saturated Organic Felt
- A non-perforated asphalt saturated organic felt which meets ASTM: D226, Type I or ASTM D4869, Type I
- Any TAMKO non-perforated asphalt saturated organic felt

In areas where ice builds up along the eaves or a back-up of water from frozen or clogged gutters is a potential problem, TAMKO's Moisture Guard Plus® waterproofing underlayment (or any specialty eaves flash-

ing product) may be applied to eaves, rakes, ridges, valleys, around chimneys, skylights or dormers to help prevent water damage. Contact TAMKO's Technical Services Department for more information.

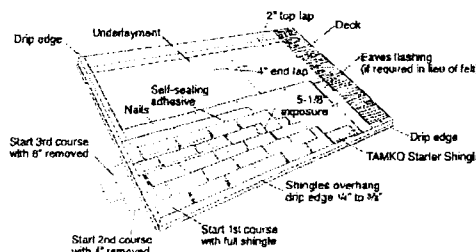
TAMKO does not recommend the use of any substitute products as shingle underlayment.

5. APPLICATION INSTRUCTIONS

STARTER COURSE: A starter course may consist of TAMKO Shingle Starter, self-sealing type shingles or a 9 inch wide strip of mineral surface roll roofing. If self-sealing shingles are used, remove the exposed tab portion and install with the factory applied adhesive adjacent to the eaves. Attach the starter course with approved fasteners along a line parallel to and 3 in. to 4 in. above the eaves edge. The starter course should overhang both the eaves and rake edges 1/4 in. to 3/8 in. If a roll roofing is used, seal down the shingles in the first course by applying adhesive cement in four spots equally spaced to the surface of the starter strip and press the shingle down on the spots of cement. Plastic cement should be used sparingly, as excessive amounts may cause blistering.

SHINGLE APPLICATION: There are three different offset methods for applying strip shingles: the 4-inch method, the 5-inch method and the 6-inch method. By removing different lengths from the first shingle, cutouts in one course of shingles do not line up directly with those of the course below. It is recommended that the shingles be laid according to one of these methods consistent with procedures outlined in ARMA's Residential Asphalt Roofing Manual. This panel will feature the 4-inch method. For information regarding the other methods, please refer to the ARMA Residential Asphalt Roofing Manual.

CAUTION: Never use an alignment system where shingle joints are closer than 4 in. to one another.



6. LOW SLOPE APPLICATION

On pitches 2 in. per foot to 4 in. per foot cover the deck with two layers of asphalt saturated felt. Begin by applying the felt in a 19 in. wide strip along the eaves and overhanging the drip edge by 1/4 to 3/4 in. Place a full 36 in. wide sheet over the 19 in. wide starter piece, completely overlapping it. All succeeding courses will be positioned to overlap the preceding course by 19 in. If winter temperatures average 25°F or less, thoroughly cement the felts to each other with plastic cement from eaves and rakes to a point of at least 24 in. inside the interior wall line of the building. As an alternative, TAMKO's Moisture Guard Plus® self-adhering waterproofing underlayment may be used in lieu of the cemented felts.

7. MANSARD ROOF OR STEEP SLOPE ROOF

(Continued)

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2



(CONTINUED from Pg. 2)

• **Glass-Seal**
• **Elite Glass-Seal® AR**
THREE-TAB ASPHALT SHINGLES

Instructions apply to
shingles manufactured in
Frederick, MD. ONLY!

If the slope exceeds 21 in. per foot (60°), each shingle must be sealed with quick setting asphalt adhesive cement immediately upon installation. Spots of cement must be equivalent in size to a \$.25 piece and applied to shingles with a 5-1/8 in. exposure, use 6 fasteners per shingle. See Section 3 for the Mansard Fastening Pattern.

8. RE-ROOFING

Before re-roofing, be certain to inspect the roof decks. All plywood shall meet the requirements listed in Section 1.

Nail down or remove curled or broken shingles from the existing roof. Replace all missing shingles with new ones to provide a smooth base. Shingles that are buckled usually indicate warped decking or protruding nails. Hammer down all protruding nails or remove them and refasten in a new location. Remove all drip edge metal and replace with new.

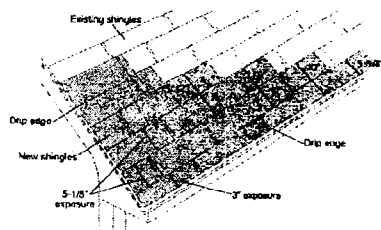
If re-roofing over an existing roof where new flashing is required to protect against ice dams (freeze/thaw cycle of water and/or the backup of water in frozen or clogged gutters), remove the old roofing to a point at least 24 in. beyond the interior wall line and apply TAMKO's Moisture Guard Plus® waterproofing underlayment. Contact TAMKO's Technical Services Department for more information.

The nesting procedure described below is the preferred method for re-roofing over square tab strip shingles with a 5-1/8 in. exposure.

Starter Course: Begin by using TAMKO Shingle Starter or by cutting shingles into 5-1/8 x 36 inch strips. This is done by removing the 5-1/8 in. tabs from the bottom and approximately 2 in. from the top of the shingles so that the remaining portion is the same width as the exposure of the old shingles. Apply the starter piece so that the self-sealing adhesive lies along the eaves and is even with the existing roof. The starter strip should be wide enough to overhang the eaves and carry water into the gutter. Remove 3 in. from the length of the first starter shingle to ensure that the joints from the old roof do not align with the new.

First Course: Cut off approximately 2 in. from the bottom edge of the shingles so that the shingles fit beneath the existing third course and align with the edge of the starter strip. Start the first course with a full 36 in. long shingle and fasten according to the instructions printed in Section 3.

Second and Succeeding Courses: According to the off-set application method you choose to use, remove the appropriate length from the rake end of the first shingle in each succeeding course. Place the top edge of the new shingle against the butt edge of the old shingles in the courses above. The full width shingle used on the second course will reduce the exposure of the first course to 3 in. The remaining courses will automatically have a 5-1/8 in. exposure.



9. VALLEY APPLICATION

Over the shingle underlayment, center a 36 in. wide sheet of TAMKO Nail-Fast® or a minimum 50 lb. roll roofing in the valley. Nail the felt only where necessary to hold it in place and then only nail the outside edges.

IMPORTANT: PRIOR TO INSTALLATION WARM SHINGLES TO PREVENT DAMAGE WHICH CAN OCCUR WHILE BENDING SHINGLES TO FORM VALLEY.

- Apply the first course of shingles along the eaves of one of the intersecting roof planes and across the valley.

Note: For proper flow of water over the trimmed shingle, always start applying the shingles on the roof plane that has the lower slope or less height.

- Extend the end shingle at least 12 in. onto the adjoining roof. Apply succeeding courses in the same manner, extending them across the valley and onto the adjoining roof.
- Do not trim if the shingle length exceeds 12 in. Lengths should vary.
- Press the shingles tightly into the valley.
- Use normal shingle fastening methods.

Note: No fastener should be within 6 in. of the valley centerline, and two fasteners should be placed at the end of each shingle crossing the valley.

- To the adjoining roof plane, apply one row of shingles extending it over previously applied shingles and trim a minimum of 2 in. back from the centerline of the valley.

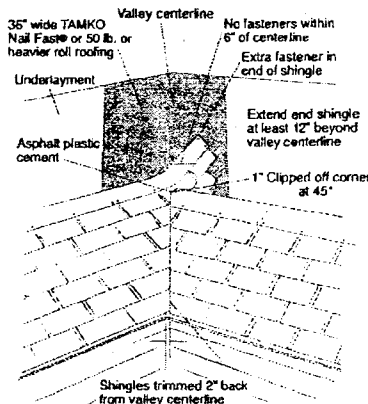
Note: For a neater installation, snap a chalkline over the shingles for guidance.

- Clip the upper corner of each shingle at a 45-degree angle and embed the end of the shingle in a 3 in. wide strip of asphalt plastic cement. This will prevent water from penetrating between the courses by directing it into the valley.

CAUTION:

Adhesive must be applied in smooth, thin, even layers.

Excessive use of adhesive will cause blistering to this product.



(Continued)

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3

TAMKO
ROOFING PRODUCTS

(CONTINUED from Pg. 3)

• **Glass-Seal**
• **Elite Glass-Seal® AR**
THREE-TAB ASPHALT SHINGLES

Instructions apply to
shingles manufactured in
Frederick, MD. ONLY!

TAMKO assumes no responsibility for blistering.

FOR ALTERNATE VALLEY APPLICATION METHODS, PLEASE CONTACT TAMKO'S TECHNICAL SERVICES DEPARTMENT.

10. HIP AND RIDGE FASTENING DETAIL

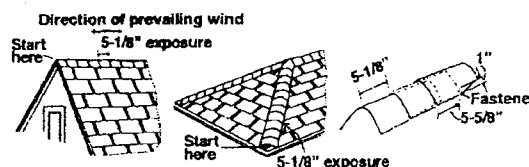
Apply the shingles with a 5-1/8 in. exposure beginning at the bottom of the hip or from the end of the ridge opposite the direction of the prevailing winds. Secure each shingle with one fastener 5-5/8 in. back from the exposed end and 1 in. up from the edge. Do not nail directly into the sealant.

TAMKO recommends the use of TAMKO Hip & Ridge shingle products. Where matching colors are available, it is acceptable to use TAMKO's Glass-Seal or Elite Glass-Seal shingles cut down to 12 in. pieces.

NOTE: AR type shingle products should be used as Hip & Ridge on Glass-Seal AR and Elite Glass-Seal AR shingles.

Fasteners should be 1/4 in. longer than the one used for shingles.

IMPORTANT: PRIOR TO INSTALLATION, CARE NEEDS TO BE TAKEN TO PREVENT DAMAGE WHICH CAN OCCUR WHILE BENDING SHINGLES IN COOL WEATHER.



THESE ARE THE MANUFACTURER'S APPLICATION INSTRUCTIONS FOR THE ROOFING CONDITIONS DESCRIBED. TAMKO ROOFING PRODUCTS, INC. ASSUMES NO RESPONSIBILITY FOR LEAKS OR OTHER ROOFING DEFECTS RESULTING FROM FAILURE TO FOLLOW THE MANUFACTURER'S INSTRUCTIONS.

THIS PRODUCT IS COVERED BY A LIMITED WARRANTY. THE TERMS OF WHICH ARE PRINTED ON THE WRAPPER.

IMPORTANT - READ CAREFULLY BEFORE OPENING BUNDLE

In this paragraph "You" and "Your" refer to the installer of the shingles and the owner of the building on which these shingles will be installed. This is a legally binding agreement between You and TAMKO Roofing Products, Inc. ("TAMKO"). By opening this bundle You agree: (a) to install the shingles strictly in accordance with the instructions printed on this wrapper; and (b) leaks and other roofing defects resulting from failure to follow the manufacturers installation instructions printed on this wrapper are not covered by the limited warranty that is also printed on this wrapper, or any other warranty, including, but not limited to (except where prohibited by law) implied warranties of MERCHANTABILITY and FITNESS FOR USE.

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03/05

4

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

ONE BELLE HALL PROPERTY OWNERS)
ASSOCIATION, INC. and BRANDY RAMEY,)
individually, and on behalf of all others similarly)
situated,)

CASE NO. 2012-CP-10-7594

Plaintiffs,)

vs.)

Trammell Crow Residential Company; TCR NC)
Construction I, LP; Belle Hall Direct 101, LP;)
TCR RLD Condominiums, Inc.; CS 101 Belle)
Hall, LP; TCR Southeast, Inc.; TCR Carolina)
Properties, Inc.; TCR SE Construction, Inc.;)
TCR SE Construction II, Inc.; TCR)
Construction, a division of Trammell Crow)
Residential; TCR Development, a division of)
Trammell Crow Residential; Trammell Crow)
Residential Carolina, a division of Trammell)
Crow Residential; and Tauer Consulting)
Company, Inc., a division of Trammell Crow)
Residential, each individually, and collectively)
d/b/a "Trammell Crow Residential," "Trammell)
Crow" or "TCR"; Halter Properties, LLC;)
Halter Realty LLC; and Halter Realty Group,)
LLC, each individually, and collectively d/b/a)
"Halter Companies"; Jane Doe 1-5; ABG)
Caulking & Waterproofing of Morristown, Inc.)
a/k/a ABG Caulking Contractors; Advanced)
Building Products & Services, LLC;)
BASF Corporation; Budget Mechanical)
Plumbing, Inc.; Builders First Source –)
Southeast Group, LLC; Builders Services)
Group, Inc., individually, and d/b/a Gale)
Contractor Services, Inc.; Century Fire)
Protection, LLC; Cline Design Associates, P.A.)
and Gary D. Cline; Coastal Lumber & Framing,)
LLC; Dodson Brothers Exterminating Co.,)
Inc. a/k/a Dodson Pest Control; First Exteriors,)
LLC; Flooring Services, Inc.; General Heating)
& Air Conditioning Company of Greenville,)

BY

JULIE J. HARRINGTON
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Inc. d/b/a General Heating and Air; Jimmy
 Warner, individually, and d/b/a Warner
 Heating & Air; Glazing Consultants, Inc.;
 GWC Roofing, Inc., individually, and
 d/b/a Southcoast Exteriors, Inc.; Houston
 Stafford Electrical Contractors, LP a/k/a
 IES Residential, Inc. d/b/a Houston
 Stafford Electric; KMAC of the Carolinas,
 Inc.; P&P Metal Sales Co., Inc. a/k/a
 P&P Metal Sales, LLC a/k/a P&P Metal
 Sales, Inc. a/k/a Carolina Metals;
 Pleasant Places, Inc.; Raymond Building
 Supply Corporation d/b/a Energy Saving
 Products of Florida, Inc. a/k/a Energy
 Saving Products of Florida; Southern
 Specialties, Inc.; Structural Contractors
 South, Inc.; Superior Construction
 Services, Inc., individually, and d/b/a
 Superior Masonry Unlimited, Inc.;
 TAMKO Building Products, Inc. f/k/a
 TAMKO Roofing Products, Inc.; VNS
 Corporation, individually, and d/b/a
 Wholesale Building Products f/k/a
 Wholesale Building Materials, Inc.;
 What Don't We Do; and John Doe 1-25,
 Defendants.

VNS Corporation, individually, and d/b/a
 Wholesale Building Products f/k/a Wholesale
 Building Materials,

Third Party Plaintiff,

vs.

Billy Gray, d/b/a United Builders, LLC,

Third Party Defendant.

Houston Stafford Electrical Contractors, LP
 a/k/a IES Residential, Inc. d/b/a Houston
 Stafford Electric,

Third-Party Plaintiffs,

Vs.

J. Correa Electrical Company, LLC.,

Third-Party Defendant.

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**DEFENDANT TAMKO BUILDING PRODUCTS, INC.'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS AND COMPEL
ARBITRATION AND IN REPLY TO PLAINTIFFS' MEMORANDUM IN OPPOSITION
TO DEFENDANT TAMKO'S MOTION TO DISMISS AND COMPEL ARBITRATION**

I. Procedural History

On January 9, 2014, Plaintiffs served an Amended Complaint on Defendant alleging causes of action for negligence, breach of warranty, and strict liability. Prior to this date, Plaintiffs had been pursuing this lawsuit against other defendants through an original Complaint filed in 2012. During this earlier portion of the lawsuit and before Defendant was added to the case, Plaintiffs served a subpoena for records upon TAMKO. In response, TAMKO provided its file related to the sale of the subject shingles. See **Exhibit A**, TAMKO subpoena response.

Based on the arbitration provision contained within its warranty, Defendant filed a Motion to Dismiss and Compel Arbitration. Plaintiffs served its Memorandum in Opposition to Defendant TAMKO's Motion to Dismiss and Compel Arbitration in response one day before the scheduled hearing on the motion. In its brief in response to Defendant's Motion to Compel Arbitration, Plaintiffs claim TAMKO's warranty, including the arbitration provision, are not applicable to it. See **Exhibit B**, Signed Warranty dated 1/2/07.¹ While many of the arguments made by both sides were briefed

¹ In its Motion to Dismiss and Compel Arbitration, TAMKO attached a version of its warranty as an exhibit. At that time, it was unclear from Plaintiffs' Complaint which version of the warranty had been applicable to

and orally argued at the June 25, 2014 hearing, TAMKO requested and the Court permitted additional briefing on certain issues.

II. Argument

a. **TAMKO's Warranty is Not Contrary to either the Horizontal Property Act or the South Carolina Nonprofit Corporation Act**

One of Plaintiffs' arguments in opposition to Defendant's Motion is that TAMKO's warranty provisions are contrary to the "Horizontal Property Act," incorrectly identified as the Horizontal Property Regime Act in Plaintiff's brief. See S.C. Code Ann. § 27-31-10 et al. In their explanation of certain sections of the HPA, Plaintiffs point out that the administration of the property shall be governed by bylaws appended to the master deed. See S.C. Code Ann. § 27-31-150. Defendant does not disagree with this statement. Defendant does, however, disagree with the Plaintiffs' argument that any limitation on the POA's power to "administrate" not included in the Bylaws violates the HPA. Plaintiffs claim that the arbitration provision operates to limit the POA's "power to administrate" because the arbitration provision is not "contained within the Bylaws." If this were correct, a POA would never have the power to do anything that was not explicitly enumerated in its Bylaws. And, any additional power would have to be added to the Bylaws through its rigorous amendment process. See **Exhibit C**, Bylaws, pg. 16. Under Plaintiffs' theory, this would include a limitation on buying any product with a warranty containing an arbitration provision: no building repair materials, no pool cleaning products, not even a refrigerator for the clubhouse. Plaintiffs cite no authority for this proposition, as there is none.

this transaction. With the receipt of additional discovery documents, Defendant TAMKO was provided with OBH – O&M 94, which is a signed copy of the applicable warranty. Therefore, this signed warranty, as well as an unsigned but more legible copy of the same is being attached as **Exhibit B**.

Plaintiff continues its argument related to the HPA by claiming that TAMKO's arbitration provisions, "when read in conjunction with the other anti-suit provisions," attempt to "divide the ownership" in violation of the HPA. See S.C. Code Ann. § 27-31-70 ("The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void.") This is also incorrect. TAMKO has been very clear, as evidenced by its motion, of its desire to arbitrate the issues relating to the shingles with the POA collectively, which is appropriate, because the roof of a building in a condominium is a common element. See Master Deed for One Belle Hall, Section 5(b), pg. 6; see also S.C. Code Ann. § 27-31-20(f)(2). TAMKO is in no way attempting to "divide" the ownership, and, in fact, seeks to keep the ownership together for purposes of this arbitration.

Plaintiffs' final argument related to the HPA is that because the Bylaws have no limitation of Plaintiffs' right to sue, any provision in TAMKO's warranty which purportedly limits this right creates an ambiguity which must be construed in favor of Plaintiffs. This argument is illogical for several reasons. First, the Bylaws contain no limitation on the right to sue, or the right to arbitrate, or any right related to dispute resolution. The Bylaws are silent on these issues as they relate to the power of the POA to represent the interests of the owners. However, in a section related to the indemnification of officers, directors, and committee members, there is a reference to indemnification being valid in connection with "any action, suit, or other proceeding." See **Exhibit C**, pg. 11. This is a recognition in the Bylaws of "other proceedings," which is broader than Plaintiffs' literal reading of the phrase "right to sue."

Another flaw in Plaintiffs' argument relates to its citation of the statute related to the powers of nonprofit corporations, which is the POA's classification. Section 33-31-302(1) of the South Carolina Nonprofit Corporation Act provides nonprofit corporations with the power "to sue and be sued, complain, and defend in its corporate name." However, contrary to Plaintiffs' assertion, the common meaning of the phrase "to sue" does not preclude arbitration. Arbitration is simply another forum in which to assert a basis of liability against a party, and non-profit corporations have been ordered to arbitrate in South Carolina. See *Ashley Villas Homeowners' Association, Inc. v. Johnson*, 2004 WL 6337259 (S.C. App. 2004) (In this unreported opinion, a Homeowners' Association brought an action to collect past due annual assessments from delinquent homeowners, and the trial court ordered arbitration. The appeal was not related to the order of arbitration.) Plaintiffs have not presented any authority that a nonprofit corporation cannot be required to arbitrate.

b. SC Courts Have Compelled A Non-Signatory to a Standard Materials Limited Warranty to Arbitrate Under Terms Mandating Arbitration

Plaintiffs assert that a court cannot compel a "non-signatory" to a warranty contract containing a mandatory arbitration provision to arbitrate, because the non-party did not "bargain" for the warranty's limitations and disclaimers, citing *Gold Kist vs C&S Bank*, 286 SC 272, 333 S.E. 2d. 67 (Ct. App. 1985). What this ignores is that no transferee (like One Belle Hall POA Inc. and Brandy Ramey) of a standard warranty accompanying the sale of bulk construction materials such as roof shingles could ever negotiate the specific terms of the warranty that accompanied the initial sale and application of the product.

All commercial warranties for mass produced products are “take it or leave it” contracts, made by the seller (TAMKO) to accompany the sale of its product. This warranty is a typical “repair or replace” warranty that extends over the life of the product (25 years), and is similar to other shingle warranties. A comparison of the warranty provisions offered by other major shingle manufacturers, such as GAF and Owens Corning, among others, to TAMKO’s warranty, demonstrates this. See Affidavit of Patrick Cleary, submitted to the court during oral argument and attached hereto as **Exhibit D**, as compared to the applicable TAMKO warranty in effect at the time these shingles were sold and installed at One Belle Hall (See **Exhibit A**). Like most warranties of this type, all shingle manufacturers limit the remedy to repair or replace, disclaim implied warranties, exclude liability for damage to other property, and disclaim consequential and incidental damages. These are reasonable terms given the extended duration of the warranty (25 years) and the fact that the shingle manufacturer has no control over how and under what circumstances the shingles are ultimately used.

SC’s version of the UCC expressly permits these limitations. See SC Code 36-2-317 and SC Code 36-2-712. Courts routinely enforce these limitations. See *Myrtle Beach Pipeline Corp. v. Emerson Elec. Co.*, 843 F. Supp. 1027 (D.S.C. 1993, *af’d*, 46 F.3d 1125 (4th Cir. 1995) and *In re MI Windows and Doors, Inc. Products Liability Litigation*, 2012 WL 4846987 (D.S.C. 2012). As such, these limitations cannot be deemed to render a warranty “unconscionable.” To do so would invalidate all similarly worded construction material warranties.

Plaintiffs deliberately misconstrue TAMKO’s warranty to assert that it either does not provide a remedy at all, or seeks in other sections to withdraw the remedy it

purports to provide. A simple review of the warranty shows this is incorrect. If the shingles are defective in manufacture, the homeowner – either the POA or the individual condo owner – has a “repair or replace” warranty that can be enforced. See **Exhibit A**, page 2, “TAMKO Full Start Period and After Full Start Period.” The exclusion of “damage to any building, either exterior or interior, or any property contained therein or for injuries or damages of any kind whatsoever” does not negate the obligation to repair or replace shingles that are determined to have manufacturing defects.

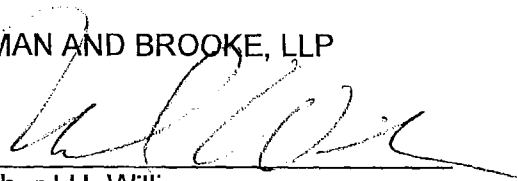
Plaintiffs ignore recent SC and 4th Circuit case law expressly upholding a signatory’s right to enforce an arbitration agreement in a contract against a non-signatory. See, for example, *Pearson vs. Hilton Head Hospital*, 400 S.C. 281, 733 S.E. 2d 597 (Ct. App. 2012) and *International Paper Company vs. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411 (4th Cir. 2000) applying S.C. law. Both Courts find enforcing arbitration provisions against a third party beneficiary of a contract to be reasonable, under theory of estoppel. A party cannot accept the benefit of a contract (in this case, the shingles and the 25 year repair or replace express limited warranty accompanying them), and sue for breach of said warranty (See **Exhibit E**, Plaintiffs’ Amended Complaint, Second Cause of Action, “Breach of Warranty as to all Defendants,”) but at the same time, repudiate its terms.

This Court inquired at oral argument whether either party in the *Pearson* case sought certification to the SC Supreme Court of the Court of Appeals’ opinion. A check of the Court record indicates that they did not. Accordingly, this case and the *International Paper* opinion are instructive here.

III. Conclusion

Plaintiffs' reliance upon the Horizontal Property Act and Nonprofit Corporation Act as a limitation on the ability of this Court to order arbitration is misguided and incorrect, and is without precedent. Adoption of Plaintiffs' strained interpretations of these acts would undercut the intent of the legislature and diminish the rights of the POA itself to manage the common elements of One Belle Hall. Additionally, South Carolina Courts have compelled non-signatories of a Standard Materials Limited Warranty to arbitrate under the warranty's arbitration terms. Therefore, Defendant TAMKO respectfully requests that the Court consider these supplemental arguments, as well as its previous briefing and arguments, and grant the Motion to Dismiss and Compel Arbitration.

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Columbia, South Carolina

June 27, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ONE BELLE HALL PROPERTY OWNERS)
ASSOCIATION, INC. and BRANDY RAMEY,)
individually, and on behalf of all others similarly)
situated,)

Plaintiffs,)

vs.)

Trammell Crow Residential Company; TCR NC)
Construction I, LP; Belle Hall Direct 101, LP; TCR)
RLD Condominiums, Inc.; CS 101 Belle Hall, LP;)
TCR Southeast, Inc.; TCR Carolina Properties, Inc.;)
TCR SE Construction, Inc.; TCR SE Construction)
II, Inc.; TCR Construction, a division of Trammell)
Crow Residential; TCR Development, a division of)
Trammell Crow Residential; Trammell Crow)
Residential Carolina, a division of Trammell Crow)
Residential; and Tauer Consulting Company, Inc., a)
division of Trammell Crow Residential, each)
individually, and collectively d/b/a “Trammell)
Crow Residential,” “Trammell Crow” or “TCR”;)
Halter Properties, LLC; Halter Realty, LLC; and)
Halter Realty Group, LLC, each individually, and)
collectively d/b/a “Halter Companies”; Jane Doe 1-)
5; ABG Caulking & Waterproofing of Morristown,)
Inc. a/k/a ABG Caulking Contractors; Advanced)
Building Products & Services, LLC; BASF)
Corporation; Budget Mechanical Plumbing, Inc.;)
Builders First Source – Southeast Group, LLC;)
Builders Services Group, Inc., individually, and)
d/b/a Gale Contractor Services, Inc.; Century Fire)
Protection, LLC; Cline Design Associates, P.A. and)
Gary D. Cline; Coastal Lumber & Framing, LLC;)
Dodson Brothers Exterminating Co., Inc. a/k/a)
Dodson Pest Control; First Exteriors, LLC;)
Flooring Services, Inc.; General Heating & Air)
Conditioning Company of Greenville, Inc. d/b/a)
General Heating and Air; Jimmy Warner,)
individually, and d/b/a Warner Heating & Air;)
Glazing Consultants, Inc.; GWC Roofing, Inc.,)
individually, and d/b/a Southcoast Exteriors, Inc.;)
Houston Stafford Electrical Contractors, LP a/k/a)

IN THE COURT OF COMMON PLEAS)
FOR THE NINTH JUDICIAL CIRCUIT)
CASE NO. 2012-CP-10-7594)

**PLAINTIFFS’ SUPPLEMENTAL
MEMORANDUM IN OPPOSITION
TO DEFENDANT TAMKO’S
MOTION TO DISMISS AND
COMPEL ARBITRATION**

IES Residential, Inc. d/b/a Houston Stafford)
 Electric; KMAC of the Carolinas, Inc.; P&P Metal)
 Sales Co., Inc. a/k/a P&P Metal Sales, LLC a/k/a)
 P&P Metal Sales, Inc. a/k/a Carolina Metals;)
 Pleasant Places, Inc.; Raymond Building Supply)
 Corporation d/b/a Energy Saving Products of)
 Florida, Inc. a/k/a Energy Saving Products of)
 Florida; RS Custom Homes, LLC; Southern)
 Specialties, Inc.; Structural Contractors South, Inc.;)
 Superior Construction Services, Inc., individually,)
 and d/b/a Superior Masonry Unlimited, Inc.;)
 TAMKO Building Products, Inc. f/k/a TAMKO)
 Roofing Products, Inc.; VNS Corporation,)
 individually, and d/b/a Wholesale Building)
 Products f/k/a Wholesale Building Materials, Inc.;)
 What Don't We Do; and John Doe 1-25,)
)
 Defendants.)

The Plaintiffs, One Belle Hall Property Owners Association and Brandy Ramey, individually, and on behalf of all others similarly situated (hereinafter collectively referred to as "Plaintiffs"), by and through their undersigned counsel, hereby submit this Supplemental Memorandum in Opposition to Defendant's, TAMKO Building Products, Inc. f/k/a TAMKO Roofing Products, Inc. (hereinafter "TAMKO"), Motion to Dismiss and Compel Arbitration.

SUMMARY OF ARGUMENT

This Court should deny TAMKO's Motion to Dismiss and Compel Arbitration because the arbitration and other anti-suit provisions contained in TAMKO's Warranty are wholly unconscionable, contrary to South Carolina law, inherently ambiguous, and thus, unenforceable. Additionally, Plaintiffs' claims relate to material misrepresentations and omissions promulgated by TAMKO and arbitration cannot be enforced in connection with claims related to deceptive conduct or claims which are unrelated to TAMKO's written warranty.

SUPPLEMENTAL ARGUMENT

A.) TAMKO's Warranty Limitation and Disclaimers are Unfair, Unconscionable and Unenforceable.

TAMKO's entire argument admittedly hinges upon the "fairness" of its Warranty limitation and disclaimers, limitations and disclaimers which purport to exclude any monetary recovery, and thus, are undoubtedly unfair and biased in favor of TAMKO. Indeed, TAMKO's Warranty expressly excludes from coverage "damages of any kind whatsoever" which necessarily includes: (a) direct or indirect economic damages; (b) consequential or incidental damages; and (c) special or punitive damages. Specifically, Paragraph Two of the TAMKO Warranty Section entitled "Exclusions from Coverage" provides as follows:

TAMKO shall not be liable under any circumstance for. . . (2) *Damage to any building, either exterior or interior, or any property contained therein or for injuries or damages of any kind whatsoever.* . .

(See TAMKO's Warranty) (emphasis added).

While TAMKO *now* maintains this exclusion does "not negate other obligations to repair or replace shingles that are determined to have manufacturing defects," TAMKO does so in an effort to try to clarify what is an obvious ambiguity in its Warranty, an ambiguity that must be construed *against TAMKO*. (See TAMKO Supplemental Brief, p. 8). Based upon the Warranty's written, express exclusion, TAMKO is not liable under any circumstance for damages of any kind whatsoever period, an exclusion which TAMKO now represents means one thing (although not stated), but which TAMKO could later asserts means exactly as it states. Simply stated, TAMKO cannot use its Warranty as both a sword and shield and cannot cherry pick the provisions which best serves its interest at any given moment. This is the definition of unfair, unfairness which precludes the enforcement of TAMKO's Warranty limitations and disclaimers and unfairness which TAMKO concedes should not exist in its Warranty.

During the June 25th Motion Hearing, TAMKO introduced to the Court five warranties provided by other roofing product manufacturers including GAF, IKO, CertainTeed, Marlakey, and Owens Corning in an erroneous attempt to justify the purported “fairness” of its Warranty.¹ Notably, at least three of these manufacturers, GAF, IKO and CertainTeed, were and/or are named Defendants in multi-district litigation where arbitration was not enforced as to Plaintiffs’ claims. Moreover, most of these warranties do not purport to exclude liability for “any damage whatsoever” or clarify liability arising out of or related to their shingles shall not “exceed the reasonable cost of shingles and labor to replace or repair the defective shingles.” *See* CertainTeed Warranty, pg. 6; IKO Warranty, pg. 6 (in its exclusions from coverage section, IKO purports to exclude only “any damage to the interior or exterior of any building, or any property or contents within or outside any building”); GAF Warranty, pg. 2 (in its exclusion from coverage section, GAF clarifies it will not compensate for “damages resulting from anything other than an inherent manufacturing defect in your shingles” and, similar to IKO, excludes “damage to interior or exterior of the building, including, but not limited to mold growth.”); Malarkey Warranty, pg. 4 (in its exclusion from coverage section, Malarkey reiterates it covers “manufacturing defects in Malarkey shingles” and contains no language which purports to exclude all monetary damages); Owens Corning Warranty, pg. 3 (in its exclusion section, Owens Corning clarifies its warranty “does not cover damage to the Owens Corning shingle due to any cause not expressly covered herein”). Unlike these warranties, TAMKO does purport to exclude all monetary damages and does not clarify otherwise in its “Exclusions from Coverage” Section. (See TAMKO Warranty) (noting “TAMKO shall not be liable under any circumstance for. . . (2) *Damage to any building, either exterior or interior, or any property contained therein or for injuries or damages of any kind whatsoever. . .*”).

¹TAMKO’s introduction of these new materials during the June 25th Motion Hearing serves as one of the primary reasons Plaintiffs filed this Supplemental Memorandum.

Moreover, TAMKO's reliance on *International Paper*, *Myrtle Beach* and *Pearson* is misplaced. Neither *International Paper*, *Myrtle Beach* nor *Pearson* involved "objectionable" contract features such as those present here, features which the South Carolina Court of Appeals has already recognized as cumulatively unconscionable and unenforceable, regardless of signatory status. See *International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 420 (4th Cir. 2000) (noting clause at issue contained "none of the features so objectionable" as found in other cases); *Myrtle Beach Pipeline Corp. v. Emerson Elec. Co.*, 843 F. Supp. 1027, 1045-46 (4th Cir. 1993) (only the exclusion of consequential damages were at issue in *Myrtle Beach*, not the exclusion of "any damages whatsoever" as is the case here. Moreover, the *Myrtle Beach* Court noted "consequential damages may be excluded, *provided this exclusion is not unconscionable.*" (emphasis added); *Pearson v. Hilton Head Hospital*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012) (Pearson involved two employment contracts, neither of which were challenged on the grounds of to their unconscionable nature); see also *D.R. Horton*, 403 S.C. at 15, 742 S.E.2d at 40-41. TAMKO's reliance on *Myrtle Beach* is further misplaced given the *Myrtle Beach* Court primarily based its decision on the fact that the transaction at issue was a "commercial transaction involving two sophisticated corporate entities; no consumers [were] involved." *Myrtle Beach*, 843 F.Supp. at 1044 ("The facts and circumstances surrounding this transaction reveal that this contract was freely entered into by two corporations well-versed in commercial practices. Understanding this commercial context cannot be divorced from the concept of limited remedies.").

In other words, TAMKO's Warranty contain limitations and disclaimers which mirror the provisions found unconscionable in *D.R. Horton*, and which were not at issue in any of the cases

relied on by TAMKO. According to prevailing South Carolina jurisprudence, such limitations offered on a take it or leave it basis and which serve to wrongfully deprive substantial rights while concomitantly eviscerating all means of recovering any damages are unconscionable, regardless of the UCC's applicability. *Simpson*, 373 S.C. at 29-30, 644 S.E.2d at 671 (“*The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution. . . [T]his arbitration clause violates statutory law because it prevents Simpson from receiving the mandatory statutory remedies to which she may be entitled. . . . Therefore, under the general rule, this provision in the arbitration clause is unenforceable. . . . In conjunction with Simpson’s lack of meaningful choice in agreeing to arbitrate, this provision is an unconscionable waiver of statutory rights, and therefore, unenforceable.*”) (emphasis added); *D.R. Horton*, 403 S.C. at 15, 742 S.E.2d at 40-41 (“Relying on the supreme court’s analysis in *Simpson*, we affirm the trial court’s finding of unconscionability, *particularly in light of the lack of mutuality of remedy imposed by Section 14(i), which purported to exempt Horton from liability for monetary damages.*”) (emphasis added).

Like the defendants in both *D.R. Horton* and *Simpson*, TAMKO takes the position its Warranty relieves TAMKO of all liability for this very damage under any conceivable set of circumstances. Thus, already illegible, admittedly adhesive in nature, inherently ambiguous, and lacking in both mutuality and fairness per the *Simpson* and *D.R. Horton* Courts, TAMKO’s Warranty limitations are cumulatively unconscionable, and therefore, wholly unenforceable.²

² Under our jurisprudence, such internal inconsistencies render TAMKO’s Warranty inherently ambiguous and unconscionable, and therefore, this Court should refuse to enforce the same. In the insurance context, for example, the South Carolina Court of Appeals in *Isle of Palms Pest Control Company versus Monticello Insurance Company*, directly confronted a similar “internal inconsistency” issue, concluding as follows:

[T]he internal inconsistency created by [a policy exclusion] which purports to bar coverage for claims arising out of the very operation sought to be insured renders [the policy] ambiguous in favor of coverage.

Simpson, 373 S.C. at 34, 542 S.E.2d at 673 (recognizing “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. . .”); *D.R. Horton*, 403 S.C. at 15, 742 S.E.2d at 40-41 (“We conclude the arbitration clause in this case should not be severed from the numerous unconscionable provisions and particularly [D.R.] Horton’s attempt to waive any seller liability for monetary damages of any kind, including secondary, consequential, punitive, general, special or indirect damages.”)

B.) Plaintiffs’ Warranty and Tort-Based Claims are Unrelated to TAMKO’s Written Warranty, and Therefore, are Not Subject to Arbitration

Also, to the extent TAMKO can even enforce its Warranty limitations and disclaimers despite their cumulative unconscionability, TAMKO can only enforce arbitration as to an express warranty claim asserted in connection with the printed Warranty itself, a claim which Plaintiffs do not maintain. *See, e.g., Zabinski v. Bright Acres Ass’n*, 346 S.C. 580, 553 S.E.2d 110, n. 4 (2001) (“Other jurisdictions provide a test to determine whether a tort claim falls within the scope of an agreement to arbitrate. . .[T]he focus should be on the factual allegations contained in the petition rather than on the legal causes of actions asserted. The test is based on a determination of whether the particular tort claim is so interwoven with the contract that it could not stand alone. . .If the tort claim is completely independent of the contract and could be maintained without reference to the contract, the tort claim is not arbitrable.”) (emphasis added); *Pearson*, 400 S.C. at 295, 733 S.E.2d at 604 *citing International Paper*, 206 F.3d at 417-18 (“When a signatory seeks to enforce an arbitration agreement against a non-signatory, the

319 S.C. 12, 19, 459 S.E.2d 318, 321 (Ct. App. 1994), *reh’g denied*, (Aug. 4, 1995 (emphasis added); *see also Hooters of Augusta, Inc. v. American Global Ins. Co.*, 272 F. Supp.2d 1365, 1378 (S.D. Ga. 2003) (noting “[i]nsurers must not deceive insurance purchasers into believing they have coverage only to have an exclusionary provision entirely nullify it”).

doctrine estops the non-signatory from claiming that he is not bound to the arbitration agreement when he receives a ‘direct benefit’ from a contract containing an arbitration clause.”)

Indeed, as previously noted in Plaintiffs Initial Opposing Memorandum, TAMKO represented and warranted, *through various marketing materials*, that its Shingles were in compliance with all building codes and ASTM standards including ASTM D 6381, Class H; ASTM D 3161, Type 1, Class F; ASTM D 7158, Class H; ASTM D 3462 and ASTM E 108. In contrast to these warranties and representations concerning the Shingles, the Shingles are defective and problematic at the time of sale and thereafter. They blister and crack, leading to early granule loss, increased moisture absorption, and reduced life expectancy. Moreover, the Shingles do not perform as warranted and represented and allow for resulting damage to other property and building components. Thus, contrary to TAMKO’s contention, *Pearson and International Paper* are also inapplicable in this context – Plaintiffs assert two tort-based claims and one breach of warranty claim unrelated to TAMKO’s printed Warranty. In other words, Plaintiffs do not seek a direct benefit from the printed Warranty itself, but from implied warranties and express representations which exist independent of the written Warranty. Because neither Plaintiffs’ warranty claims nor tort-based claims arise from TAMKO’s written warranty, none are “arbitrable” under the test outlined by our Supreme Court in *Zabinski*. *See Zabinski, supra*.

C.) TAMKO’s Warranty Limitations and Disclaimers Violate the Horizontal Property Regime Act Because TAMKO’s Warranty Purports to Require “Individualized Arbitration”

TAMKO’s argument in connection with the Horizontal Property Regime Act is yet another example of TAMKO’s attempts to explain away the ultimate effect of its Warranty’s limitations and disclaimers, while also relying on their express terms to its benefit. TAMKO simply cannot have it both ways, as again, this is unfair.

Specifically, TAMKO's Warranty expressly states "any action brought by you against TAMKO will be arbitrated or . . . litigated *individually and you will not consolidate, or seek class treatment for*, any action unless previously agreed to in writing by both TAMKO and you." (See TAMKO Warranty) (emphasis added). Yet, despite this express language, in TAMKO's Supplemental Brief, TAMKO maintains it "is in no way attempting to 'divide' the ownership and, if fact, seeks to *keep the ownership together for purposes of this arbitration*." Moreover, in TAMKO's Initial Supporting Memorandum, TAMKO repeatedly avers that its Warranty purports to require "*individualized arbitration*". (See Tamko Supporting Memorandum and Supplemental Memorandum).

The One Belle Hall Master Deed conveys ownership of common elements to the Regime, *but each owner owns an undivided interest in the Regime property*. Pursuant to Section 27-31-70 of the HPRA, the common elements, *both general and limited, shall remain undivided* and shall *not* be the object of *an action for partition or division of the co-ownership*. *Any covenant to the contrary shall be void*. In maintaining that its Warranty purports to require "individualized arbitration," TAMKO's admits its Warranty limitation and disclaimers purports to "divide" the ownership of the common and limited common elements by purporting to require "each owner" to represent its own interest in the same. The division of such interests, in this manner, is precluded by the HPRA, and this Court cannot enforce Warranty limitations and disclaimers which violate our laws.³

³ Additionally, the Plaintiff POA, as a non-profit corporation, has the powers conferred upon it by the statutory provisions allowing its very existence and delineating its powers. Section 33-31-302 of the South Carolina Code endows all non-profit corporations with the powers described in subsection (1) – (18) of that statute which reads, in pertinent part, as follows:

. . .[E]very corporation has . . .the same powers as an individual to do all things necessary or convenient to carry out its affairs including, WITHOUT LIMITATION, power: (1) To sue and be sued, complaint and defendant in its corporate name. . .

D.) TAMKO Cannot Enforce its Warranty's Limitations and Disclaimers Based Upon Its Own Deceptive Conduct.

Finally, this Court should deny TAMKO's Motion because Plaintiffs' claims relate to material misrepresentations and omissions promulgated by TAMKO and arbitration cannot be enforced in connection with claims related to deceptive conduct. Indeed, it is uniformly accepted in this State that a party, such as TAMKO, who engages in deceptive conduct, has waived its right to invoke an arbitration clause. *Partain v. Upstate Automotive Group*, 386 S.C. 488, 494 689 S.E.2d 602, 605 (2010) (arbitration clause held to be unenforceable where auto dealership's fraudulent conduct of substituting lesser quality car was unforeseeable to purchaser); *Aiken v. World Fin. Corp. of South Carolina*, 373 S.C. 144, 151, 644 S.E.2d 705, 709 (2007) ("because even the most broadly-worded arbitration agreements still have limits founded in general principles of contract law, this Court will refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings."); *Chassereau v. Global Sun Pools*, 373 S.C. 168, 172, 644 S.E.2d 718, 720 (2007) (noting same).

Here, the claims asserted by Plaintiffs against TAMKO are related to TAMKO's misrepresentations and material omissions concerning the Shingles. TAMKO never disclosed to anyone the risks inherent in the Shingles such as the significant probability of blistering, cracking, leakage and consequential damages. To the contrary, TAMKO sold the Shingles to the public based upon false representations and warranties which (a) fail to disclose these inherent deficiencies; (b) fail to disclose its Shingles are not in compliance with industry standards; (c) fail to disclose the premature failure of its Shingles; and (d) fail to disclose the lack of remedy purportedly available. Clearly, TAMKO's actions constitute "deceptive conduct," and thus,

In other words, non-profit corporations such as the POA possess the power, without limitation, to sue – without limitation being the key words ignored by TAMKO in its Supplemental Brief.

TAMKO cannot seek to invoke arbitration as to Plaintiffs' claims which are based upon TAMKO's deception.

CONCLUSION

In sum, this Court should deny TAMKO's Motion because South Carolina courts cannot enforce a contract which is unconscionable, unfair, or violative of statutory law. Here, the conceded adhesive contract containing obviously unfair provisions throughout TAMKO's Warranty prevent Plaintiffs from receiving damages to which they are entitled in their underlying claims. As such, these provisions are cumulatively unconscionable, and thus, should be construed together so that, as a whole, these provisions are not severable from each other, and thus, rejected as one. Just as the *Simpson* and *D.R. Horton* Courts refused to enforce such unconscionable terms, so too should this Court refuse to enforce the unconscionable terms contained in TAMKO's Warranty, especially in light of TAMKO's own conduct.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By: Dabny Lynn/ps
 Justin Lucey
 Dabny Lynn
 415 Mill Street
 Post Office Box 806
 Mount Pleasant, SC 29465-0806
 (843) 849-8400 phone
 (843) 849-8406 fax

June 30, 2014
 Charleston, South Carolina

MANDATORY BINDING ARBITRATION: EVERY CLAIM, CONTROVERSY, OR DISPUTE OF ANY KIND WHATSOEVER INCLUDING WHETHER ANY PARTICULAR MATTER IS SUBJECT TO ARBITRATION (EACH AN "ACTION") BETWEEN YOU AND TAMKO (INCLUDING ANY OF TAMKO'S EMPLOYEES AND AGENTS) RELATING TO OR ARISING OUT OF THE SHINGLES OR THIS LIMITED WARRANTY SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION, REGARDLESS OF WHETHER THE ACTION SOUNDS IN WARRANTY, CONTRACT, STATUTE OR ANY OTHER LEGAL OR EQUITABLE THEORY. TO ARBITRATE AN ACTION AGAINST TAMKO, YOU MUST INITIATE THE ARBITRATION IN ACCORDANCE WITH THE APPLICABLE RULES OF ARBITRATION OF THE AMERICAN ARBITRATION ASSOCIATION (WHICH ARE AVAILABLE ONLINE AT www.adr.com OR BY CALLING THE AMERICAN ARBITRATION ASSOCIATION AT 1-800-778-7879) AND PROVIDE WRITTEN NOTICE TO TAMKO BY CERTIFIED MAIL AT P.O. BOX 1404, JOPLIN, MISSOURI 64802 WITHIN THE TIME PERIOD PRESCRIBED IMMEDIATELY BELOW.

Legal Remedies: EXCEPT WHERE PROHIBITED BY LAW, THE OBLIGATION CONTAINED IN THIS LIMITED WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER OBLIGATIONS, GUARANTEES AND WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATIONS OR LIABILITY ON THE PART OF TAMKO BUILDING PRODUCTS, INC. IN NO EVENT SHALL TAMKO BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND. SOME STATES DO NOT ALLOW EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. NO ACTION FOR BREACH OF THIS LIMITED WARRANTY OR ANY OTHER ACTION AGAINST TAMKO RELATING TO OR ARISING OUT OF THE SHINGLES, THEIR PURCHASE OR THIS TRANSACTION SHALL BE BROUGHT LATER THAN ONE YEAR AFTER ANY CAUSE OF ACTION HAS ACCRUED. IN JURISDICTIONS WHERE STATUTORY CLAIMS OR IMPLIED WARRANTIES CANNOT BE EXCLUDED, ALL SUCH STATUTORY CLAIMS, IMPLIED WARRANTIES AND ALL RIGHTS TO BRING ACTIONS FOR BREACH THEREOF EXPIRE ONE YEAR (OR SUCH LONGER PERIOD OF TIME IF MANDATED BY APPLICABLE LAWS) AFTER THE DATE OF PURCHASE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. Invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other provision which shall remain in full force and effect.

ANY ACTION BROUGHT BY YOU AGAINST TAMKO WILL BE ARBITRATED (OR, IF ARBITRATION OF THE ACTION IS NOT PERMITTED BY LAW, LITIGATED) INDIVIDUALLY AND YOU WILL NOT CONSOLIDATE, OR SEEK CLASS TREATMENT FOR, ANY ACTION UNLESS PREVIOUSLY AGREED TO IN WRITING BY BOTH TAMKO AND YOU.

NO REPRESENTATIVE, EMPLOYEE OR OTHER AGENT OF TAMKO, OR ANY PERSON OTHER THAN TAMKO'S PRESIDENT, HAS AUTHORITY TO ASSUME FOR TAMKO ANY ADDITIONAL LIABILITY OR RESPONSIBILITY IN CONNECTION WITH THE SHINGLES EXCEPT AS DESCRIBED ABOVE.

THIS FORM IS NOT TO BE COPIED OR REPRODUCED IN ANY MANNER. THIS LIMITED WARRANTY IS VALID ONLY IN THE UNITED STATES, EXCLUDING HAWAII AND ALASKA. THIS LIMITED WARRANTY APPLIES TO TAMKO FIBERGLASS SHINGLES SOLD ON OR AFTER JUNE 1, 2006 AND SUPERSEDES ALL PREVIOUSLY PUBLISHED WARRANTIES.

PAGE 5



WARRANTY INFORMATION (To be completed by Owner and Contractor)

Owner's Name _____

Address Where Applied _____

City _____

State _____ Zip _____

Type of TAMKO shingle applied:

- | | |
|--|---------------------------------------|
| ☐ TAMKO Glass-Seal | 240 Months (20 Year) Limited Warranty |
| ☐ TAMKO Glass-Seal AR | 240 Months (20 Year) Limited Warranty |
| ☐ TAMKO Elite Glass-Seal | 300 Months (25 Year) Limited Warranty |
| ☐ TAMKO Elite Glass-Seal AR | 300 Months (25 Year) Limited Warranty |
| ☐ TAMKO Heritage 30 | 360 Months (30 Year) Limited Warranty |
| ☐ TAMKO Heritage 30 AR | 360 Months (30 Year) Limited Warranty |
| ☐ TAMKO Heritage XL AR | 480 Months (40 Year) Limited Warranty |
| ☐ TAMKO Heritage 50 | 600 Months (50 Year) Limited Warranty |
| ☐ TAMKO Heritage 50 AR | 600 Months (50 Year) Limited Warranty |

Number of Squares _____

Color _____

Date of application of shingles _____

Total cost of shingles _____

Total cost of shingle application _____

Contractor's Name _____

Contractor's Signature _____

Date _____

**RETAIN THIS WARRANTY WITH CONTRACTORS
RECEIPT FOR FUTURE REFERENCE.**

JP21371



BUILDING PRODUCTS FOR THE PROFESSIONAL.

Since 1944, building professionals and homeowners have looked to TAMKO for quality products that are built to perform. Our extensive line of residential products includes: Lamarite composite shingles, Metalworks steel shingles, Heritage series laminated asphalt shingles, 3-tab shingles, EverGrain and Elements composite decking & railing, Tam-Rail railing, rolled roofing products, waterproofing materials, ventilation products and asbestos-free cements and coatings. Each of these products delivers TAMKO quality, performance and durability.



P.O. Box 1404
Joplin, MO 64802 USA
www.tamko.com



Heritage® 50
Heritage® 50 AR
Heritage® XL AR
Heritage® 30
Heritage® 30 AR

Elite Glass-Seal®
Elite Glass-Seal® AR

Glass-Seal
Glass-Seal AR

**FIBERGLASS SHINGLES
LIMITED WARRANTY**



The Owner may transfer this limited warranty one time during the first two years of Term to a Purchaser. No other transfers are permitted.

FIBERGLASS/ASPHALT SHINGLE LIMITED WARRANTY

In this limited warranty certain capitalized words have specific meanings:

- "TAMKO" means TAMKO Building Products, Inc.
- "Term" means the period of time this limited warranty lasts. The Term begins on the date of Purchase and continues, unless sooner terminated, for the number of months set forth in Table 1.
- "Owner" means the owner of the building at the time the Shingles are installed on that building. If you purchase a new residence and are the first person to occupy the residence, TAMKO will consider you to be the Owner even though the Shingles were already installed.
- "Shingles" means the TAMKO shingles identified in this limited warranty which were installed on a building owned by the Owner.
- "Purchase" means the retail purchase of the Shingles.
- "Full Start Period" means the initial period of the Term during which TAMKO's obligation is not prorated. The length of the Full Start Period is listed in Table 1.
- "Maximum Liability" means the obligation of TAMKO described in the paragraphs titled "TAMKO Full Start Period" and "After the Full Start Period," whichever is applicable.
- "Labor Payment Certificate" means a certificate issued by TAMKO that may be redeemed to pay some or all of the cost of labor for roof repairs.
- "Material Certificate" means a certificate issued by TAMKO and redeemable at participating distributors for a stated quantity of replacement shingles of the same type and color as the Shingles which are to be replaced. If shingles of the same type or color are no longer available, the certificate will be for the closest TAMKO substitute available.
- "AR" means Shingles which are covered by a warranty that provides for cleaning or discoloration caused by certain algae growth. "AR" appears as part of the name or description on the wrapper of AR designated shingles, such as "Glass Seal AR" or "Heritage 30 AR." Only AR designated shingles are covered by an Algae Cleaning Limited Warranty.
- "Square" means 100 square feet for most shingles. For Heritage 50 and Heritage XL "Square" means 98.4 square feet.
- "High Wind Application" means application of shingles in accordance with application instructions appearing on the shingle wrapper, with TAMKO Hip and Ridge shingles installed on all hips and ridges. See local building codes for proper nailing application.

PAGE 1

TABLE 1

SHINGLE	TERM	FULL START PERIOD	STD APPLICATION WIND WARRANTY MPH	HIGH WIND APPLICATION WARRANTY MPH	DOLLAR LIMIT PER SQUARE
Glass Seal	240 months	3 years	60	—	\$25.00
Glass Seal AR	240 months	3 years	60	—	\$25.00
Elite Glass Seal	300 months	3 years	60	—	\$30.00
Elite Glass Seal AR	300 months	3 years	60	—	\$30.00
Heritage 30	360 months	5 years	70	—	\$40.00
Heritage 30 AR	360 months	5 years	70	—	\$40.00
Heritage XL AR	480 months	7 years	80	90	\$45.00
Heritage 50	600 months	7 years	90	110	\$55.00
Heritage 50 AR	600 months	7 years	90	110	\$55.00

TAMKO Full Start Period: If, during the Full Start Period, Shingles are determined to have manufacturing defects which have directly caused leaks, TAMKO will provide the Owner with a Material Certificate for replacement shingles (or, at TAMKO's option, the Dollar Limit Per Square identified in Table 1) and a Labor Payment Certificate that may be used to pay the reasonable cost of installing replacement shingles, according to the terms of this limited warranty. This is TAMKO's Maximum Liability during the Full Start Period.

After the Full Start Period: If, after the end of the Full Start Period, Shingles are determined to have manufacturing defects which have directly caused leaks, TAMKO's obligation is limited to providing the Owner with a Material Certificate for replacement shingles or, at TAMKO's option, the Dollar Limit Per Square identified in Table 1. The Dollar Limit Per Square and the quantity of replacement shingles will be prorated over the life of this limited warranty. This is TAMKO's Maximum Liability after the Full Start Period. TAMKO is not responsible for the cost of labor for installing replacement shingles after the Full Start Period. Proration shall be determined by dividing the number of months remaining in the Term by the total number of months of the Term. For example, if TAMKO is notified of a warranty claim at a time when 100 months remain in a 300 month warranty Term, TAMKO's Maximum Liability is to provide a Certificate for one third of the replacement shingles or, at TAMKO's option, payment of one third of the Dollar Limit Per Square identified in Table 1. The remaining cost shall be the responsibility of the Owner.

Both during and after the Full Start Period, the extent of replacement is at the sole discretion of TAMKO. TAMKO is not responsible for the cost of flashings or metal work or for the cost of removing or disposing of Shingles which are to be replaced. Replacement shingles will be warranted only for the remainder of the original Term. Tender of payment of the prorated Dollar Limit Per Square shall extinguish all liability of TAMKO under this limited warranty and all applicable implied warranties.

Notification to TAMKO: The Owner must notify TAMKO by certified mail at P.O. Box 1404, Joplin, Missouri 64802 of any claims under this limited warranty within thirty (30) days following discovery of the problem with the Shingles. The notice must include documentary proof of Purchase.

PAGE 2

Right of Inspection and Time for Payment: TAMKO shall have a reasonable time after notification to inspect the Shingles. The Owner shall provide TAMKO with reasonable access to the Shingles for purposes of inspection. If requested by TAMKO, the Owner must complete and deliver to TAMKO, at the Owner's expense, a warranty questionnaire, photographs of the roof and samples of the Shingles. If reasonable access is denied or made subject to unreasonable conditions by the Owner, or if the Owner fails or refuses to cooperate in TAMKO's investigation of the complaint (such as by failing to provide sample Shingles or photographs or a completed warranty questionnaire), TAMKO's obligation under this limited warranty shall immediately terminate. If TAMKO determines there are manufacturing defects covered by this limited warranty, TAMKO will have up to ninety (90) days after receipt of notification to process the Owner's claim.

120 Month Algae Cleaning Limited Warranty: If, during the initial 120 months of the Term, Shingles designated AR become stained by certain algae growth, including blue-green algae, TAMKO will issue to the Owner a Labor Payment certificate that may be used to pay the reasonable cost of cleaning the shingles (up to a maximum of \$15 per square). TAMKO shall have no liability or responsibility for cleaning shingles with algae growth: (a) after the initial 120 months of the Term for Shingles which are designated AR, or (b) at any time for Shingles that are not designated AR.

60 Month Limited Wind Warranty: The Shingles are also covered by a 60 month limited warranty against damage from wind up to the designated wind velocity per product identified in Table 1. This Limited Wind Warranty applies only if: (a) the Shingles were installed according to the instructions printed on the wrapper and (b) the Shingles have had the opportunity to seal down. Shingles that are installed in cool seasons may not seal until weather conditions are adequate to allow the seal down strip to activate. If conditions (a) and (b) have been met and during the first 60 months of the Term the Shingles are damaged or blown off by wind up to the designated wind velocity for the product as a result of a manufacturing defect, TAMKO will process the Owner's claim in accordance with the sections titled "TAMKO Full Start Period" or "After the Full Start Period," whichever is applicable. Alternatively, TAMKO may, solely at its option, provide the Owner with a Labor Payment Certificate that may be used to pay the reasonable cost of manually sealing unsealed Shingles and replacing Shingles which have blown off and a Material Certificate for the number of shingles that have blown off. Shingles will be conclusively deemed to have been exposed to winds in excess of the designated wind velocity for the product if the National Weather Service or other reputable weather agency records winds in excess of the designated wind velocity for the product in the county or parish where the Shingles are installed or in any adjoining county or parish. TAMKO shall have no liability under this Limited Wind Warranty if the Shingles have been exposed at any time to winds in excess of the designated wind velocity for the product.

PAGE 3

Exclusions from Coverage: TAMKO shall not be liable under any circumstances for:

1. Faulty or improper application of the Shingles, inadequate ventilation of the Shingles or Shingles not installed or applied in accordance with TAMKO written instructions to the installer on the packaging or leaks or damages resulting from any one or more of such causes.
2. Damage to any building, either exterior or interior, or any property contained therein or for injuries or damages of any kind whatsoever.
3. Tear-off, removal, or disposal of any Shingles, or for any costs related to such tear-off, removal, or disposal.
4. Removal or abatement of any asbestos present in the roof to which the Shingles are applied, or for any costs related to such removal or abatement.
5. Shading or discoloration from any cause whatsoever, including, but not limited to algae, moss or staining from overhanging trees, except as provided in the Algae Cleaning Limited Warranty set forth above.
6. Damage caused by Algae or fungus growth.
7. Leaks or damages resulting from Acts of God (including, but without limitation, lightning, wind (except as set forth in the Limited Wind Warranty), hurricane, tornado, hail, or other violent storm or casualty), impact of objects or damage to a roof due to settlement, distortion, failure or cracking of the roof deck, walls or foundation of a building, or for any defect in or failure of material used as a roof base over which the Shingles are applied, or for damage by traffic on the roof.
8. Chemical attack on the Shingles as a result of exposure to chemicals including, but not limited to, aliphatic or aromatic solvents, chlorinated hydrocarbons, turpentine, oils or organic or inorganic polar materials.
9. Leaks or damage to the Shingles from any cause other than inherent manufacturing defect in the Shingle.

Transferability: The Owner may transfer this limited warranty one (1) time during the first two (2) years of the Term to a purchaser of the building upon which the Shingles are installed (a "Purchaser"). The transfer must occur simultaneously with the sale of the building. To transfer this limited warranty, the Owner must provide TAMKO with written notice within thirty (30) days after the transfer. The written notice must include the names of the Owner and the Purchaser, the address of the building upon which the Shingles are installed, the date the Shingles were installed, and the date of the transfer. The Owner may transfer this limited warranty only one (1) time. Except for one transfer to a Purchaser during the first two (2) years of the Term, this limited warranty may not be sold, assigned or transferred in any manner whatsoever. Neither a Purchaser nor any other person may transfer this limited warranty. Except as set forth in this paragraph, any assignment, sale or transfer of this limited warranty or the building to which the TAMKO Shingles are applied shall immediately terminate all liability of TAMKO for the Shingles, all warranties contained herein or hereunder and any applicable implied warranties including warranties of merchantability and fitness for a particular purpose.

PAGE 4

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

ONE BELLE HALL PROPERTY OWNERS)
ASSOCIATION, INC. and BRANDY RAMEY,)
individually, and on behalf of all others similarly)
situated,)

CASE NO. 2012-CP-10-7594

Plaintiffs,)

vs.)

Trammell Crow Residential Company; TCR NC)
Construction I, LP; Belle Hall Direct 101, LP;)
TCR RLD Condominiums, Inc.; CS 101 Belle)
Hall, LP; TCR Southeast, Inc.; TCR Carolina)
Properties, Inc.; TCR SE Construction, Inc.;)
TCR SE Construction II, Inc.; TCR)
Construction, a division of Trammell Crow)
Residential; TCR Development, a division of)
Trammell Crow Residential; Trammell Crow)
Residential Carolina, a division of Trammell)
Crow Residential; and Tauer Consulting)
Company, Inc., a division of Trammell Crow)
Residential, each individually, and collectively)
d/b/a "Trammell Crow Residential," "Trammell)
Crow" or "TCR"; Halter Properties, LLC;)
Halter Realty LLC; and Halter Realty Group,)
LLC, each individually, and collectively d/b/a)
"Halter Companies"; Jane Doe 1-5; ABG)
Caulking & Waterproofing of Morristown, Inc.)
a/k/a ABG Caulking Contractors; Advanced)
Building Products & Services, LLC;)
BASF Corporation; Budget Mechanical)
Plumbing, Inc.; Builders First Source –)
Southeast Group, LLC; Builders Services)
Group, Inc., individually, and d/b/a Gale)
Contractor Services, Inc.; Century Fire)
Protection, LLC; Cline Design Associates, P.A.)
and Gary D. Cline; Coastal Lumber & Framing,)
LLC; Dodson Brothers Exterminating Co.,)
Inc. a/k/a Dodson Pest Control; First Exteriors,)
LLC; Flooring Services, Inc.; General Heating)
& Air Conditioning Company of Greenville,)
Inc. d/b/a General Heating and Air; Jimmy)
Warner, individually, and d/b/a Warner)
Heating & Air; Glazing Consultants, Inc.;)

AFFIDAVIT
OF
ALEX HINES

FILED
2014 JUL 10 PM 2:28
JULIE L. ARNETT
CLERK OF COURT
BY _____

GWC Roofing, Inc., individually, and
d/b/a Southcoast Exteriors, Inc.; Houston
Stafford Electrical Contractors, LP a/k/a
IES Residential, Inc. d/b/a Houston
Stafford Electric; KMAC of the Carolinas,
Inc.; P&P Metal Sales Co., Inc. a/k/a
P&P Metal Sales, LLC a/k/a P&P Metal
Sales, Inc. a/k/a Carolina Metals;
Pleasant Places, Inc.; Raymond Building
Supply Corporation d/b/a Energy Saving
Products of Florida, Inc. a/k/a Energy
Saving Products of Florida; Southern
Specialties, Inc.; Structural Contractors
South, Inc.; Superior Construction
Services, Inc., individually, and d/b/a
Superior Masonry Unlimited, Inc.;
TAMKO Building Products, Inc. f/k/a
TAMKO Roofing Products, Inc.; VNS
Corporation, individually, and d/b/a
Wholesale Building Products f/k/a
Wholesale Building Materials, Inc.;
What Don't We Do; and John Doe 1-25,

Defendants.

VNS Corporation, individually, and d/b/a
Wholesale Building Products f/k/a Wholesale
Building Materials,

Third Party Plaintiff,

vs.

Billy Gray, d/b/a United Builders, LLC,

Third Party Defendant.

Houston Stafford Electrical Contractors, LP
a/k/a IES Residential, Inc. d/b/a Houston
Stafford Electric,

Third-Party Plaintiffs,

Vs.

J. Correa Electrical Company, LLC.,

Third-Party Defendant.

1. I am Alex Hines, Corporate Director of Marketing for TAMKO Building Products, Inc. I have knowledge of/am familiar with how claims are administered at TAMKO. The following information is true and correct to the best of my knowledge and belief.

2. I have reviewed the brief of the Plaintiffs in the above referenced litigation, where they contend that TAMKO's standard limited warranty has provisions that are "in conflict," and result in giving a warranty in one section, but "taking it away" in another. This is incorrect, and is not how TAMKO administers warranty claims.

3. The TAMKO limited warranty is a "repair or replace" limited warranty, typical of others in our industry. It provides a remedy in the event the shingles contain manufacturing defects which directly cause leaks. If, during the three (3) year "Full Start Period" the shingles are determined to have manufacturing defects which have directly caused leaks, TAMKO will provide the Owner with a Material Certificate for replacement shingles (or, at TAMKO's option the applicable Dollar Limit Per Square) and a Labor Payment Certificate that may be used to pay the reasonable cost of installation replacement shingles. After the "Full Start Period" has passed, the extent of the remedy is prorated over the remaining life of the warranty. The limited warranty period for "Elite Glass Seal AR" shingles is 25 years. Examples of the Material Certificate and the Labor Payment Certificate are attached as Exhibits A and B.

4. At the time these shingles were manufactured and sold (in or about 2006), the TAMKO limited warranty was legibly printed on the shingle packages, and was also provided with the shipments. See photo at Exhibit C. It was also available on TAMKO's website, at www.TAMKO.com. This remains TAMKO's practice.

5. To notify TAMKO of the application of shingles manufactured and sold by TAMKO, typically a builder or roofer will sign and date the limited warranty form and keep it as part of their records, and pass it on to the building owner once the job is completed. It is not necessary that a signed and dated copy be sent to TAMKO, although this is helpful in responding to future claims. Exhibit D is a copy of a signed and dated TAMKO limited warranty form applicable to One Belle Hall that was produced to TAMKO in this litigation. A clean copy of this warranty is attached as Exhibit E.

6. The limited warranty seeks to exclude liability for damage to other property such as building and contents in Exclusions from Coverage, Paragraph 2: "Damage to any building, either exterior or interior, or to any property contained therein or for injuries or damages of any kind whatsoever." This does not exclude the repair or replace remedy regarding manufacturing defects in the shingles themselves. The terms of the limited warranty do not say this, and the limited warranty has never been applied or restricted by TAMKO in such a manner.

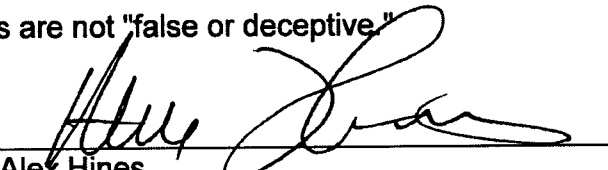
7. The limited warranty limitations also seek to disclaim implied warranties, exclude consequential and incidental damages, and contain other provisions common to materials warranties in our industry. However, the limited warranty specifically provides that if any of these exclusions or disclaimers are inconsistent with the laws of the local jurisdiction covering the transaction to which the limited warranty applies, these limitations may not apply.

8. While manufacturing defects in shingles are unusual, and while TAMKO takes pride in its roofing products and endeavors to make a quality product, when manufacturing defects are brought to TAMKO's attention through the warranty claims process, TAMKO sends the customer a warranty "kit" asking for information and a

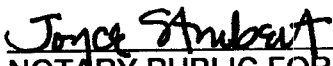
sample of the shingles that the customer contends are defective. A copy of this kit is attached as Exhibit F.

9. According to available records attached hereto as Exhibit G, for the One Bell Hall project, on 2/24/2010, a warranty claim was initiated by a phone call from "Kyle Crout" at the One Belle Hall address to TAMKO, reporting "blisters" but no roof leaks. Accordingly, a claim file was opened, and warranty kit was sent out on 2/24/2010. TAMKO received no further communication or response from the building owner. Accordingly, on 6/25/10, having received nothing in response, TAMKO inactivated the claim. Nothing further was communicated to TAMKO about this matter until TAMKO was served as a Defendant in this lawsuit, in February of 2014.

10. TAMKO generally advertises its products, but has made no specific representations to Plaintiffs, and was not even aware of the identity of Plaintiffs until being served with a copy of the Summons and Complaint. Like all shingle manufacturers, TAMKO makes general representations to the public that its products are of high quality. These representations are not "false or deceptive."


 Alex Hines
 Corporate Director of Marketing
 for TAMKO Building Products, Inc.

SWORN TO and subscribed before me
 this 7th day of July, 2014


 NOTARY PUBLIC FOR MISSOURI

My Commission Expires: _____

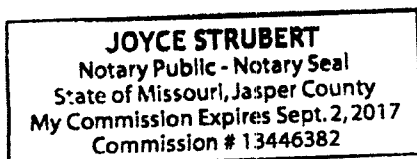
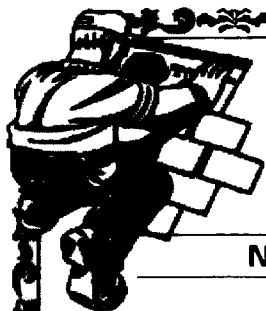


EXHIBIT A



TAMKO BUILDING PRODUCTS, INC. MATERIAL CERTIFICATE

Certificate No: _____

Issue Date: _____ Expiration Date: _____

All products must be picked up from a participating TAMKO

Distributor prior to the expiration date.

NON-NEGOTIABLE

In full and complete discharge of TAMKO Building Products, Inc. (TAMKO) from all claims the Building Owner may have, including, but not limited to the claim number identified hereon, this Certificate is issued to:

Building Owner: _____

Mailing Address: _____

Claim Address: _____

Redeemable Only For:

Product Name: _____

Shingle Color: _____

Quantity/UOM: _____

NOTE: This certificate contains a GREY WATERMARK stating "ORIGINAL" and a raised seal bearing the notation "TAMKO MATERIAL CERTIFICATE". DO NOT accept this certificate if the watermark and/or seal are absent or appear to be altered.

TO BE COMPLETED BY DISTRIBUTOR: I _____, certify that the Building Owner designated herein signed and

Distributor Name

presented this certificate for redemption on or before the expiration date and that TAMKO material, in Quantity designated herein, was transferred to the Building Owner on the _____ day of _____, 20____

Distributor: _____

Authorized Representative: _____

ATTENTION DISTRIBUTOR: Material Certificates must be submitted to TAMKO within 30 days after the expiration date. TAMKO will not redeem certificates submitted after that date. To redeem certificate, call TAMKO Customer Service at 1-800-641-4691 to receive a **MATERIAL REPLACEMENT ORDER NUMBER**



220 West 4th Street,
Joplin, Missouri 64801
www.tamko.com

THIS CERTIFICATE MUST BE SUBMITTED TO A PARTICIPATING TAMKO DISTRIBUTOR PRIOR TO THE EXPIRATION DATE!

EXHIBIT B



TAMKO BUILDING PRODUCTS, INC. LABOR PAYMENT CERTIFICATE

Certificate No: _____

Issue Date: _____ Expiration Date: _____

Certificate Value: _____

NON-NEGOTIABLE

NON-TRANSFERABLE

In full and complete discharge of TAMKO Building Products, Inc. (TAMKO) from all claims the Building Owner may have, including, but not limited to the claim number identified hereon, this Certificate is issued to:

Building Owner: _____

Mailing Address: _____

Claim Address: _____

Certificate Value: \$ _____

Total Labor Settlement: \$ _____

Issued By: TAMKO BUILDING PRODUCTS, INC.

Authorized
By: _____

Stephen A. McNally - Vice President Sales/Marketing

For Questions regarding certificate please call Warranty Services at 800-441-7190.

TAMKO shall have the right, but not the obligation, to inspect the roof after repairs or replacement work has been done.

I accept this certificate in full satisfaction of the claim number identified hereon and all other claims the undersigned may have against TAMKO Building Products, Inc. and hereby release TAMKO Building Products, Inc., its agents and employees from all such claims.

Building Owner's Signature : _____

(If more than one building owner,
all owners must sign.): _____

(This certificate is redeemable only if signed by the designated building owner and received by TAMKO Building Products, Inc. prior to the expiration date)

**TO RECEIVE PAYMENT OF THE CERTIFICATE VALUE THIS
CERTIFICATE MUST BE RECEIVED BY TAMKO BEFORE EXPIRATION
DATE!**

Attention Roofer/Contractor: This certificate contains a GREY WATERMARK stating "ORIGINAL" and a raised seal bearing the notation "TAMKO LABOR PAYMENT CERTIFICATE". DO NOT ACCEPT THIS CERTIFICATE if watermark and/or seal are absent or appear altered.

No representative, employee or agent of TAMKO, or any person other than TAMKO's President has authority to modify any term of this certificate or any TAMKO warranty or to assume for TAMKO any liability or responsibility for TAMKO shingles other than as set forth in TAMKO's limited warranty.

TO BE COMPLETED BY ROOFER/CONTRACTOR: I _____, certify that the Building Owner designated herein
Roofer / Contractor Name

signed and presented this certificate for redemption on or before the expiration date and that repair/replacement was completed for the Building Owner on the _____ day of _____, 20_____.



220 West 4th Street,
Joplin, Missouri 64801
www.tamko.com

To redeem certificate, send to
TAMKO Building Products, Inc.
Attn: Warranty Services
P.O. 1404, Joplin, MO 64802-1404
A check will be issued to the
Roofer/Contractor.

Roofer/Contractor: _____

Address: _____

City: _____ State: _____ Zip: _____

Signature: _____

EXHIBIT C

EXHIBIT D

[illegible][illegible]

WARRANTY INFORMATION
(To be completed by Owner and Contractor)

Owner's Name _____
Address Where Applied _____
City _____
State _____ To _____

[illegible]

Number of Squares 527.66
Color SIATE GRU

Date of application of strings 21/01/2016
Total cost of strings \$ 18,451.00

Total cost of a single application \$15.400

Contractor's Name Blue Powering Company

Contractor's Signature J. H. H. H.

Date 1/2/07

RETAIN THIS WARRANTY WITH CONTRACTORS
RECEIPT FOR FUTURE REFERENCE



**BUILDING PRODUCTS FOR
THE PROFESSIONAL.**

Since 1944, building professionals and homeowners have looked to TAMKO for quality products that are built to perform. Our extensive line of residential products includes: Lumarite composite shingles, Metalworks steel shingles, Heritage series laminated asphalt shingles, 3-tab shingles, EverGuth and Elements composite decking & railing, Tern-Rail railing, rolled roofing products, waterproofing materials, ventilation products and asbestos-free cements and coatings. Each of these products delivers TAMKO quality, performance and durability.



P.O. Box 1404
Joplin, MO 64802 USA
www.funko.com

OVERSIGHT



Heritage® 50
Heritage® 50 AR
Heritage® XL AR
Heritage® 30
Heritage® 30 AR

Elite Glass-Seal
Elite Glass-Seal AR

Class-Seal
Class-Seal AR

**FIBERGLASS SHINGLES
LIMITED WARRANTY**



The Owner may transfer this limited warranty one time during the first two years of the Term to a Purchaser. No other transfers are permitted.

FIBERGLASS/ASPHALT SHINGLE LIMITED WARRANTY

In this limited warranty certain capitalized words have specific meanings:

"TAMKO" means TAMKO Building Products, Inc.

"Term" means the period of time this limited warranty lasts. The Term begins on the date of Purchase and continues, unless sooner terminated, for the number of months set forth in Table 1.

"Owner" means the owner of the building at the time the Shingles are installed on that building. If you purchase a new residence and are the first person to occupy the residence, TAMKO will consider you to be the Owner even though the Shingles were already installed.

"Shingles" means the TAMKO shingles identified in this limited warranty which were installed on a building owned by the Owner.

"Purchase" means the retail purchase of the Shingles.

"Full Start Period" means the initial period of the Term during which TAMKO's obligation is not prorated. The length of the Full Start Period is listed in Table 1.

"Maximum Liability" means the obligation of TAMKO described in the paragraphs titled "TAMKO Full Start Period" and "After the Full Start Period," whichever is applicable.

"Labor Payment Certificate" means a certificate issued by TAMKO that may be redeemed to pay some or all of the cost of labor for roof repairs.

"Material Certificate" means a certificate issued by TAMKO and redeemable at participating distributors for a stated quantity of replacement shingles of the same type and color as the Shingles which are to be replaced. If shingles of the same type or color are no longer available, the certificate will be for the closest TAMKO substitute available.

"AR" means Shingles which are covered by a warranty that provides for cleaning of discoloration caused by certain algae growth. "AR" appears as part of the name or description on the wrapper of AR designated shingles, such as "Glass Seal AR" or "Heritage 30 AR." Only AR designated shingles are covered by an Algae Cleaning Limited Warranty.

"Square" means 100 square feet for most shingles. For Heritage 50 and Heritage XL, "Square" means 98.4 square feet.

"High Wind Application" means application of shingles in accordance with application instructions appearing on the shingle wrapper, with TAMKO Hip and Ridge shingles installed on all hips and ridges. Some local building codes may require additional fasteners and Heritage 30 and 30AR shingles qualify for High Wind Application only if the shingles are installed with six (6) fasteners in the locations specified for mansard applications. See local building codes for proper nailing application.

PAGE 1

TABLE 1

SHINGLE	TERM	FULL START PERIOD	WT APPLICATION WIND VELOCITY MPH	HIGH WIND APPLICATION WIND VELOCITY MPH	DOLLAR LIMIT PER SQUARE
Glass Seal	240 months	3 years	60	—	US \$25.00
Glass Seal AR	240 months	3 years	60	—	US \$25.00
Elite Glass Seal	300 months	3 years	60	—	US \$30.00
Elite Glass Seal AR	300 months	3 years	60	—	US \$30.00
Heritage 30	360 months	5 years	70	80	US \$40.00
Heritage 30 AR	360 months	5 years	70	80	US \$40.00
Heritage XL AR	480 months	7 years	80	90	US \$45.00
Heritage 50	600 months	7 years	90	110	US \$55.00
Heritage 50 AR	600 months	7 years	90	110	US \$55.00

TAMKO Full Start Period: If, during the Full Start Period, Shingles that have been installed in strict accordance with the instructions printed on the wrapper are determined to have manufacturing defects which have directly caused leaks, TAMKO will provide the Owner with a Material Certificate for replacement shingles (or, at TAMKO's option, the Dollar Limit Per Square identified in Table 1) and a Labor Payment Certificate that may be used to pay the reasonable cost of installing replacement shingles, according to the terms of this limited warranty. This is TAMKO's Maximum Liability during the Full Start Period.

After the Full Start Period: If, after the end of the Full Start Period, Shingles that have been installed in strict accordance with the instructions printed on the wrapper are determined to have manufacturing defects which have directly caused leaks, TAMKO's obligation is limited to providing the Owner with a Material Certificate for replacement shingles or, at TAMKO's option, the Dollar Limit Per Square identified in Table 1. The Dollar Limit Per Square and the quantity of replacement shingles will be prorated over the life of this limited warranty. This is TAMKO's Maximum Liability after the Full Start Period. TAMKO is not responsible for the cost of labor for installing replacement shingles after the Full Start Period. Proration shall be determined by dividing the number of months remaining in the Term by the total number of months of the Term. For example, if TAMKO is notified of a warranty claim at a time when 100 months remain in a 300 month warranty Term, TAMKO's Maximum Liability is to provide a Certificate for one third of the replacement shingles or, at TAMKO's option, payment of one third of the Dollar Limit Per Square identified in Table 1. The remaining cost shall be the responsibility of the Owner.

Both during and after the Full Start Period, the extent of replacement is at the sole discretion of TAMKO. TAMKO is not responsible for the cost of flashings or metal work or for the cost of removing or disposing of Shingles which are to be replaced. Replacement shingles will be warranted only for the remainder of the original Term. Tender of payment of the prorated Dollar Limit Per Square shall extinguish all liability of TAMKO under this limited warranty and all applicable implied warranties and conditions.

Notification to TAMKO: The Owner must notify TAMKO by certified mail at P.O. Box 1404, Joplin, Missouri 64802 of any claims under this limited warranty within thirty (30) days following discovery of the problem with the Shingles. The notice must include documentary proof of Purchase. Failure of the Owner to notify TAMKO as provided herein shall extinguish all liability of TAMKO under this limited warranty and all applicable implied warranties and conditions.

PAGE 2

Right of Inspection and Time for Payment: TAMKO shall have a reasonable time after notification to inspect the Shingles. The Owner shall provide TAMKO with reasonable access to the Shingles for purposes of inspection. If requested by TAMKO, the Owner must complete and deliver to TAMKO, at the Owner's expense, a warranty questionnaire, photographs of the roof and samples of the Shingles. If reasonable access is denied or made subject to unreasonable conditions by the Owner, or if the Owner fails or refuses to cooperate in TAMKO's investigation of the complaint (such as by failing to provide sample Shingles or photographs or a completed warranty questionnaire), TAMKO's obligation under this limited warranty shall immediately terminate. If TAMKO determines there are manufacturing defects covered by this limited warranty, TAMKO will have up to ninety (90) days after receipt of notification to process the Owner's claim.

120 Month Algae Cleaning Limited Warranty: If, during the initial 120 months of the Term, Shingles designated AR become stained by certain algae growth, including blue-green algae, TAMKO will issue to the Owner a Labor Payment Certificate that may be used to pay the reasonable cost of cleaning the shingles up to a maximum of \$15 per square. TAMKO shall have no liability or responsibility for cleaning shingles with algae growth: (a) after the initial 120 months of the Term for Shingles which are designated AR, or (b) at any time for Shingles that are not designated AR.

60 Month Limited Wind Warranty: The Shingles are also covered by a 60 month limited warranty against damage from wind up to the designated wind velocity per product identified in Table 1. This Limited Wind Warranty applies only if: (a) the Shingles were installed according to the instructions printed on the wrapper and (b) the Shingles have had the opportunity to seal down. Shingles that are installed in cool seasons may not seal until weather conditions are adequate to allow the seal down strip to activate. If conditions (a) and (b) have been met and during the first 60 months of the Term the Shingles are damaged or blown off by wind up to the designated wind velocity for the product as a result of a manufacturing defect, TAMKO will process the Owner's claim in accordance with the sections titled "TAMKO Full Start Period" or "After the Full Start Period," whichever is applicable. Alternatively, TAMKO may, solely at its option, provide the Owner with a Labor Payment Certificate that may be used to pay the reasonable cost of manually sealing unsealed Shingles and replacing Shingles which have blown off and a Material Certificate for the number of shingles that have blown off. Shingles will be conclusively deemed to have been exposed to winds in excess of the designated wind velocity for the product if the National Weather Service or other reputable weather agency records winds in excess of the designated wind velocity for the product in the county, parish, regional district or municipality where the Shingles are installed or in any adjoining county, parish, regional district or municipality. Exposure of the shingles at any time to winds in excess of the designated wind velocity for the product shall extinguish all liability of TAMKO under this limited warranty and all applicable implied warranties and conditions.

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Exclusions from Coverage: TAMKO shall not be liable under any circumstances for:

1. Faulty or improper application of the Shingles, inadequate ventilation of the Shingles or Shingles not installed or applied in accordance with TAMKO written instructions to the installer on the packaging or leaks or damages resulting from any one or more of such causes.
2. Damage to any building, either exterior or interior, or any property contained therein or for injuries or damages of any kind whatsoever.
3. Tear-off, removal, or disposal of any Shingles, or for any costs related to such tear-off, removal, or disposal.
4. Removal or abatement of any asbestos present in the roof to which the Shingles are applied, or for any costs related to such removal or abatement.
5. Shading or discoloration from any cause whatsoever, including, but not limited to, algae, moss or staining from overhanging trees, except as provided in the Algae Cleaning Limited Warranty set forth above.
6. Damage caused by Algae, fungus, or other biological growth.
7. Leaks or damages resulting from Acts of God (including, but without limitation, lightning, wind (except as set forth in the Limited Wind Warranty), hurricane, tornado, hail, or other violent storm or casualty), impact of objects or damage to a roof due to settlement, distortion, failure or cracking of the roof deck, walls or foundation of a building, or for any defect in or failure of material used as a roof base over which the Shingles are applied, or for damage by traffic on the roof.
8. Chemical attack on the Shingles as a result of exposure to chemicals including, but not limited to, aliphatic or aromatic solvents, chlorinated hydrocarbons, turpentine, oils or organic or inorganic polar materials.
9. Leaks or damage to the Shingles from any cause other than inherent manufacturing defect in the Shingle.

Transferability: The Owner may transfer this limited warranty one (1) time during the first two (2) years of the Term to a purchaser of the building upon which the Shingles are installed (a "Purchaser"). The transfer must occur simultaneously with the sale of the building. To transfer this limited warranty, the Owner must provide TAMKO with written notice within thirty (30) days after the transfer. The written notice must include the names of the Owner and the Purchaser, the address of the building upon which the Shingles are installed, the date the Shingles were installed, and the date of the transfer. The Owner may transfer this limited warranty only one (1) time. Except for one transfer to a Purchaser during the first two (2) years of the Term, this limited warranty may not be sold, assigned or transferred in any manner whatsoever. Neither a Purchaser nor any other person may transfer this limited warranty. Except as set forth in this paragraph, any assignment, sale or transfer of this limited warranty or the building to which the TAMKO Shingles are applied shall immediately terminate all liability of TAMKO for the Shingles, all warranties contained herein or hereunder and any applicable implied warranties and conditions including warranties and conditions of merchantability and fitness for a particular purpose.

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EXHIBIT E

MANDATORY BINDING ARBITRATION: EVERY CLAIM, CONTROVERSY, OR DISPUTE OF ANY KIND WHATSOEVER INCLUDING WHETHER ANY PARTICULAR MATTER IS SUBJECT TO ARBITRATION (EACH AN "ACTION") BETWEEN YOU AND TAMKO (INCLUDING ANY OF TAMKO'S EMPLOYEES AND AGENTS) RELATING TO OR ARISING OUT OF THE SHINGLES OR THIS LIMITED WARRANTY SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION, REGARDLESS OF WHETHER THE ACTION SOUNDS IN WARRANTY, CONTRACT, STATUTE OR ANY OTHER LEGAL OR EQUITABLE THEORY. TO ARBITRATE AN ACTION AGAINST TAMKO, YOU MUST INITIATE THE ARBITRATION IN ACCORDANCE WITH THE APPLICABLE RULES OF ARBITRATION OF THE AMERICAN ARBITRATION ASSOCIATION (WHICH ARE AVAILABLE ONLINE AT www.adr.com OR BY CALLING THE AMERICAN ARBITRATION ASSOCIATION AT 1-800-778-7879) AND PROVIDE WRITTEN NOTICE TO TAMKO BY CERTIFIED MAIL AT P.O. BOX 1404, JOPLIN, MISSOURI 64802 WITHIN THE TIME PERIOD PRESCRIBED IMMEDIATELY BELOW.

Legal Remedies: EXCEPT WHERE PROHIBITED BY LAW, THE OBLIGATION CONTAINED IN THIS LIMITED WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER OBLIGATIONS, GUARANTEES AND WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATIONS OR LIABILITY ON THE PART OF TAMKO BUILDING PRODUCTS, INC. IN NO EVENT SHALL TAMKO BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND. SOME STATES DO NOT ALLOW EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. NO ACTION FOR BREACH OF THIS LIMITED WARRANTY OR ANY OTHER ACTION AGAINST TAMKO RELATING TO OR ARISING OUT OF THE SHINGLES, THEIR PURCHASE OR THIS TRANSACTION SHALL BE BROUGHT LATER THAN ONE YEAR AFTER ANY CAUSE OF ACTION HAS ACCRUED. IN JURISDICTIONS WHERE STATUTORY CLAIMS OR IMPLIED WARRANTIES CANNOT BE EXCLUDED, ALL SUCH STATUTORY CLAIMS, IMPLIED WARRANTIES AND ALL RIGHTS TO BRING ACTIONS FOR BREACH THEREOF EXPIRE ONE YEAR (OR SUCH LONGER PERIOD OF TIME IF MANDATED BY APPLICABLE LAWS) AFTER THE DATE OF PURCHASE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. Invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other provision which shall remain in full force and effect.

ANY ACTION BROUGHT BY YOU AGAINST TAMKO WILL BE ARBITRATED (OR, IF ARBITRATION OF THE ACTION IS NOT PERMITTED BY LAW, LITIGATED) INDIVIDUALLY AND YOU WILL NOT CONSOLIDATE OR SEEK CLASS TREATMENT FOR ANY ACTION UNLESS PREVIOUSLY AGREED TO IN WRITING BY BOTH TAMKO AND YOU.

NO REPRESENTATIVE, EMPLOYEE OR OTHER AGENT OF TAMKO, OR ANY PERSON OTHER THAN TAMKO'S PRESIDENT, HAS AUTHORITY TO ASSUME FOR TAMKO ANY ADDITIONAL LIABILITY OR RESPONSIBILITY IN CONNECTION WITH THE SHINGLES EXCEPT AS DESCRIBED ABOVE.

THIS FORM IS NOT TO BE COPIED OR REPRODUCED IN ANY MANNER. THIS LIMITED WARRANTY IS VALID ONLY IN THE UNITED STATES, EXCLUDING HAWAII AND ALASKA. THIS LIMITED WARRANTY APPLIES TO TAMKO FIBERGLASS SHINGLES SOLD ON OR AFTER JUNE 1, 2006 AND SUPERSEDES ALL PREVIOUSLY PUBLISHED WARRANTIES.

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WARRANTY INFORMATION (To be completed by Owner and Contractor)

Owner's Name _____

Address Where Applied _____

City _____

State _____ Zip _____

Type of TAMKO shingle applied:

☐ TAMKO Glass-Seal	240 Months (20 Year) Limited Warranty
☐ TAMKO Glass-Seal AR	240 Months (20 Year) Limited Warranty
☐ TAMKO Elite Glass-Seal	300 Months (25 Year) Limited Warranty
☐ TAMKO Elite Glass-Seal AR	300 Months (25 Year) Limited Warranty
☐ TAMKO Heritage 30	360 Months (30 Year) Limited Warranty
☐ TAMKO Heritage 30 AR	360 Months (30 Year) Limited Warranty
☐ TAMKO Heritage XL AR	480 Months (40 Year) Limited Warranty
☐ TAMKO Heritage 50	600 Months (50 Year) Limited Warranty
☐ TAMKO Heritage 50 AR	600 Months (50 Year) Limited Warranty

Number of Squares _____

Color _____

Date of application of shingles _____

Total cost of shingles _____

Total cost of shingle application _____

Contractor's Name _____

Contractor's Signature _____

Date _____

RETAIN THIS WARRANTY WITH CONTRACTORS
RECEIPT FOR FUTURE REFERENCE.

JP21271

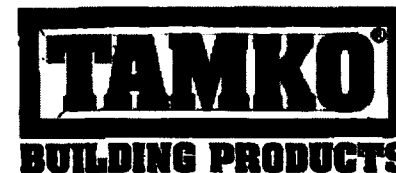


BUILDING PRODUCTS FOR THE PROFESSIONAL.

Since 1944, building professionals and homeowners have looked to TAMKO for quality products that are built to perform. Our extensive line of residential products includes: Lamarite composite shingles, Metalworks steel shingles, Heritage series laminated asphalt shingles, 3-tab shingles, EverGrain and Elements composite decking & railing, Tam-Rail railing, rolled roofing products, waterproofing materials, ventilation products and asbestos-free cements and coatings. Each of these products delivers TAMKO quality, performance and durability.



P.O. Box 1404
Joplin, MO 64802 USA
www.tamko.com



Heritage® 50
Heritage® 50 AR
Heritage® XL AR
Heritage® 30
Heritage® 30 AR

Elite Glass-Seal®
Elite Glass-Seal® AR

Glass-Seal
Glass-Seal AR

**FIBERGLASS SHINGLES
LIMITED WARRANTY**



The Owner may transfer this limited warranty one time during the first two years of Term to a Purchaser. No other transfers are permitted.

FIBERGLASS/ASPHALT SHINGLE LIMITED WARRANTY

In this limited warranty certain capitalized words have specific meanings:

"TAMKO" means TAMKO Building Products, Inc.
 "Term" means the period of time this limited warranty lasts. The Term begins on the date of Purchase and continues, unless sooner terminated, for the number of months set forth in Table 1.
 "Owner" means the owner of the building at the time the Shingles are installed on that building. If you purchase a new residence and are the first person to occupy the residence, TAMKO will consider you to be the Owner even though the Shingles were already installed.

"Shingles" means the TAMKO shingles identified in this limited warranty which were installed on a building owned by the Owner.

"Purchase" means the retail purchase of the Shingles.

"Full Start Period" means the initial period of the Term during which TAMKO's obligation is not prorated. The length of the Full Start Period is listed in Table 1.

"Maximum Liability" means the obligation of TAMKO described in the paragraphs titled "TAMKO Full Start Period" and "After the Full Start Period," whichever is applicable.

"Labor Payment Certificate" means a certificate issued by TAMKO that may be redeemed to pay some or all of the cost of labor for roof repairs.

"Material Certificate" means a certificate issued by TAMKO and redeemable at participating distributors for a stated quantity of replacement shingles of the same type and color as the Shingles which are to be replaced. If shingles of the same type or color are no longer available, the certificate will be for the closest TAMKO substitute available.

"AR" means Shingles which are covered by a warranty that provides for cleaning or discoloration caused by certain algae growth. "AR" appears as part of the name or description on the wrapper of AR designated shingles, such as "Glass Seal AR" or "Heritage 30 AR." Only AR designated shingles are covered by an Algae Cleaning Limited Warranty.

"Square" means 100 square feet for most shingles. For Heritage 50 and Heritage XL "Square" means 98.4 square feet.

"High Wind Application" means application of shingles in accordance with application instructions appearing on the shingle wrapper, with TAMKO Hip and Ridge shingles installed on all hips and ridges. See local building codes for proper nailing application.

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TABLE 1

SHINGLE	TERM	FULL START PERIOD	STD APPLICATION WIND MPH	DOOR WIND APPLICATION WARRANTY MPH	DOLLAR LIMIT PER SQUARE
Glass Seal	240 months	3 years	60	—	\$25.00
Glass Seal AR	240 months	3 years	60	—	\$25.00
Elite Glass Seal	300 months	3 years	60	—	\$30.00
Elite Glass Seal AR	300 months	3 years	60	—	\$30.00
Heritage 30	360 months	5 years	70	—	\$40.00
Heritage 30 AR	360 months	5 years	70	—	\$40.00
Heritage XL AR	480 months	7 years	80	90	\$45.00
Heritage 50	600 months	7 years	90	110	\$55.00
Heritage 50 AR	600 months	7 years	90	110	\$55.00

TAMKO Full Start Period: If, during the Full Start Period, Shingles are determined to have manufacturing defects which have directly caused leaks, TAMKO will provide the Owner with a Material Certificate for replacement shingles (or, at TAMKO's option, the Dollar Limit Per Square identified in Table 1) and a Labor Payment Certificate that may be used to pay the reasonable cost of installing replacement shingles, according to the terms of this limited warranty. This is TAMKO's Maximum Liability during the Full Start Period.

After the Full Start Period: If, after the end of the Full Start Period, Shingles are determined to have manufacturing defects which have directly caused leaks, TAMKO's obligation is limited to providing the Owner with a Material Certificate for replacement shingles or, at TAMKO's option, the Dollar Limit Per Square identified in Table 1. The Dollar Limit Per Square and the quantity of replacement shingles will be prorated over the life of this limited warranty. This is TAMKO's Maximum Liability after the Full Start Period. TAMKO is not responsible for the cost of labor for installing replacement shingles after the Full Start Period. Proration shall be determined by dividing the number of months remaining in the Term by the total number of months of the Term. For example, if TAMKO is notified of a warranty claim at a time when 100 months remain in a 300 month warranty Term, TAMKO's Maximum Liability is to provide a Certificate for one third of the replacement shingles or, at TAMKO's option, payment of one third of the Dollar Limit Per Square identified in Table 1. The remaining cost shall be the responsibility of the Owner.

Both during and after the Full Start Period, the extent of replacement is at the sole discretion of TAMKO. TAMKO is not responsible for the cost of flashings or metal work or for the cost of removing or disposing of Shingles which are to be replaced. Replacement shingles will be warranted only for the remainder of the original Term. Tender of payment of the prorated Dollar Limit Per Square shall extinguish all liability of TAMKO under this limited warranty and all applicable implied warranties.

Notification to TAMKO: The Owner must notify TAMKO by certified mail at P.O. Box 1404, Joplin, Missouri 64802 of any claims under this limited warranty within thirty (30) days following discovery of the problem with the Shingles. The notice must include documentary proof of Purchase.

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Right of Inspection and Time for Payment: TAMKO shall have a reasonable time after notification to inspect the Shingles. The Owner shall provide TAMKO with reasonable access to the Shingles for purposes of inspection. If requested by TAMKO, the Owner must complete and deliver to TAMKO, at the Owner's expense, a warranty questionnaire, photographs of the roof and samples of the Shingles. If reasonable access is denied or made subject to unreasonable conditions by the Owner, or if the Owner fails or refuses to cooperate in TAMKO's investigation of the complaint (such as by failing to provide sample Shingles or photographs or a completed warranty questionnaire), TAMKO's obligation under this limited warranty shall immediately terminate. If TAMKO determines there are manufacturing defects covered by this limited warranty, TAMKO will have up to ninety (90) days after receipt of notification to process the Owner's claim.

120 Month Algae Cleaning Limited Warranty: If, during the initial 120 months of the Term, Shingles designated AR become stained by certain algae growth, including blue-green algae, TAMKO will issue to the Owner a Labor Payment certificate that may be used to pay the reasonable cost of cleaning the shingles (up to a maximum of \$15 per square). TAMKO shall have no liability or responsibility for cleaning shingles with algae growth: (a) after the initial 120 months of the Term for Shingles which are designated AR, or (b) at any time for Shingles that are not designated AR.

60 Month Limited Wind Warranty: The Shingles are also covered by a 60 month limited warranty against damage from wind up to the designated wind velocity per product identified in Table 1. This Limited Wind Warranty applies only if: (a) the Shingles were installed according to the instructions printed on the wrapper and (b) the Shingles have had the opportunity to seal down. Shingles that are installed in cool seasons may not seal until weather conditions are adequate to allow the seal down strip to activate. If conditions (a) and (b) have been met and during the first 60 months of the Term the Shingles are damaged or blown off by wind up to the designated wind velocity for the product as a result of a manufacturing defect, TAMKO will process the Owner's claim in accordance with the sections titled "TAMKO Full Start Period" or "After the Full Start Period," whichever is applicable. Alternatively, TAMKO may, solely at its option, provide the Owner with a Labor Payment Certificate that may be used to pay the reasonable cost of manually sealing unsealed Shingles and replacing Shingles which have blown off and a Material Certificate for the number of shingles that have blown off. Shingles will be conclusively deemed to have been exposed to winds in excess of the designated wind velocity for the product if the National Weather Service or other reputable weather agency records winds in excess of the designated wind velocity for the product in the county or parish where the Shingles are installed or in any adjoining county or parish. TAMKO shall have no liability under this Limited Wind Warranty if the Shingles have been exposed at any time to winds in excess of the designated wind velocity for the product.

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Exclusions from Coverage: TAMKO shall not be liable under any circumstances for:

1. Faulty or improper application of the Shingles, inadequate ventilation of the Shingles or Shingles not installed or applied in accordance with TAMKO written instructions to the installer on the packaging or leaks or damages resulting from any one or more of such causes.
2. Damage to any building, either exterior or interior, or any property contained therein or for injuries or damages of any kind whatsoever.
3. Tear-off, removal, or disposal of any Shingles, or for any costs related to such tear-off, removal, or disposal.
4. Removal or abatement of any asbestos present in the roof to which the Shingles are applied, or for any costs related to such removal or abatement.
5. Shading or discoloration from any cause whatsoever, including, but not limited to algae, moss or staining from overhanging trees, except as provided in the Algae Cleaning Limited Warranty set forth above.
6. Damage caused by Algae or fungus growth.
7. Leaks or damages resulting from Acts of God (including, but without limitation, lightning, wind (except as set forth in the Limited Wind Warranty), hurricane, tornado, hail, or other violent storm or casualty), impact of objects or damage to a roof due to settlement, distortion, failure or cracking of the roof deck, walls or foundation of a building, or for any defect in or failure of material used as a roof base over which the Shingles are applied, or for damage by traffic on the roof.
8. Chemical attack on the Shingles as a result of exposure to chemicals including, but not limited to, aliphatic or aromatic solvents, chlorinated hydrocarbons, turpentine, oils or organic or inorganic polar materials.
9. Leaks or damage to the Shingles from any cause other than inherent manufacturing defect in the Shingle.

Transferability: The Owner may transfer this limited warranty one (1) time during the first two (2) years of the Term to a purchaser of the building upon which the Shingles are installed (a "Purchaser"). The transfer must occur simultaneously with the sale of the building. To transfer this limited warranty, the Owner must provide TAMKO with written notice within thirty (30) days after the transfer. The written notice must include the names of the Owner and the Purchaser, the address of the building upon which the Shingles are installed, the date the Shingles were installed, and the date of the transfer. The Owner may transfer this limited warranty only one (1) time. Except for one transfer to a Purchaser during the first two (2) years of the Term, this limited warranty may not be sold, assigned or transferred in any manner whatsoever. Neither a Purchaser nor any other person may transfer this limited warranty. Except as set forth in this paragraph, any assignment, sale or transfer of this limited warranty or the building to which the TAMKO Shingles are applied shall immediately terminate all liability of TAMKO for the Shingles, and warranties contained herein or hereunder and any applicable implied warranties including warranties of merchantability and fitness for a particular purpose.

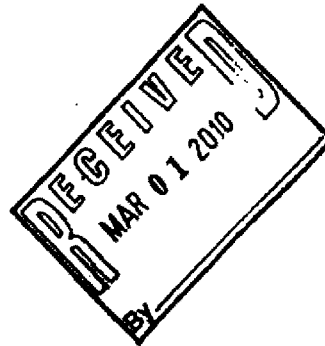
PAGE 4

EXHIBIT F



WARRANTY SERVICES
RESIDENTIAL

1-800-441-7190



Re: Claim # 70190

Dear Sirs or Madame:

Thank you for contacting TAMKO Residential Warranty Services Department. Please read the enclosed documents and call 1-800-441-7190 if you have any questions.

Failure on your part to complete and return all of the items requested will cause delays in processing your claim and could affect TAMKO's liability under the Limited Warranty.

It is our intention to process your claim as quickly and accurately as possible in accordance with the terms of your Limited Warranty. To ensure this, we require the following four (4) items:

- 1. COMPLETE AND SIGN THE ATTACHED TAMKO WARRANTY CLAIM FORM**
 - 2. PROOF OF PURCHASE (see instructions on next page)***
 - 3. PHOTOGRAPHS (see instructions on next page)***
- TWO FULL SIZE SHINGLE SAMPLES FROM THE AFFECTED AREA (see instructions on next page)***

***FOR SAFETY PURPOSES, TAMKO RECOMMENDS THAT HOMEOWNERS USE A PROFESSIONAL ROOFING CONTRACTOR TO CLIMB ON THE ROOF TO TAKE THE REQUIRED PHOTOGRAPHS AND TO REMOVE AND REPLACE SAMPLE SHINGLES AS INSTRUCTED BELOW. ANY INDIVIDUAL ON A ROOF SHOULD TAKE ALL NECESSARY SAFETY PRECAUTIONS AND USE APPROPRIATE FALL PROTECTION METHODS.**

(1)



REMOVE TWO FULL SHINGLES USING THIS PROCEDURE

STEP 1

Loosen tabs in the second course above the sample shingle. Lift tabs and withdraw the exposed nails or staples.

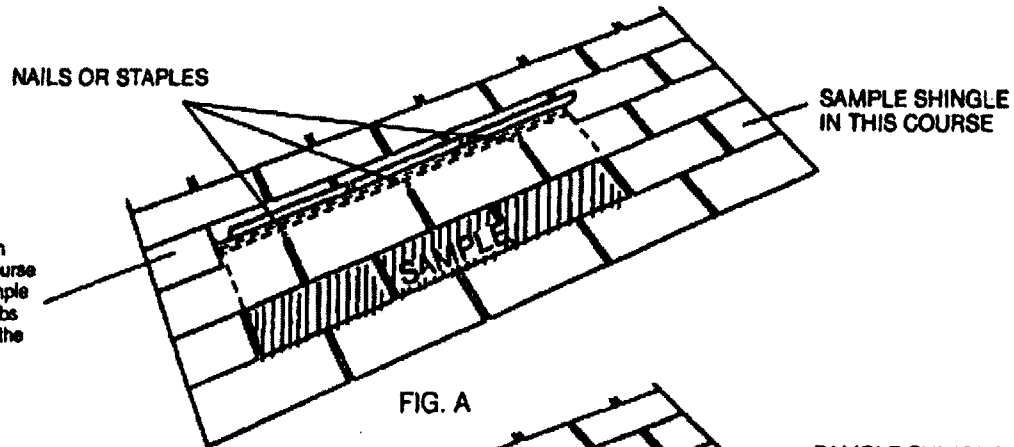


FIG. A

STEP 2

Loosen and lift tabs in the first course above sample shingle and withdraw exposed nails or staples.

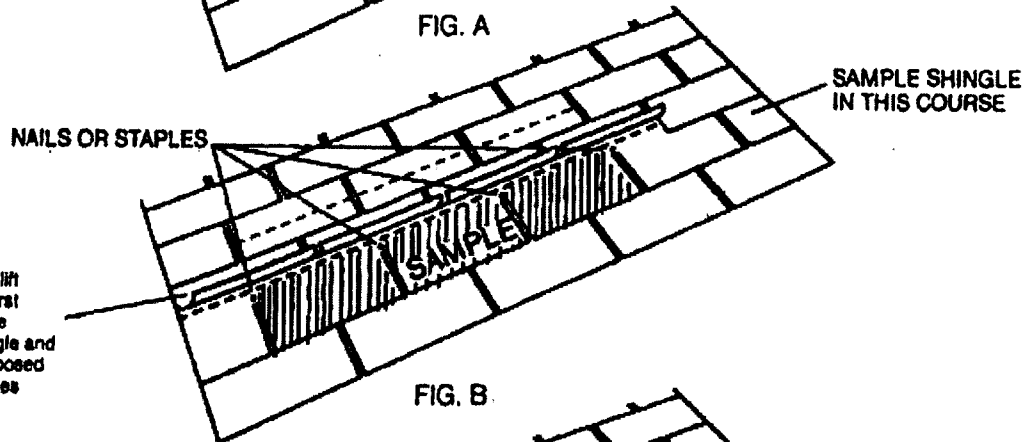


FIG. B

STEP 3

Loosen tabs of sample shingles which can now be withdrawn for labeling and shipping.

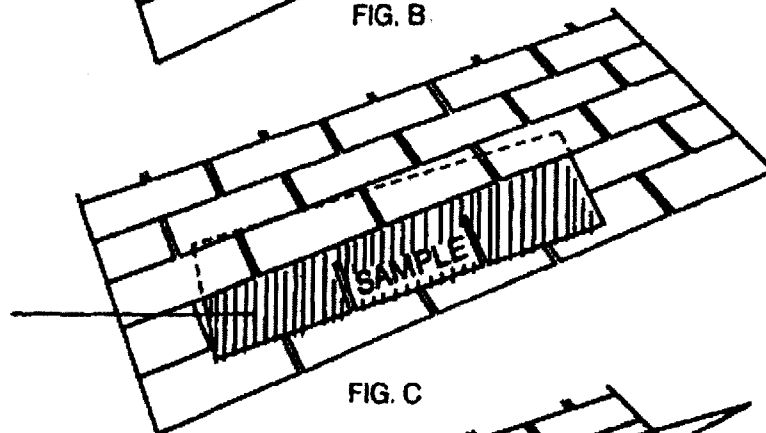


FIG. C

STEP 4

Place new shingles in position that sample was removed from and rernail as Fig. D indicates. Lift tab and place approx. 1" dia. spot of shingle cement under each tab. Press tabs down into cement.

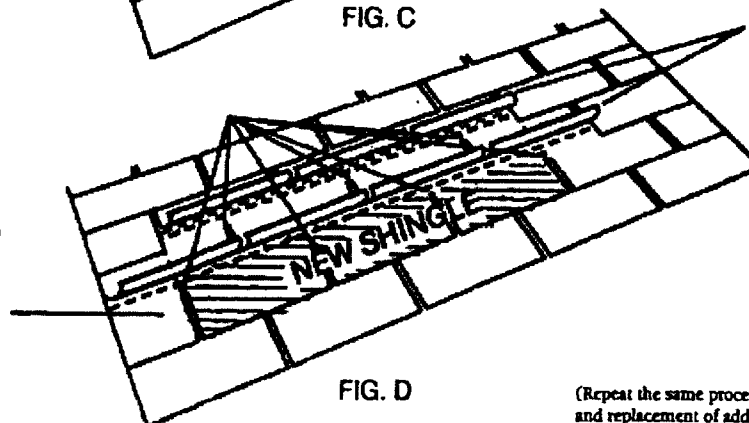


FIG. D

STEP 5

Rernail both lifted courses and place a spot of shingle cement approx. 1" dia. under center of each tab that was lifted. Press tab down into cement.

(Repeat the same procedure for removal and replacement of additional shingles.)

PROOF OF PURCHASE (one of the following)

- a. Copy of dated sales receipt for shingles
- b. Roofing applicator's contract
- c. (MOBILE HOMES & MANUFACTURED HOMES): A copy of your Bill of Sale will be accepted as Proof of Purchase unless you have replaced the original roof.
- d. (NEW CONSTRUCTION): A copy of your deed will be accepted as a Proof of Purchase unless you have replaced the original roof.

PHOTOGRAPHS

- a. One (1) photograph of your entire structure (house, garage, apartment, condominium, church, etc.) showing the front view of the building, from a distance.
- b. Two (2) CLOSE-UP photographs clearly showing the nailing/stapling (fastener) placement used to secure the shingles and the sealant pattern (must lift up the entire 12" x 36" shingle to get this picture).*
- c. Four (4) pictures that clearly show the problem that exists on every affected area of your roof. Please remember that these pictures are what we use to determine the extent of your problem. The clearer the pictures, the easier it will be to resolve your claim without additional follow-up requests. Follow-up requests will delay the processing of your claim.
- d. Pictures of all of the ventilation. (Examples: turbine vents, roof vents, gable vents, soffit vents). Often times the cause of cracking/curling is due to lack of proper ventilation.

SAMPLES (needed for product identification, visual verification or laboratory testing)

Two FULL SIZE shingle samples from the affected area on your roof where the problem is occurring. Enclosed are directions for removing the shingle samples and returning them to TAMKO. Please be sure to replace the shingles you remove to prevent damage. *

If it is a TAMKO shingle and it proves to contain a manufacturing defect which directly results in a leak, TAMKO will reimburse you the cost you incur, up to a maximum of \$100.00, to have the samples removed and replaced by a professional roofing contractor. Please include a copy of the roofer's invoice for payment.

***FOR SAFETY PURPOSES, TAMKO RECOMMENDS THAT HOMEOWNERS USE A PROFESSIONAL ROOFING CONTRACTOR TO CLIMB ON THE ROOF TO TAKE THE REQUIRED PHOTOGRAPHS AND TO REMOVE AND REPLACE SAMPLE SHINGLES AS INSTRUCTED BELOW. ANY INDIVIDUAL ON A ROOF SHOULD TAKE ALL NECESSARY SAFETY PRECAUTIONS AND USE APPROPRIATE FALL PROTECTION METHODS.**

(2)

PLEASE WRITE YOUR CLAIM NUMBER (referenced above) on all documents, photographs and shingle samples . This will help us to identify all items that belong with your claim and will prevent loss or misplacement.

- (a) Enclose the following in the envelope provided:
 - 1. Completed Warranty Claim Form
 - 2. Proof of Purchase
 - 3. Photographs
- (b) Place the envelope and two sample shingles in the returnable poly-bag mailer .
- (c) Mail to TAMKO.

Our claims are settled via photographs and samples. CDs, DVDS and video tapes will not be accepted. This allows us to offer you, the customer, a quicker disposition on your claim.

TAMKO's Limited Warranties cover manufacturing defects which have directly caused leaks. Most TAMKO Limited Warranties apply only to the original owner and are not transferable. If you are not the original owner, please see your Limited Warranty to find out if this exclusion applies to you. The Limited Warranty that will be applied to your claim is the limited warranty that was in effect at the time of your purchase and was printed on every shingle wrapper you purchased.

TAMKO's Limited Warranties cover wind damage due to a manufacturing defect by wind up to a designated wind velocity during the first five years after application. Please see your Limited Warranty for complete details and conditions of the wind warranty coverage of your Limited Warranty.

TAMKO's liability under most of its Limited Warranties is limited to the reasonable replacement cost of the shingles and in some cases, the reasonable cost of installing the replacement shingles (excluding tear-off, removal and disposal), prorated over the life of the limited warranty. If the shingles are determined to have manufacturing defects which have directly caused leaks a settlement is made, a Material Certificate will be issued to you for the material portion of your claim. Material Certificates are for like material and for the prorated amount of squares. If applicable under the terms of your Limited Warranty, a Labor Payment Certificate may be used as part of the settlement to pay the reasonable cost of installing the replacement shingles (excluding tear-off, removal and disposal). The Labor Payment Certificates may also be prorated. Claims are settled strictly according to your Limited Warranty. Please see your Limited Warranty for details on TAMKO's liability for your claim.

If we determine that an inspection of your roof is necessary, we will contact you to arrange a convenient time for the inspection within a reasonable time after we have received your claim kit.

Please allow six (6) to eight (8) weeks following receipt of the above required information for a written response explaining our resolution.

(3)

All items submitted become the property of TAMKO and are not returnable.

Thank you for your cooperation in taking the time to submit the information needed to process your claim.

Sincerely,

TAMKO BUILDING PRODUCTS, INC.

ENCLOSURES:

Shingle Warranty Claim Form

Envelope

Returnable Poly-Bag Mailer

Removal of Shingle Guide

(4)

TAMKO

CLAIM NO: 000070190

TAMKO BUILDING PRODUCTS, INC
TAMKO SHINGLE WARRANTY CLAIM FORM
(SEE REVERSE SIDE FOR INSTRUCTIONS)

1. OWNER/PROPERTY WORK: (843)2000169
A. NAME: BELLE HALL DIRECT 101 LP PHONE: HOME: ()
B. ADDRESS (OF ROOF SITE): 1900 BELLE ISLE AVE
CITY: MT PLEASANT STATE: SC
COUNTY: CHARLESTON ZIP: 29464-
C. OWNERS MAILING ADDRESS (IF DIFFERENT): 230 SEVEN FARMS DR#104
PO BOX: CHARLESTON SC 29492-
D. TYPE OF STRUCTURE: () SINGLE FAMILY RESIDENCE () CONDO () APARTMENT
() GARAGE () MANUFACTURED HOME
(*)OTHER (EXPLAIN) _____
E. DATE HOME/STRUCTURE WAS PURCHASED: _____
F. TOTAL SQUARE FEET OF ROOF AREA: _____
G. SLOPE OF ROOF: (INCHES PER FOOT) () 2/12 () 4/12 () 6/12 () 8/12
() OTHER(SPECIFY) _____

2. INSTALLATION OF SHINGLES

- A. DATE SHINGLES WERE INSTALLED: 05/17/2006
B. AT THE TIME OF INSTALLATION, WAS THIS A NEW STRUCTURE? () YES () NO
C. IF NO, WERE THE OLD SHINGLES REMOVED? () YES () NO
D. WHICH TAMKO SHINGLE DID YOU PURCHASE: (IF KNOWN)?
STYLE: _____ COLOR: _____ WARRANTY YEARS: _____

3. DESCRIPTION OF PROBLEM

- A. DESCRIBE PROBLEM WITH SHINGLE:
BLISTERS
B. WHEN DID THE PROBLEM BEGIN (MONTH/YEAR)? _____
C. IS YOUR ROOF LEAKING? () YES () NO
D. WHICH AREAS ARE AFFECTED? () NORTH () SOUTH () EAST () WEST
E. ESTIMATED SQUARE FEET AFFECTED? _____

SIGNATURE

DATE

NAME (PLEASE PRINT)

INSTRUCTIONS TO COMPLETE THIS FORM**1. OWNER/PROPERTY**

- a. Your name and phone number at home and work.
- b. The address where the shingles are installed on the roof.
- c. Your mailing address, if different, than (b).
- d. Place an "X" in the box that best describes the type of structure.
- e. The month and year you purchased this structure.
- f. The total number of squares is usually on the invoice for the shingles or on the installer's contract. It may be referred to as squares or bundles of shingles.
- g. Place an "X" in the box that best describes the slope of your roof (inches per foot).

2. INSTALLATION OF SHINGLES

- a. Can be obtained from receipt for shingles, roofing contractor's invoice or builder's contract.
- b. Mark an "X" in "Yes" if shingles were installed during construction of structure.
Mark an "X" in "No" if shingles were purchased to re-roof structure.
- c. Were the old shingles removed before installing the new shingles?
- d. If you know the style, color and/or warranty years of the TAMKO shingle that you purchased, enter the information in the space provided.

3. DESCRIPTION OF PROBLEM

- a. Be specific and list all problems if more than one.
- b. Please indicate the month and year that you discovered the problem.
- c. Indicate if your roof is leaking.
- d. Mark an "X" in the box or boxes that describe where the problem is occurring.
- e. Estimate number of squares affected by this problem.
(1 square = 100 square feet)

EXHIBIT G

TAMKO WARRANTY SERVICES BROWSE DISPLAY

RC008MB

ENTRY F REF NO	OWNER NAME	BUILDING ADDRESS	CITY	TRACKING STATUS
000070194	BELLE HALL DIRECT 101 LP	2200 BELLE ISLE AVE	MT PLEAS	28
000070193	BELLE HALL DIRECT 101 LP	2100 BELLE ISLE AVE	MT PLEAS	28
000070192	BELLE HALL DIRECT 101 LP	2000 BELLE ISLE AVE	MT PLEAS	28
000070190	BELLE HALL DIRECT 101 LP	1900 BELLE ISLE AVE	MT PLEAS	01
000069325	ERIC ,BROWN	2091 SHEL RING CIRCLE	MT PLEAS	28
000063090	CRAIG ,BUCK	2917 THORNROSE LANE	MT PLEAS	29
000046117	DEAN ,FELTMANN	190 4TH AVE	MT PLEAS	29

Inactivated
Rec'd f/ Customer

--> RESIDENTIAL CLAIMS

--> NON RESIDENTIAL CLAIMS

PF 1-CONTACT 2-CLAIM 3-LAB 4-INSP 5-SETL 6-APPROV 7-BACK 8-FWD 9-BROWSE 10-MENU

PENDING RES TAMKO WARRANTY SERVICES CUSTOMER CONTACT RC002MA
ENTRY TYPE: 01 COMPLAINT STATUS: 01 RECEIVED FROM CUSTOMER
ENTRY REF NO: 000070190 ENTRY DATE: 02/24/2010 ROOF LEAKING: N (Y,N)
CONTACT DATE: 02 / 24 / 2010 TYPE: 06 AGENCY REPRESENTATI
BUSINESS:
FN: KYLE LN: CROUT PHONE: 843 - 278 - 2891
CLAIM ADDRESS: 1900 BELLE ISLE AVE
CITY: MT PLEASANT STATE: SC SOUTH CAROLI ZIP: 29464 - -
OWNER: BUSINESS: BELLE HALL DIRECT 101 LP BOOKLET: N (Y,N)
FN: LN:
ADDR: 230 SEVEN FARMS DR#104 PO BOX:
CITY: CHARLESTON STATE: SC SOUTH CAROLI ZIP: 29492 - -
PHONE: HOME: - - WORK: 843 - 200 - 0169 EXT:
PROBLEM: BLISTERS
MATERIAL DESC: PRODUCT TYPE: RES RESIDENTIAL
DATE APPLD: 05 / 17 / 2006 ORG OWNER: Y (Y,N) BUILDING USE: 10 OTHER COMMERCIAL
KIT SENT BY: 01 WARRANTY SERVICE RE DATE: 02 / 24 / 2010 LAB DIV: FRED FREDERIC
TO: BUSINESS: BELLE HALL DIRECT 101 LP PF14 (SEL GROUP CODE)
FN: LN: PH: 843 - 200 - 0169
ADDR: 230 SEVEN FARMS DR #104 PO BOX:
CITY: CHARLESTON STATE: SC SOUTH CAROLI ZIP: 29492 - -
TERR: 21 RON COLLIER NOTIFIED: / / LEGL NOTIFIED: / /
PF2-CLAIM 3-LAB 4-INSP 5-SET 6-APPR 7-BRO 8-CALLS 9-KIT 10-MENU 11-ASC 15-PRINT
*** YOU CANNOT UPDATE .. PLEASE PRESS A PF KEY ***

RES	TAMKO WARRANTY SERVICES	RC009MA
	CLAIM FOLLOW UP CALLS	
ENTRY TYPE: 01 COMPLAINT	STATUS: 01 RECEIVED FROM CUSTOMER	
ENTRY REF NO: 000070190	ENTRY DATE: 02/24/2010	
CALL DATE	CONTACT TYPE	REASON FOR CALL
02 / 24 / 2010	01 HOME OWNER	01 GENERAL INQUIRY
		BROSS
COMMENTS: KYLE IS THE CONTACT FOR BOTH THE CURRENT OWNER AND CONTRACTOR.		
SAYS NOT OWNED BY CONDO ASSN YET.		

PF 1-CONT 2-CLAIM 3-LAB 4-INSP 5-SET 6-APPR 7-BACK 8-FWD 9-KIT 10-MENU 12-ADD
 INSERT PF-12 TO ADD NEW CALL

PENDING RES

TAMKO WARRANTY SERVICES

RC013MA

STATUS CODE CHANGES

ENTRY TYPE: 01 COMPLAINT

STATUS: 01 RECEIVED FROM CUSTOMER

ENTRY REF NO: 000070190

ENTRY DATE: 02/24/2010

NEW STATUS CODE:

COMMENTS:

STATUS	DESCRIPTION	CHANGED DATE	CHANGED BY
01	RECEIVED FROM CUSTOMER	02/24/2010	BROSS
REASON: RCT002 - INITIAL CONTACT PROGRAM			
02	KIT SENT TO CUSTOMER	02/24/2010	CBONTRA
REASON: RCT002 - INITIAL CONTACT PROGRAM			
01	RECEIVED FROM CUSTOMER	02/24/2010	BROSS
REASON: RCT002 - INITIAL CONTACT PROGRAM			

PF1-CONTACT 2-CLAIM 3-LAB 4-INSP 5-SETTL 6-APPROV 7-BACK 8-FWD 9-KIT 10-MENU
BOTTOM OF DATA REACHED

15:16:42 Thursday, April 25, 2013

PENDING RES TAMKO WARRANTY SERVICES CUSTOMER CONTACT RC002MA
ENTRY TYPE: 01 COMPLAINT STATUS: #28 CLAIM INACTIVATED
ENTRY REF NO: 000470192 ENTRY DATE: 02/24/2010 ROOF LEAKING: N (Y,N)
CONTACT DATE: 02 / 24 / 2010 TYPE: 06 AGENCY REPRESENTATI
BUSINESS:
FN: KYLE LN: CROUT PHONE: 843 - 278 - 2891
CLAIM ADDRESS: 2000 BELLE ISLE AVE
CITY: MT PLEASANT STATE: SC SOUTH CAROLI ZIP: 29464 - -
OWNER: BUSINESS: BELLE HALL DIRECT 101 LP BOOKLET: N (Y,N)
FN: LN:
ADDR: 230 SEVEN FARMS DR#104 PO BOX:
CITY: CHARLESTON STATE: SC SOUTH CAROLI ZIP: 29492 - -
PHONE: HOME: - - WORK: 843 - 200 - 0169 EXT:
PROBLEM: BLISTERS
MATERIAL DESC: PRODUCT TYPE: RES RESIDENTIAL
DATE APPLD: 05 / 10 / 2006 ORG OWNER: Y (Y,N) BUILDING USE: 10 OTHER COMMERCIAL
KIT SENT BY: 01 WARRANTY SERVICE RE DATE: 02 / 24 / 2010 LAB DIV: FRED FREDERIC
TO: BUSINESS: BELLE HALL DIRECT 101 LP PF14 (SEL GROUP CODE)
FN: LN: PH: 843 - 200 - 0169
ADDR: 230 SEVEN FARMS DR #104 PO BOX:
CITY: CHARLESTON STATE: SC SOUTH CAROLI ZIP: 29492 - -
TERR: 21 RON COLLIER NOTIFIED: / / LEGL NOTIFIED: / /
PF2-CLAIM 3-LAB 4-INSP 5-SET 6-APPR 7-BRO 8-CALLS 9-KIT 10-MENU 11-ASC 15-PRINT
*** YOU CANNOT UPDATE .. PLEASE PRESS A PF KEY ***

16:16:51 Thursday, April 25, 2013

RES

TAMKO WARRANTY SERVICES

RC009MA

CLAIM FOLLOW UP CALLS

ENTRY TYPE: 01 COMPLAINT

STATUS: 28 CLAIM INACTIVATED

ENTRY REF NO: 000070192

ENTRY DATE: 02/24/2010

CALL DATE	CONTACT TYPE	REASON FOR CALL	ENTERED BY
-----------	--------------	-----------------	------------

02 / 24 / 2010	01 HOME OWNER	01 GENERAL INQUIRY	BROSS
----------------	---------------	--------------------	-------

COMMENTS: KYLE IS THE CONTACT FOR BOTH THE CURRENT OWNER AND CONTRACTOR.

SAYS NOT OWNED BY CONDO ASSN YET.

PF 1-CONT 2-CLAIM 3-LAB 4-INSP 5-SET 6-APPR 7-BACK 8-FWD 9-KIT 10-MENU 12-ADD
INSERT PF-12 TO ADD NEW CALL

PENDING RES

TAMKO WARRANTY SERVICES

RC013MA

STATUS CODE CHANGES

ENTRY TYPE: 01 COMPLAINT

STATUS: 28 CLAIM INACTIVATED

ENTRY REF NO: 000070192

ENTRY DATE: 02/24/2010

NEW STATUS CODE:

COMMENTS:

STATUS	DESCRIPTION	CHANGED DATE	CHANGED BY
28	CLAIM INACTIVATED	06/25/2010	RCD001
REASON: MORE THAN 120 DAYS SINCE KIT SENT, CLAIM INACTIVATED			
02	KIT SENT TO CUSTOMER	02/24/2010	BROSS
REASON: RCT002 - INITIAL CONTACT PROGRAM			

PF1-CONTACT 2-CLAIM 3-LAB 4-INSP 5-SETTL 6-APPROV 7-BACK 8-FWD 9-KIT 10-MENU
ENTER THE NEW STATUS CODE AND COMMENTS FOR THE STATUS CODE CHANGE

PENDING RES TAMKO WARRANTY SERVICES CUSTOMER CONTACT RC002MA
ENTRY TYPE: 01 COMPLAINT STATUS: 28 CLAIM INACTIVATED
ENTRY REF NO: 000070193 ENTRY DATE: 02/24/2010 ROOF LEAKING: N (Y,N)
CONTACT DATE: 02 / 24 / 2010 TYPE: 06 AGENCY REPRESENTATI
BUSINESS:
FN: KYLE LN: CROUT PHONE: 843 - 278 - 2891
CLAIM ADDRESS: 2100 BELLE ISLE AVE
CITY: MT PLEASANT STATE: SC SOUTH CAROLI ZIP: 29464 - -
OWNER: BUSINESS: BELLE HALL DIRECT 101 LP BOOKLET: N (Y,N)
FN: LN:
ADDR: 230 SEVEN FARMS DR#104 PO BOX:
CITY: CHARLESTON STATE: SC SOUTH CAROLI ZIP: 29492 - -
PHONE: HOME: - - WORK: 843 - 200 - 0169 EXT:
PROBLEM: BLISTERS
MATERIAL DESC: PRODUCT TYPE: RES RESIDENTIAL
DATE APPLD: 05 / 30 / 2006 ORG OWNER: Y (Y,N) BUILDING USE: 10 OTHER COMMERCIAL
KIT SENT BY: 01 WARRANTY SERVICE RE DATE: 02 / 24 / 2010 LAB DIV: FRED FREDERIC
TO: BUSINESS: BELLE HALL DIRECT 101 LP PF14 (SEL GROUP CODE)
FN: LN: PH: 843 - 200 - 0169
ADDR: 230 SEVEN FARMS DR #104 PO BOX:
CITY: CHARLESTON STATE: SC SOUTH CAROLI ZIP: 29492 - -
TERR: 21 RON COLLIER NOTIFIED: / / LEGL NOTIFIED: / /
PF2-CLAIM 3-LAB 4-INSP 5-SET 6-APPR 7-BRO 8-CALLS 9-KIT 10-MENU 11-ASC 15-PRINT
*** YOU CANNOT UPDATE .. PLEASE PRESS A PF KEY ***

06:17:43 Thursday, April 25, 2013

206

RES

TAMKO WARRANTY SERVICES

RC009MA

CLAIM FOLLOW UP CALLS

ENTRY TYPE: 01 COMPLAINT

STATUS: 28 CLAIM INACTIVATED

ENTRY REF NO: 000070193

ENTRY DATE: 02/24/2010

CALL DATE

CONTACT TYPE

REASON FOR CALL

ENTERED BY

02 / 24 / 2010 01 HOME OWNER

01 GENERAL INQUIRY

BROSS

COMMENTS: KYLE IS THE CONTACT FOR BOTH THE CURRENT OWNER AND CONTRACTOR.
SAYS NOT OWNED BY CONDO ASSN YET.

PF 1-CONT 2-CLAIM 3-LAB 4-INSP 5-SET 6-APPR 7-BACK 8-FWD 9-KIT 10-MENU 12-ADD
INSERT PF-12 TO ADD NEW CALL

PENDING RES

TAMKO WARRANTY SERVICES

RC013MA

STATUS CODE CHANGES

ENTRY TYPE: 01 COMPLAINT

STATUS: 28 CLAIM INACTIVATED

ENTRY REF NO: 000070193

ENTRY DATE: 02/24/2010

NEW STATUS CODE:

COMMENTS:

STATUS	DESCRIPTION	CHANGED DATE	CHANGED BY
28	CLAIM INACTIVATED	06/25/2010	RCD001
REASON: MORE THAN 120 DAYS SINCE KIT SENT, CLAIM INACTIVATED			
02	KIT SENT TO CUSTOMER	02/24/2010	BROSS
REASON: RCT002 - INITIAL CONTACT PROGRAM			

PF1-CONTACT 2-CLAIM 3-LAB 4-INSP 5-SETTL 6-APPROV 7-BACK 8-FWD 9-KIT 10-MENU
ENTER THE NEW STATUS CODE AND COMMENTS FOR THE STATUS CODE CHANGE

PENDING RES TAMKO WARRANTY SERVICES CUSTOMER CONTACT RC002MA
ENTRY TYPE: 01 COMPLAINT STATUS: 28 CLAIM INACTIVATED
ENTRY REF NO: 000070194 ENTRY DATE: 02/24/2010 ROOF LEAKING: N (Y,N)
CONTACT DATE: 02 / 24 / 2010 TYPE: 06 AGENCY REPRESENTATI
BUSINESS:
FN: KYLE LN: CROUT PHONE: 843 - 278 - 2891
CLAIM ADDRESS: 2200 BELLE ISLE AVE
CITY: MT PLEASANT STATE: SC SOUTH CAROLI ZIP: 29464 - -
OWNER: BUSINESS: BELLE HALL DIRECT 101 LP BOOKLET: N (Y,N)
FN: LN:
ADDR: 230 SEVEN FARMS DR#104 PO BOX:
CITY: CHARLESTON STATE: SC SOUTH CAROLI ZIP: 29492 - -
PHONE: HOME: - - WORK: 843 - 200 - 0169 EXT:
PROBLEM: ELISTERS
MATERIAL DESC: PRODUCT TYPE: RES RESIDENTIAL
DATE APPLD: 06 / 01 / 2006 ORG OWNER: Y (Y,N) BUILDING USE: 10 OTHER COMMERCIAL
KIT SENT BY: 01 WARRANTY SERVICE RE DATE: 02 / 24 / 2010 LAB DIV: FRED FREDERIC
TO: BUSINESS: BELLE HALL DIRECT 101 LP PF14 (SEL GROUP CODE)
FN: LN: PH: 843 - 200 - 0169
ADDR: 230 SEVEN FARMS DR #104 PO BOX:
CITY: CHARLESTON STATE: SC SOUTH CAROLI ZIP: 29492 - -
TERR: 21 RON COLLIER NOTIFIED: / / LEGL NOTIFIED: / /
PF2-CLAIM 3-LAB 4-INSP 5-SET 6-APPR 7-BRO 8-CALLS 9-KIT 10-MENU 11-ASC 15-PRINT
*** YOU CANNOT UPDATE .. PLEASE PRESS A PF KEY ***

16:18:05 Thursday, April 25, 2013

209

RES

TAMKO WARRANTY SERVICES

RC009MA

CLAIM FOLLOW UP CALLS

ENTRY TYPE: 01 COMPLAINT

STATUS: 28 CLAIM INACTIVATED

ENTRY REF NO: 000070194

ENTRY DATE: 02/24/2010

CALL DATE

CONTACT TYPE

REASON FOR CALL

ENTERED BY

02 / 24 / 2010 01 HOME OWNER

01 GENERAL INQUIRY

BROSS

COMMENTS: KYLE IS THE CONTACT FOR BOTH THE CURRENT OWNER AND CONTRACTOR.

SAYS NOT OWNED BY CONDO ASSN YET.

PF 1-CONT 2-CLAIM 3-LAB 4-INSP 5-SET 6-APPR 7-BACK 8-FWD 9-KIT 10-MENU 12-ADD
INSERT PF-12 TO ADD NEW CALL

PENDING RES

TAMKO WARRANTY SERVICES

RC013MA

STATUS CODE CHANGES

ENTRY TYPE: 01 COMPLAINT

STATUS: 28 CLAIM INACTIVATED

ENTRY REF NO: 000070194

ENTRY DATE: 02/24/2010

NEW STATUS CODE:

COMMENTS:

STATUS	DESCRIPTION	CHANGED DATE	CHANGED BY
28	CLAIM INACTIVATED	06/25/2010	RCD001
REASON: MORE THAN 120 DAYS SINCE KIT SENT, CLAIM INACTIVATED			
02	KIT SENT TO CUSTOMER	02/24/2010	BROSS
REASON: RCT002 - INITIAL CONTACT PROGRAM			

PF1-CONTACT 2-CLAIM 3-LAB 4-INSP 5-SETTL 6-APPROV 7-BACK 8-FWD 9-KIT 10-MENU
ENTER THE NEW STATUS CODE AND COMMENTS FOR THE STATUS CODE CHANGE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON) IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

ONE BELLE HALL PROPERTY OWNERS)
 ASSOCIATION, INC. and BRANDY RAMEY,)
 individually, and on behalf of all others similarly)
 situated,)

Plaintiffs,)

vs.)

CASE NO. 2012-CP-10-7594

Trammell Crow Residential Company; TCR NC)
 Construction I, LP; Belle Hall Direct 101, LP;)
 TCR RLD Condominiums, Inc.; CS 101 Belle)
 Hall, LP; TCR Southeast, Inc.; TCR Carolina)
 Properties, Inc.; TCR SE Construction, Inc.;)
 TCR SE Construction II, Inc.; TCR)
 Construction, a division of Trammell Crow)
 Residential; TCR Development, a division of)
 Trammell Crow Residential; Trammell Crow)
 Residential Carolina, a division of Trammell)
 Crow Residential; and Tauer Consulting)
 Company, Inc., a division of Trammell Crow)
 Residential, each individually, and collectively)
 d/b/a "Trammell Crow Residential," "Trammell)
 Crow" or "TCR"; Halter Properties, LLC;)
 Halter Realty LLC; and Halter Realty Group,)
 LLC, each individually, and collectively d/b/a)
 "Halter Companies"; Jane Doe 1-5; ABG)
 Caulking & Waterproofing of Morristown, Inc.)
 a/k/a ABG Caulking Contractors; Advanced)
 Building Products & Services, LLC;)
 BASF Corporation; Budget Mechanical)
 Plumbing, Inc.; Builders First Source –)
 Southeast Group, LLC; Builders Services)
 Group, Inc., individually, and d/b/a Gale)
 Contractor Services, Inc.; Century Fire)
 Protection, LLC; Cline Design Associates, P.A.)
 and Gary D. Cline; Coastal Lumber & Framing,)
 LLC; Dodson Brothers Exterminating Co.,)
 Inc. a/k/a Dodson Pest Control; First Exteriors,)
 LLC; Flooring Services, Inc.; General Heating)
 & Air Conditioning Company of Greenville,)

BY _____

JULIE L. HARRIS
 CLERK OF COURT

2014 JUN 30 AM 11:47

FILED

Inc. d/b/a General Heating and Air; Jimmy
 Warner, individually, and d/b/a Warner
 Heating & Air; Glazing Consultants, Inc.;
 GWC Roofing, Inc., individually, and
 d/b/a Southcoast Exteriors, Inc.; Houston
 Stafford Electrical Contractors, LP a/k/a
 IES Residential, Inc. d/b/a Houston
 Stafford Electric; KMAC of the Carolinas,
 Inc.; P&P Metal Sales Co., Inc. a/k/a
 P&P Metal Sales, LLC a/k/a P&P Metal
 Sales, Inc. a/k/a Carolina Metals;
 Pleasant Places, Inc.; Raymond Building
 Supply Corporation d/b/a Energy Saving
 Products of Florida, Inc. a/k/a Energy
 Saving Products of Florida; Southern
 Specialties, Inc.; Structural Contractors
 South, Inc.; Superior Construction
 Services, Inc., individually, and d/b/a
 Superior Masonry Unlimited, Inc.;
 TAMKO Building Products, Inc. f/k/a
 TAMKO Roofing Products, Inc.; VNS
 Corporation, individually, and d/b/a
 Wholesale Building Products f/k/a
 Wholesale Building Materials, Inc.;
 What Don't We Do; and John Doe 1-25,
 Defendants.

VNS Corporation, individually, and d/b/a
 Wholesale Building Products f/k/a Wholesale
 Building Materials,

Third Party Plaintiff,

vs.

Billy Gray, d/b/a United Builders, LLC,

Third Party Defendant.

Houston Stafford Electrical Contractors, LP
 a/k/a IES Residential, Inc. d/b/a Houston
 Stafford Electric,

Third-Party Plaintiffs,

Vs.)
)
 J. Correa Electrical Company, LLC.,)
)
 Third-Party Defendant.)
 _____)

AFFIDAVIT OF PATRICK J. CLEARY

Patrick J. Cleary, hereby declares under penalty of perjury under the laws of the United States of America and South Carolina that the following is true and correct:

1. I am an attorney currently practicing at the law firm of Bowman and Brooke LLP in Columbia, South Carolina, counsel of record for TAMKO Building Products, Inc. in this litigation. I am a member of the South Carolina Bar (Bar No.: 80808) and the North Carolina Bar (Bar No.: 39584).

2. I am familiar with the Plaintiffs' Memorandum in Opposition to Defendant TAMKO's Motion to Dismiss and Compel Arbitration, including Exhibit B, filed on June 24, 2014.

3. On June 25, 2014, I reviewed and downloaded the CertainTeed Limited Warranty, Asphalt Shingle Products, from the following website:
<http://www.certainteed.com/resources/GeneralAsphaltShinglesWarrantyEnglish.pdf>.

A true and exact copy of the CertainTeed Limited Warranty, Asphalt Shingle Products is attached as Exhibit 1.

4. On June 25, 2014, I reviewed and downloaded the GAF Shingle and Accessory Limited Warranty, from the following website:
http://www.gaf.com/Warranties_Technical_Documents/Steep_Slope_Warranties/GA

F Shingle Accessory Warranty.pdf. A true and exact copy of the GAF Shingle and Accessory Warranty is attached as Exhibit 2.

5. On June 25, 2014, I reviewed and downloaded the IKO Limited Asphalt Limited Warranty Information for Asphalt Shingles from the following website: http://www.iko.com/publication/iko-unified-warranty-booklet/wppa_open/. A true and exact copy of the IKO Limited Asphalt Limited Warranty is attached as Exhibit 3.

6. On June 25, 2014, I reviewed and downloaded the Malarkey Shingle and Accessory Warranty from the following website: <http://www.malarkeyroofing.com/wp-content/uploads/Shingle-Warranty.pdf>. A true and exact copy of the Malarkey Warranty is attached as Exhibit 4.

7. On June 25, 2014, I reviewed and subsequently downloaded the Owens Corning Standard Product Limited Warranty on Roofing Shingles from the following website, <http://www.owenscorning.com/NetworkShare/Roofing/10013920-Standard-Roofing-Warranty.pdf>. A true and exact copy of the Owens Corning Standard Product Limited Warranty is attached as Exhibit 5.

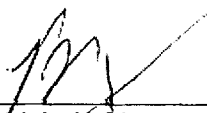
8. I reviewed the TAMKO Building Products Limited Warranty attached as Exhibit B to Plaintiffs' Memorandum and compared it with Exhibits 1-5.

9. I prepared a chart, attached as Exhibit 6, that presents: 1) the warranty duration, 2) limitations on implied warranties, 3) exclusion of incidental and consequential damages, 4) the limits on warranty coverage, 5) limitations on time to notify the manufacturer of defects, 6) whether the warranty was the exclusive warranty, and 7) the transferability of the warranty, for the TAMKO Building Products Limited Warranty and the limited warranties attached as Exhibits 1-5.

VERIFICATION

I declare and verify, certify and state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

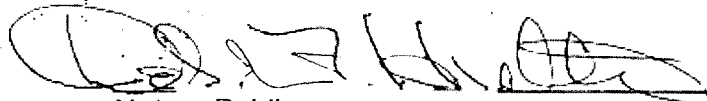
Executed on June 25, 2014.



Patrick J. Cleary

State of South Carolina)
County of RICHLAND

Sworn to before me this 25 day of June 2014



Notary Public

My Commission Expires: 3-14-2017

EXHIBIT 1

CertainTeed

Limited Warranty

Asphalt Shingle Products



CertainTeed
SANIT GORAN

Congratulations... and thank you for your recent purchase of one of the fine products from CertainTeed Roofing. Since 1904, CertainTeed has been producing quality roofing products that provide long-lasting beauty and protection for homes of every size, style and age. For over 100 years, the basis for our name, "Quality made certain, satisfaction guaranteed," has been our ongoing philosophy.

Your CertainTeed roofing warranty fully explains how CertainTeed supports its products with the strongest warranty protection available. It is important that you read the warranty section of this brochure. The warranty lists the specific CertainTeed asphalt shingle products that are covered and the period of time for which they are covered. Take the time to understand how CertainTeed protects your purchase by standing behind our products.

Limited, Prorated and Transferable Warranty

This warranty covers asphalt shingle products listed in Table 1, sold only in the United States of America, its territories and Canada.

What and Who Is Covered and for How Long

CertainTeed warrants to the original property owner/consumer that, when subject to normal and proper use, its shingles will be free from manufacturing defects for the length of time specified in Table 1 and that CertainTeed will pay to repair, replace or clean, at its option, any shingles CertainTeed determines are defective under the terms of this Limited Warranty. In the event of repair, replacement or cleaning pursuant to the terms of this Limited Warranty, the warranty applicable to the original shingles shall apply to the repaired, replaced or cleaned shingles and will extend for the balance of the original warranty period.

The Lifetime warranty period offered for certain shingles in Table 1 is only available to individual homeowners. The warranty period for shingles installed on premises not used by individual homeowners as their residence is limited as specified in Table 1. All other structures and property owners (e.g. corporations, governmental agencies, partnerships, trusts, religious organizations, schools, condominiums, homeowner associations or cooperative housing arrangements, apartment buildings, and any other type of building or premises not owned by individual homeowners) are limited to either a 50-year or 40-year warranty period described in Table 1.

Lifetime means as long as the original individual home owner (or the second owner, if the warranty was properly transferred during the SureStart period) owns the property where the shingles are installed.

SureStart™ Protection

Because CertainTeed roofing products are manufactured to the highest quality standards, we confidently include the additional assurance of SureStart™ protection. SureStart provides the strongest non prorated protection you can get in the vital early years of your new roof.

All of CertainTeed's shingle products are covered by SureStart protection. Under this warranty feature, CertainTeed, at no charge, will pay to repair or replace, at its option, any shingles CertainTeed determines are defective during the SureStart period. Note: Wind warranty and algae warranty are covered separately as described on pages 4 & 5. The SureStart period begins on the date of application and terminates following the period specified in Table 1. CertainTeed's maximum liability under SureStart is equal to the reasonable cost of comparable replacement shingles and labor as determined by CertainTeed to replace or repair the defective shingles. Roof tear-off, metal work, flashing and disposal expenses, and other costs or expenses incurred during such repair or replacement are not covered or reimbursed by this Limited Warranty, except for certain products with Lifetime warranty periods specified in Table 1, for which CertainTeed's maximum liability also includes the cost of roof tear-off and disposal.

In instances in which CertainTeed, under the terms of this warranty, has agreed to pay the reasonable cost of labor required to repair or replace defective shingles, CertainTeed will provide reimbursement only upon receipt of a copy of the contractor's invoice or other written evidence of the completion of such work which CertainTeed, in its sole discretion, deems acceptable.

SureStart protection does not extend to any shingles applied to non-ventilated or inadequately ventilated roof deck systems as determined by CertainTeed, except as stated on page 4. CertainTeed's maximum contribution toward the cost of repairing or replacing defective shingles applied to a non-ventilated or inadequately ventilated roof deck system is calculated using the

reasonable cost of comparable replacement shingles as determined by CertainTeed less 1/120th of that amount multiplied by the number of months from the start of the warranty period to the date when CertainTeed determines the shingles are defective. Labor costs, roof tear-off, metal work, flashing and disposal expenses, and other costs or expenses incurred during such repair or replacement are not covered or reimbursed by this Limited Warranty.

Beyond SureStart Protection

If CertainTeed determines its shingles are defective after the SureStart period, CertainTeed's maximum contribution toward the cost of repairing or replacing defective shingles will be calculated using the reasonable cost of comparable replacement shingles as determined by CertainTeed less the Reduction Figure Per Month, specified in Table 1, for the number of months from the start of the warranty period to the date when CertainTeed determines the shingles are defective. Labor costs, roof tear-off, metal work, flashing and disposal expenses, and other costs or expenses incurred during such repair or replacement are not covered or reimbursed by this Limited Warranty.

TABLE 1

<u>Lifetime Products^A</u>	<u>Warranty Period</u>	<u>SureStart Period</u>	<u>Wind Warranty Miles Per Hour</u>	<u>Algae Resistant Warranty Period[†]</u>	<u>Reduction Figure Per Month</u>
Grand Manor™ Presidential Shake™ TL Presidential Solaris™ Landmark™ TL Presidential Shake™ (& IR) ² Carriage House™ Landmark™ Premium Landmark Solaris™ (& IR) ² Landmark™ PRO Highland Slate™ (& IR) ² Independence™	Lifetime ^A	10 Years	110 ^{††}	15	1/600*
<u>Lifetime Products^B</u>	<u>Warranty Period</u>	<u>SureStart Period</u>	<u>Wind Warranty Miles Per Hour</u>	<u>Algae Resistant Warranty Period[†]</u>	<u>Reduction Figure Per Month</u>
Landmark™ IR ² Landmark™ Hatteras ¹	Lifetime ^B	10 Years	110 ^{††}	10	1/600*
<u>20 -, 25 - and 30 - Year Products</u>	<u>Warranty Period</u>	<u>SureStart Period</u>	<u>Wind Warranty Miles Per Hour</u>	<u>Algae Resistant Warranty Period[†]</u>	<u>Reduction Figure Per Month</u>
Patriot	30 Years	8 Years	110	10	1/360
XT 30™ (& IR) ²	30 Years	5 Years	70 ^{†††}	10	1/360
XT 25™	25 Years	5 Years	60	10	1/300
CT 20™	20 Years	3 Years	60	10	1/240
Any shingles applied to any inadequately ventilated roof deck	10 years [†]	N/A	N/A	N/A	1/120

A. The Lifetime Warranty period is only available to individual homeowners. The warranty period for these shingles installed on premises not used by individual homeowners as their residence is limited to 50 years and the SureStart period is 10 years following the installation of the shingles. Roof tear-off, metal work, flashing and disposal expense, incurred during repair or replacement are covered or reimbursed by this Limited Warranty. Limited Warranty transferees during the SureStart period are limited to a 50-year warranty period (see section titled "Transfers During the SureStart Period" for details).

B. The Lifetime Warranty period is only available to individual homeowners. The warranty period for these shingles installed on premises not used by individual homeowners as their residence is limited to 40 years and the SureStart period is 5 years following the installation of the shingles. Limited Warranty transferees during the SureStart period are limited to a 40-year warranty period (see section titled "Transfers During the SureStart Period" for details).

* For Lifetime products, at the completion of the 40th year the reduction figure will remain at 480/600, or 20% of the total maximum liability.

† For details of warranty coverage for shingles installed on inadequately ventilated roof decks on both residential and commercial buildings, see provisions under "Inadequately Ventilated and Non-Ventilated Decks."

†† Wind warranty upgrade – These products are warranted to resist blow-off due to wind velocities, including gusts, up to a maximum of 130 miles per hour during the first fifteen (15) years, provided all of the following conditions are met:

1. The CertainTeed shingles are not applied over existing roof shingles (roof-overs are not permitted).
2. The CertainTeed specified corresponding hip and ridge accessory products are installed as cap shingles (Shadow Ridge™, Cedar Crest™, Shingle Ridge™, Mountain Ridge™, Landmark Solaris™ (& IR) and Hatteras™).
3. The CertainTeed specified corresponding starter shingles are installed along the roof eaves and rakes (Swiftstart™, High-Performance Starter and Presidential Starter).

(Note: In Florida, CertainTeed will waive the requirement of applying starter shingles along the roof rake if all of the following conditions are met: The applicable building code requires that asphalt roof shingles be embedded in an 8-inch-wide bed of asphalt roofing cement applied along the roof rake edges. And, the shingles are installed and embedded in an 8-inch-wide bed of asphalt roofing cement along the roof rake edges in accordance with the code.)

††† The Wind warranty for XT 30 (& IR) for the Northwest region is 80 mph. The Wind warranty is 100 mph in Hawaii and Alaska only.

¹Algae Resistant Warranty period applies only to the Algae Resistant (AR) version of the pertinent shingle.

²CertainTeed's Impact Resistant (IR) versions of Landmark™, Presidential Shake™, Highland Slate™, Landmark Solaris™, and XT™30 shingles comply with UL 2218 Impact Resistance of Prepared Roof Covering Materials test criteria at time of manufacture.

Transferability

This Limited Warranty is transferable, but only by the original property owner/consumer to the first subsequent property owner. After the Limited Warranty has been transferred once, it is no longer transferable. The warranty transfer is only effective if the subsequent property owner provides written notice of the transfer to CertainTeed within sixty (60) days from the real estate title transfer date. (Notice must be sent to CertainTeed Roofing Technical Services Department, 1400 Union Meeting Road, Blue Bell, PA 19422.)

Transfers During the SureStart Period

If this Limited Warranty is properly transferred during the product's SureStart period, the warranty for the new owner is the same as it would have been for the original owner, except for certain products with Lifetime warranty periods where the duration of the transferred warranty will be 50 years or 40 years as specified in Table 1, measured from the beginning of the SureStart period (i.e. the date of installation), and the remaining period of SureStart protection will be available to the subsequent property owner.

Transfers After the SureStart Period

If this Limited Warranty is properly transferred by the original property owner/consumer after the SureStart period, the warranty following the transfer will be limited to two (2) years from the date of real estate title transfer. The warranty obligation will be calculated as explained in the section titled "Beyond SureStart Protection."

Limitations

This Limited Warranty does not provide protection against, and CertainTeed will have no liability for, any failure, defect or damage caused by situations and events beyond normal exposure conditions, including but not limited to:

- Winds, including gusts, greater than the Wind Warranty MPH in Table 1.
- Damage caused by lightning, hailstorm, earthquake, fire, explosion, flood or falling objects.
- Damage caused by tornado, or hurricanes (other than as warranted under Wind Warranty MPH in Table 1).
- Distortion, cracking or other failure or movement of: the base material over which the shingles are applied, the roof deck, or the walls or foundation of the building itself.
- Damage caused by structural changes, alterations or additions, or by the installation of equipment (such as, but not limited to, aerials, signs or air-conditioning equipment) to the building after the original shingles have been applied.
- Shading, stains or discoloration to the shingles arising from outside sources such as, but not limited to, algae (unless blue-green algae as described in the section titled "Limited Algae Warranty"), fungus, moss, lichens or other vegetation, mold or mildew growth, or paints, chemicals or other similar materials.
- Misuse, abuse, neglect, or improper transportation, handling or storage of the shingles.
- Installation of the shingles over non-approved roof decks as more fully explained in CertainTeed's installation instructions published at the time of original installation.

- Damage caused by improper installation or installation not in accordance with CertainTeed's installation instructions published at the time of original installation.
- Damage to the shingles, the roof deck or the structure caused by ice backup or ice damming.
- Vandalism or acts of war.
- Any other cause not a result of a manufacturing defect in the shingles.

Mold and mildew are functions of environmental conditions and are not manufacturing defects. As such, mold and mildew are not covered by this Limited Warranty or any implied warranty.

CertainTeed reserves the right to discontinue or modify any of its products, including the color of its shingles, and shall not be liable as a result of such discontinuance or modification, nor shall CertainTeed be liable in the event replacement material varies in color in comparison to the original product as a result of normal weathering. If CertainTeed replaces any material under this warranty, it may substitute products designated by CertainTeed to be of comparable quality or price range in the event the product initially installed has been discontinued or modified.

Inadequately Ventilated and Non-Ventilated Decks

Any shingles applied to inadequately ventilated or non-ventilated decks, other than the shingles and deck systems described in the section titled "Insulated Decks and Radiant Barriers," are subject to a reduced limited warranty period of ten (10) years and do not qualify for SureStart Protection. **SureStart Protection and the Warranty Period applicable to the shingle are available if CertainTeed determines that the shingle damage was caused exclusively by a manufacturing defect that is unrelated to the inadequate roof system ventilation.**

Insulated Decks and Radiant Barriers

CertainTeed's Limited Warranty, including SureStart Protection, will remain in force when its fiber glass shingles are applied to roof deck assemblies where foam insulation is prefabricated into the roof deck system (often called "nailboard insulation"), where insulation is installed beneath an acceptable roof deck system, or where radiant barriers are installed, with or without ventilation, directly below the deck. Acceptable roof deck surfaces must consist of at least 3/8" thick plywood or 7/16" thick Oriented Strand Board (OSB) and slopes must be 2:12 or greater. If a different deck surface material will be utilized, please contact CertainTeed's Technical Services Department for assistance. (See the following important restrictions.)

The design professional is responsible for ensuring: 1) the proper quality and application of the insulation and/or radiant barrier, 2) the provision of adequate structural ventilation and/or vapor retarders as determined to be necessary, and 3) that all local codes are met (particularly taking into account local climate conditions). Special attention must be taken if cellular foam, fiber glass, cellulose insulation or other highly permeable insulation will be used in an unventilated system, or if the insulation/rafter or insulation/joist planes may create an air leak that could lead to moisture transmission and condensation problems. All these important factors and decisions, while not the responsibility of CertainTeed, are critical to assure proper deck system performance.

Ventilated Nail-Base Roof Insulation

Ventilated Nail-Base Roof Insulation products (e.g. Flint Board™ CV) are made of rigid insulation (typically foam board) and another layer of material that provides air space above the insulation and below the nailable deck (which is typically at least 7/16" thick OSB or 3/8" thick plywood). Those products can provide soffit-to-ridge ventilation, and if installed in accordance with the deck manufacturer's instructions to achieve sufficient ventilation, will not reduce the scope or length of CertainTeed's Limited Warranty coverage.

Limited Algae Warranty

Blue-green algae, which is commonly but incorrectly called "fungus," can create unsightly streaking on shingles. CertainTeed warrants that the Algae-Resistant (AR) versions of the products in Table 1 will remain free from blue-green algae growth (but not mold or mildew growth) which adversely affects the overall appearance of said shingles for a period of ten (10) or fifteen (15) years, as noted in Table 1.

If during the Algae-Resistant Warranty Period specified in Table 1, the overall appearance of the Algae-Resistant shingles is adversely affected by blue-green algae, CertainTeed will pay the reasonable cost to replace or clean at its option, any affected shingles. In the event of replacement or cleaning, for the remainder of the Algae-Resistant Warranty Period,

CertainTeed's maximum contribution towards subsequent replacement or cleaning will be calculated using the Algae-Resistant Warranty Period specified in Table 1, less a prorated adjustment that reflects the number of months that have elapsed from the start of the Algae-Resistant Warranty Period to the date of reoccurrence.

WARNING: FOR LOW-VOLUME RAIN AND SALT FOG AREAS

In areas of low-volume rain (e.g. areas that receive insignificant rainfall during a 90-day period) and/or "salt fog" (e.g. parts of the Southern California coastline), copper released by algae-resistant (AR) granules or shingles can react with aluminum in gutters and cause severe corrosion of the gutters. In such regions, CertainTeed strongly recommends that vinyl or copper gutters, not aluminum gutters, be used with algae-resistant shingles. CertainTeed disclaims all liability and responsibility for any damages that may result from the use of its algae-resistant shingle products with copper granules where gutters containing aluminum are used.

Limited Wind Warranty

CertainTeed warrants its shingles will resist blow-off damage due to wind velocities, including gusts, up to the maximum wind velocity per the Wind Warranty MPH specified in Table 1 during the first fifteen (15) years of the warranty for Lifetime products and Patriot shingles for the first ten (10) years and during the first five (5) years for all other products listed in Table 1.

CertainTeed's obligations and liability for shingle blow-off damage during the wind warranty periods as specified above are limited as follows:

- If shingles blow off because the shingle's self-sealing asphalt strips did not activate, CertainTeed will have no liability or warranty obligation unless CertainTeed is afforded the opportunity to hand seal, at its expense, any non-sealing shingles.
- If shingles blow off even though the shingle's self-sealing asphalt strips did activate, CertainTeed will furnish replacement shingles without charge, but only for damaged or blown off shingles. CertainTeed will not be responsible for or reimburse labor costs, roof tear-off, metal work, flashing and disposal expenses, or any other costs pertaining to removal or replacement of damaged shingles. Any costs in excess of CertainTeed's material contribution are the property owner's responsibility (and may be covered by homeowner's insurance).
- CertainTeed shall have no liability for any shingles not fastened in accordance with CertainTeed installation instructions published at the time of original installation.
- CertainTeed shall have no liability for any damage to persons or property caused by blown off shingles.
- CertainTeed's maximum liability during the wind warranty period is the reasonable cost of hand sealing all of the shingles on the roof.

Flintlastic™ SA (Self-Adhering) System

For low slope residential roofing projects less than 2000 square feet (20 squares), CertainTeed offers a limited roof membrane warranty as follows: A 10-year warranty duration on a single ply of Flintlastic SA Cap sheet over a primed plywood roof deck or a 12-year warranty duration for a two-ply system consisting of a Flintlastic SA Nail Base and a Flintlastic SA Cap sheet, provided the Flintlastic products were applied in accordance with CertainTeed's current installation instructions published at the time of installation.

CertainTeed warrants the roof membrane, subject to the following terms, conditions, limitations, and exclusions, for the duration specified above from the date of completion of the roof membrane installation. If during the duration of this Limited Warranty, a manufacturing defect in the roof membrane causes a leak, CertainTeed or its designated roofing contractor will, at CertainTeed's sole discretion, repair or replace the roof membrane materials only as necessary to restore it to a watertight condition.

Only manufacturing defects in the roof membrane that cause leaks are covered by this Limited Warranty. CertainTeed's MAXIMUM LIABILITY during the first year of this warranty is the original cost of the CertainTeed membrane materials only. After the first year, CertainTeed's maximum liability is the original cost of the CertainTeed materials used on the roof reduced by 8.3% for 12-year warranty and 10% for 10-year warranty during each subsequent year, less any costs previously incurred by CertainTeed for repair or replacements.

Roof components which are not part of the roof membrane and hence not covered by this Limited Warranty include, but are not limited to, the following: underlying roof deck, insulation, vapor retarders, fasteners, metal work, drains, pitch pans, expansion joints, skylights, vents,

plastic accessories, any flashing, decorative or reflective coating, surfacing and/or any aggregates. In no event, however, will CertainTeed be responsible for any costs related to the removal or abatement of any asbestos present in any existing roof system to which the CertainTeed roof membrane is applied.

What the Customer Must Do

If you believe your shingles have a manufacturing defect, you must promptly notify CertainTeed and provide proof of property ownership and the date of shingle purchase and application. Unless you provide such proof, CertainTeed will use the date of manufacture to calculate the start of the warranty period. In order to properly evaluate and process a warranty claim, CertainTeed may require the property owner to submit a shingle sample to CertainTeed for analysis and/or permit a CertainTeed representative to make repairs to, take photographs of, and/or take samples from the roof. If required, CertainTeed will evaluate each properly reported claim and will repair, replace, clean or reimburse the property owner for the shingles it determines are defective, in accordance with the terms of this Limited Warranty within a reasonable amount of time. For more details about submitting a warranty claim, visit www.ctroof.com or call (800) 345-1145.

Please send all notifications and correspondence to:

**CertainTeed Corporation, 1400 Union Meeting Rd., P.O. Box 1100, Blue Bell, PA 19422,
Attn: CertainTeed Roofing Technical Services Department. Telephone number: 800-345-1145.**

Warranty Registration (not required)

You may register your product warranty on CertainTeed's website: www.certainteed.com/warrantyreg. Each registrant receives a registration confirmation number by return e-mail that can be printed and kept with this Limited Warranty and your proof of purchase. If you do not have internet access, you can register your shingles by sending: (1) your name, address, and telephone number; (2) the name and contact information of the contractor who installed your shingles and the original date of installation; and, (3) the type, color and number of squares of your shingles to: **CertainTeed Corporation, 1400 Union Meeting Rd., P.O. Box 1100, Blue Bell, PA 19422, Attn: CertainTeed Roofing Technical Services Department.**

CertainTeed will register your information and mail you a confirmation number.
Failure to register this warranty does NOT void the warranty or any of its terms.

For Your Records

Product Purchased: _____ Date of Installation: _____
Roofing Contractor: _____ Contractor's Telephone No. _____

This warranty applies to shingles installed during the calendar year of 2014.
(The warranty in effect at the time the material is originally installed is the applicable warranty.)

Limited Warranty and Limitation of Remedies

THIS DOCUMENT CONSTITUTES THE EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CERTAINTEED. THE WARRANTIES AND REMEDIES CONTAINED IN THIS DOCUMENT ARE EXPRESSLY IN LIEU OF ANY AND ALL OTHER OBLIGATIONS, GUARANTEES AND WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED BY STATUTE OR AT LAW. STATE OR PROVINCIAL LAW WILL DETERMINE THE PERIOD OF TIME FOLLOWING THE SALE THAT A PROPERTY OWNER MAY SEEK A REMEDY UNDER THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

CERTAINTEED'S OBLIGATIONS, RESPONSIBILITIES, AND LIABILITY SHALL BE LIMITED TO REPAIRING OR REPLACING THE DEFECTIVE PRODUCT OR CLEANING ALGAE-RESISTANT SHINGLES IN THE CASE OF ALGAE GROWTH AS SET FORTH IN THIS LIMITED WARRANTY. IN NO EVENT SHALL CERTAINTEED BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ANY DAMAGE TO THE PROPERTY, THE BUILDING OR ITS CONTENTS, OR FOR INJURY TO ANY PERSONS, THAT MAY OCCUR AS A RESULT OF THE USE OF CERTAINTEED'S PRODUCTS OR AS A RESULT OF THE BREACH OF THIS WARRANTY. IF YOUR STATE OR PROVINCE DOES NOT ALLOW EXCLUSIONS OR LIMITATIONS OF SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

IN NO EVENT SHALL CERTAINTEED'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THE PRODUCT(S) OR THIS LIMITED WARRANTY EXCEED THE REASONABLE COST OF SHINGLES AND LABOR TO REPLACE OR REPAIR THE DEFECTIVE SHINGLES.

This Limited Warranty may not be modified, altered or expanded by anyone, including product distributors, dealers, sellers and/or CertainTeed field representatives.

This Limited Warranty gives you specific legal rights, and you may also have other rights which vary from State to State, or Province to Province.

Roofing Plants and Regional Sales Office

CertainTeed roofing products are sold by CertainTeed Roofing in nine sales regions. They are manufactured in ten residential roofing plants and one commercial roofing plant. Since the early 1900s, CertainTeed Corporation has been an innovator in the building materials industry and today is a leading manufacturer of building materials including residential and commercial roofing, vinyl and fiber cement siding, vinyl windows, composite decking and railing, fiber glass insulation, vinyl fence, and piping products. The company is headquartered in Valley Forge, Pennsylvania, and employs more than 7,000 employees at approximately 50 manufacturing facilities throughout North America. Continuing the 100-year commitment of "Quality made certain, Satisfaction guaranteed™," CertainTeed remains one of the most trusted names in the industry. More information is available at www.certainteed.com.

This document is also available in Spanish and French.

Call 1-800-782-8777 or go to www.certainteed.com.

Se puede obtener este documento en español. Favor de llamar 1-800-782-8777.

Ce document est disponible en anglais et en espagnol. Composez le 1-800-782-8777.

ASK ABOUT OUR OTHER CERTAINTEED® PRODUCTS AND SYSTEMS

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www.certainteed.com <http://blog.certainteed.com>

CertainTeed Corporation

P.O. Box 860 / Valley Forge, PA 19482

Professional: 800-233-8990 / Consumer: 800-782-8777

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20-20-3483REV



EXHIBIT 2

The GAF Shingle & Accessory Limited Warranty

(RESWT160)

Updated: 5/13



*Quality You Can Trust...From
North America's Largest Roofing Manufacturer!™*

gaf.com

Congratulations! Thank you for purchasing asphaltic shingles and/or accessories from GAF, North America's largest roofing manufacturer – your best and safest choice. While many factors can affect how long your shingles and accessories will last, this Shingle & Accessory Limited Warranty covers your asphaltic shingles and accessories, including GAF Ridge Cap Shingles, GAF Starter Strip Shingles, GAF Leak Barrier Products, GAF Roof Deck Protection Products, and GAF Cobra® Ventilation Products, in the unlikely event that they contain a manufacturing defect. It provides great coverage that is "non-prorated" during the crucial up-front period of your ownership (the Smart Choice® Protection Period) with continued coverage for extended periods of time afterwards. Note: This warranty does not cover low-slope membranes, Master Flow® Ventilation Products, and ShingleMatch™ Roof Accessory Paint. Please go to www.gaf.com for a copy of the limited warranties covering these products.

How Long Your Warranty Lasts

Manufacturing Defects: GAF Lifetime Asphaltic Shingles. Subject to the provisions below, all GAF Asphaltic Shingles other than Sentinel®, Royal Sovereign®, and Marquis® WeatherMax® Shingles and Ridge Cap and Starter Strip Shingles carry a Lifetime warranty (as defined below) against manufacturing defects and a Smart Choice® Protection Period of 10 years.

Manufacturing Defects: Other GAF Asphaltic Shingles. Marquis® WeatherMax® Shingles are warranted against manufacturing defects for 30 years; Royal Sovereign® Shingles are warranted for 25 years, and Sentinel® Shingles are warranted for 20 years. The Smart Choice® Protection Period is 5 years for Marquis® WeatherMax® and Royal Sovereign® Shingles, and 3 years for Sentinel® Shingles. The warranty term and Smart Choice® Protection Period for Ridge Cap and Starter Strip Shingles are described below.

Manufacturing Defects: GAF Accessories Used With Any Brand Of Lifetime Asphaltic Shingles. When you install three or more of the GAF Accessory Products listed above on your roof with any brand of Lifetime Asphaltic Shingles, your GAF Accessory Products carry a Lifetime warranty (as defined below) against manufacturing defects and a Smart Choice® Protection Period of 10 years. When you install fewer than three of the above-listed GAF Accessories on your roof with any brand of Lifetime Asphaltic Shingles, your GAF Accessory Products carry a 40-year warranty against manufacturing defects and a Smart Choice® Protection Period of 5 years.

Manufacturing Defects: GAF Accessories Used With Any Other Asphaltic Shingles. When you install one or more of the above-listed GAF Accessories on your roof with any brand of non-Lifetime Asphaltic Shingles, your GAF Accessory Products carry a 25-year warranty against manufacturing defects and a Smart Choice® Protection Period of 5 years.

Definition Of Lifetime: The word "Lifetime" means as long as you, the original owner(s) (or the second owner(s) if coverage was properly transferred during the Smart Choice® Protection Period), own the property where the shingles and/or accessories are installed. The Lifetime warranty and 10-year Smart Choice® Protection Period are applicable only to shingles and accessories installed on a single family detached residence owned by individuals. For any other type of owner or building, such as a corporation, governmental entity, religious entity, condominium or homeowner association, school, apartment building, office building, or multi-use structure, the length of the warranty is 40 years and the Smart Choice® Protection Period is 5 years.

Failure To Seal/Blow-offs/Wind Damage. GAF Lifetime Shingles, Timberlex® Ridge Cap Shingles, and Ridgloss® Ridge Cap Shingles are warranted against failure to seal, blow-offs, and wind damage for 15 years. All other shingles (other than starter strips) and other ridge cap shingles are covered for 5 years. There is no coverage for failure to seal/blow-offs/wind damage for any other GAF Accessory Products.

Algae Discoloration. All StainGuard®-labeled Shingles and Ridge Cap Shingles are warranted against algae discoloration for 10 years. There is no coverage for algae discoloration for any other GAF Accessory Products.

Who Is Covered By This Limited Warranty; Transferability. You are covered by this warranty if you live in the United States or Canada and are the original property owner (i.e., not a builder or installer) or the first subsequent owner if this warranty was properly transferred.

This limited warranty may be transferred only once. The second owner must notify GAF in writing within 60 days after the property transfer for warranty coverage to be transferred. (Other than this one transfer, this warranty may not be transferred or assigned, directly or indirectly.) If the transfer takes place within the Smart Choice® Protection Period, the second owner is entitled to the same coverage as the original owner. If the transfer takes place afterwards, the length of this warranty shall be reduced to the two-year period after the ownership changes. If there is a defect during this two-year period, GAF's reimbursement to the second owner will be based only on the reasonable cost of replacement shingles or applicable accessories, reduced by the amount of use that has been received from the shingles or applicable accessories from date of installation through the date of claim.

Manufacturing Defects: What Is Covered/Sole And Exclusive Remedy. GAF Warranty Company, LLC, a subsidiary of GAF, warrants that your GAF Roofing Shingles will remain free from manufacturing defects that adversely affect their performance during the applicable Smart Choice® Protection Period or that cause leaks for the remainder of the applicable warranty term and that your GAF Accessory Products will remain free from manufacturing defects that adversely affect their performance during the applicable warranty term.

Note: Failure to seal/blow-offs/wind damage and algae discoloration are covered separately below.

(1) During the Smart Choice® Protection Period: GAF will pay you the full reasonable cost of labor to repair or re-cover any defective GAF Shingles or Accessories (excluding non-GAF accessories, metal work, or flashing) and will provide replacement shingles or accessories or the reasonable cost of obtaining replacement shingles or accessories, at GAF's option. GAF will not pay to tear off your shingles or accessories, or to dispose of them.

(2) After the Smart Choice® Protection Period: Labor will no longer be covered. GAF's contribution to you will be based on either providing you with replacement GAF Shingles or Accessories, or at GAF's choice, reimbursing you for the reasonable cost of replacement shingles or accessories. The amount of shingles, accessories, or reimbursement provided to you will be reduced to reflect the use you have received from your shingles or accessories. The amount of use will be calculated by dividing the number of months which have elapsed since installation to the date of claim by the number of months in the warranty term. For a Lifetime warranty, the number of months in the warranty term is deemed to be 600 for years 11 – 40 of the warranty term. For years 41 and beyond of a Lifetime warranty, GAF's contribution is 20%. For example, if you make a claim for Lifetime Shingles installed on a single family home after your shingles have been installed for 25 years (300 months), GAF's contribution will be reduced by 300/600 or 50%.

Failure To Seal/Blow-Offs/Wind Damage: What Is Covered/Sole And Exclusive Remedy.

This Limited Failure To Seal/Blow-offs/Wind Damage Warranty is specifically conditioned on your shingles or ridge cap shingles being fastened and installed strictly in accordance with GAF's application instructions. This warranty does not apply to starter strip shingles. GAF warrants to you that your GAF Shingles or Ridge Cap Shingles will not fail to seal, blow off, or sustain damage from winds (including gusts) up to the applicable wind speed listed on the reverse after your shingles or ridge cap shingles should have sealed but did not due to a manufacturing defect. If your shingles or ridge cap shingles do fail to seal, blow off, or suffer wind damage, GAF will reimburse you for the reasonable costs of replacing the blown-off or damaged shingles or ridge cap shingles and hand sealing any unsealed shingles or ridge cap shingles. Costs related to underlayment, metal work, and flashings are not included. GAF's maximum liability under this paragraph is to reimburse you for the cost of hand-sealing all of the shingles or ridge cap shingles on your roof.

Shingle	Wind Speed Coverage with special installation (mph / km/h)	Wind Speed Coverage without special installation (mph / km/h)
All GAF Lifetime Shingles	130/209*	110/175
Marquis® WeatherMax®	80/130	80/130
Royal Sovereign® & Sentinel®	60/96	60/96
*Your shingles will be covered up to the maximum wind speed above ONLY if your shingles are installed using 6 nails per shingle and you have GAF Starter Strip Products installed at the eaves and rakes.		
Ridge Cap Shingle	Wind Speed Coverage with special installation (mph / km/h)	Wind Speed Coverage without special installation (mph / km/h)
Timberlex® & Ridgloss®	130/209**	110/175
All other GAF Ridge Cap Shingles	90/144**	70/112
**Your ridge cap shingles will be covered up to the maximum wind speed above ONLY if your ridge cap shingles are installed in strict accordance with the "Maximum Wind Speed Coverage Under Ltd. Warranty" section of the applicable ridge cap shingle application instructions.		

Note: All self-sealing shingles and ridge cap shingles, including GAF's, must be exposed to warm, sunny conditions for several days before they completely seal. Before sealing occurs, shingles and ridge cap shingles are vulnerable to blow-offs and wind damage. Shingles and ridge cap shingles installed in Fall or Winter may not seal until the following Spring. Shingles or ridge cap shingles which are not exposed to direct sunlight or adequate surface temperatures or that are not fastened or installed properly may never seal. Failures to seal, blow-offs, and wind damage under these circumstances result from the nature of self-sealing shingles and ridge cap shingles, not a manufacturing defect, and are not covered under this warranty.

Algae Discoloration: What Is Covered/Sole And Exclusive Remedy.

This StainGuard® Limited Warranty applies only to shingles and ridge cap shingles sold in packages bearing the StainGuard® logo. GAF warrants to you that blue-green algae (also known as cyanobacteria) will not cause a pronounced discoloration of your StainGuard®-labeled Shingles or Ridge Cap Shingles. During the first year, if your StainGuard®-labeled Shingles or Ridge Cap Shingles exhibit a pronounced discoloration caused by blue-green algae, GAF's contribution will be either the reasonable cost of commercially cleaning your shingles or ridge cap shingles or, at GAF's option, replacing discolored shingles or ridge cap shingles, up to a maximum of the original cost of the affected shingles or ridge cap shingles. During the remainder of the StainGuard® Limited Warranty period, GAF's contribution to you will be reduced to reflect the amount of use you have received from your shingles or ridge cap shingles since your shingles or ridge cap shingles were installed (100%, reduced by a percentage equal to the number of months from the installation date to the date of claim divided by 120).

Note: Preventing pronounced algae-related discoloration of your shingles or ridge cap shingles is achieved through formulations or through unique blends of granules.

What Is Not Covered

Even if your shingles or accessories were not properly installed according to GAF's application instructions or to standard good roofing practices, this limited warranty remains in effect. However, GAF will NOT compensate you for:

- (1) Damages resulting from anything other than an inherent manufacturing defect in your shingles or accessories, such as:
 - (a) Improper fastening of your shingles or accessories or application not in strict accordance with GAF's printed application instructions, if the improper installation was the cause of the damage.
 - (b) Settlement, movement, or defects in the building, walls, foundation, or the roof base over which the shingles or accessories were applied.
 - (c) Inadequate attic ventilation.
- (2) Damages resulting from causes beyond normal wear and tear, such as:
 - (a) acts of nature, such as hail, fire, winds (including gusts) over the applicable wind speed listed above, or ice damming above the areas of your roof deck covered by a GAF Leak Barrier;
 - (b) impact of foreign objects or traffic on the roof.
 - (c) improper storage or handling of shingles or accessories.
- (3) Shading or variations in the color of your shingles or ridge cap shingles or discoloration or contamination caused by fungus, mold, lichen, algae (except for blue-green algae if your shingles or ridge cap shingles were labeled with the StainGuard® logo), or other contaminants, including that caused by organic materials on the roof.
- (4) Labor costs, except as specifically provided for above, disposal costs, tear-off costs, and costs related to underlayments (unless your claim involves a manufacturing defect in a GAF Underlayment), metal work, and flashings.
- (5) Damage to the interior or exterior of the building, including, but not limited to, mold growth.

Other Limitations Concerning Coverage

Decisions as to the extent of repair, re-cover, or cleaning required, and the reasonable cost of such work, will be made solely by GAF. GAF reserves the right to arrange directly for your shingles or accessories to be repaired, re-covered, or cleaned instead of reimbursing you for such work. The remedy under this warranty is available only for those shingles and accessories actually exhibiting manufacturing defects or algae discoloration at the time your claim is settled. Any replacement shingles or accessories will be warranted only for the remainder of the original warranty period. GAF reserves the right to discontinue or modify its shingles or accessories, including the colors available, so any replacement shingles or accessories may not be an exact match for the shingles or accessories on your roof. Even if GAF does not modify a color, replacement shingles or accessories may not match your original shingles or accessories due to normal weathering, manufacturing variations, or other factors.

Claims: What You Must Do.

You must notify GAF about any claim within 30 days after you notice a problem and provide proof of the date your shingles or accessories were applied and that you were the owner at that time (or that the warranty was properly transferred to you). If you are claiming a Lifetime warranty on any GAF Accessories, you must also provide proof of the date(s) your three or more GAF Accessories and Lifetime Shingles were applied. You must either call GAF at 1-800-458-1860 about your claim, or send a notice to GAF in writing to: GAF, Warranty Services, 1361 Alps Road, Wayne, New Jersey 07470, USA. You will then be provided with complete details about submitting your claim. GAF may require you to send to GAF, at your expense, sample shingles or accessories for testing and photographs. Within a reasonable time after proper notification, GAF will evaluate your claim and resolve it in accordance with the terms of this warranty. Any claim for shingles or accessories which have been replaced before notifying GAF of your claim may be denied. NOTE: Notice to your contractor, dealer, or home builder is NOT notice to GAF. You should retain this document for your records in the unlikely event that you need to file a claim.

Sole And Exclusive Warranty

THIS WARRANTY IS EXCLUSIVE AND REPLACES ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, WHETHER BY STATUTE, AT LAW OR IN EQUITY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. This written warranty is your exclusive warranty from GAF and represents the SOLE REMEDY available to any owner of GAF Shingles or Accessories. GAF makes NO OTHER REPRESENTATIONS, CONDITIONS, GUARANTEES, OR WARRANTIES of any kind other than that stated herein. GAF WILL NOT BE LIABLE IN ANY EVENT FOR CONSEQUENTIAL, PUNITIVE, SPECIAL, INCIDENTAL, OR OTHER SIMILAR DAMAGES OF ANY KIND, including DAMAGE TO THE INTERIOR OR EXTERIOR OF ANY BUILDING, whether for breach of this warranty, negligence, strict liability in tort, or for any other cause. Some jurisdictions do not allow limitations on or the exclusion of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

Modification Of Warranty

This limited warranty may not be changed or modified except in writing, signed by an officer of GAF. No one (other than an officer of GAF) has the authority to assume any additional liability or responsibility for GAF in connection with your shingles or accessories except as described in this warranty. This limited warranty gives you specific legal rights, and you may also have other rights which vary from jurisdiction to jurisdiction. (Note: Warranty subject to change. For current information, visit www.gaf.com or write to GAF at 1361 Alps Road, Wayne, NJ 07470, USA, Attn: Warranty Services.)

Effective Date

This limited warranty is effective for GAF Asphaltic Shingles and GAF Accessories installed after January 1, 2013.

EXHIBIT 3



Limited Warranty Information for Asphalt Shingles



Owner's Name: _____

Contractor's Signature: _____

Address: _____

Date of Application: _____

(mm) (dd) (yy)

Product Applied: _____

Contractor's Name: _____

Color: _____

Address: _____

Contract Price: _____

Number of Bundles: _____

Phone #: _____

Complete and retain for your records - do not send to IKO.

Note: This Limited Warranty form does not constitute proof of product purchase.

IKO Asphalt Shingle Limited Warranty

Congratulations on your purchase of IKO asphalt roof Shingles. Your choice gives you a roof backed by over 50 years of experience in making high quality products for homes across North America.

This brochure explains the details of the limited warranty IKO provides on your Shingles after they have been installed on your roof. **Read it carefully to ensure you are well-informed about the warranty coverage for your purchase. Also, remember that your contractor or roofer is not an employee or representative of IKO. This limited warranty can only be changed if such change is in writing and signed by an authorized corporate officer of IKO.** IKO is not bound by any guarantees, warranties or representations or any change to this limited warranty made by your contractor, roofer or by any other person not an authorized corporate officer of IKO. IKO's Limited Warranty and your coverage is detailed in this booklet (the "Limited Warranty"). If you have questions about that coverage, contact IKO directly for assistance.

There are many terms in this Limited Warranty that have specific meanings. For your convenience some of the terms are defined below:

"AR" means that this product contains a preservative to prevent discoloration by algae. Shingles which are covered by the Limited Algae Resistance Warranty set out herein provide for the cleaning of discoloration on the exposed face of certain Shingles should that discoloration be caused by certain algae growth. Only Shingles shown as "AR" in the Information Tables, and Armourshake, Cambridge HD, Cambridge, Crowne Slate, Cambridge IR, RoofShake HW and Royal Estate Shingles are covered by a Limited Algae Resistance Warranty. See the section titled "Limited Algae Resistance Warranty" for more details on this coverage.

"High Wind Application" means the installation of Shingles using the specific instructions that appear on the Shingle wrapper. Some local building codes may require additional fasteners. For "High Wind Application" of IKO Shingles, additional fasteners are required during installation. Please check your local building code and the application instructions specific to your Shingles for proper nailing and application requirements.

"IKO" in the United States means IKO Industries Inc. / in Canada it means IKO Industries Ltd.

"Iron Clad Protection" means the limited non prorated coverage provided by the IKO Limited Warranty during the Iron Clad Protection Period. Please read the section titled "IKO Iron Clad Protection Period" for more details on this coverage. The length of the Iron Clad Protection period for each Shingle is listed in the Information Tables below.

"Iron Clad Protection Period" means the initial period of the Warranty Period during which IKO provides Iron Clad Protection coverage. Please read the section titled "IKO Iron Clad Protection Period" for more details. The length of the Iron Clad Protection period for each Shingle is listed in the Information Tables below.

"Limited Warranty" means the limited warranties and your coverage provided by IKO for your Shingles as expressly set out in this document, and are the only warranties being provided by IKO.

"Maximum Liability" means the maximum obligation of IKO under the Limited Warranty, as described in the sections titled "Iron Clad Protection Period", "Beyond Iron Clad Protection Period", "Limited Wind Resistance Warranty" and "Limited Algae Resistance Warranty" whichever is applicable. Please read each of these sections carefully for more details.

"Owner" means the individual owner(s) of the single family residential home at the time that the Shingles were installed on that building. If you purchase a new residence from the builder of the home and are the first person to live in it, IKO will consider you to be the Owner, even though the Shingles had already been installed.

"Purchase" or "Purchased" means the retail purchase of the Shingles covered by this Limited Warranty.

"Shingle" or "Shingles" means the IKO asphalt shingle product identified in this Limited Warranty that was installed on the roof of the building owned by the Owner.

"Square" means 100 square feet of roof area.

"The Information Tables" means collectively the Limited Warranty Information Table and the Limited Lifetime Warranty Information Table below.

In addition to any other specific conditions set forth in this Limited Warranty, the "Warranty Conditions" are standard conditions that must be met for your IKO warranty to be valid. The Warranty Conditions include:

- The Shingles were properly installed, in strict accordance with both IKO's written installation instructions and local building code requirements; and
- The person making the Warranty claim is the Owner of the Shingles, or the person to whom the Limited Warranty was validly transferred as set out herein. For details on Warranty Transfers, please read "Transferability of Warranty" below; and
- The Shingles have a manufacturing defect that has resulted in a leak; and
- The repair or replacement must be with IKO Shingles and must be completed on the same building/structure to which the Shingles covered under this Limited Warranty were originally applied.

Depending on the type of Shingles used on the Owner's roof, other conditions described herein may also apply in order for the IKO warranty to be valid or applicable.

Limited Warranty Information Table

Name of Shingle	Warranty Period (months)	IKO "Iron Clad Protection Period" (months)	Reduction Figure (first 180 months) n*	Reduction Figure (after 180 months) m*	Maximum Liability/Dollar Limit per Square	Standard Application/High Wind Application Warranty (Mph) [km/h]	Algae Resistance† Warranty (months)
Armourshake**	Limited Lifetime†	180	Refer to Chart A	Refer to Chart A	95	110/130 [177/210]	120
Cambridge HD**	Limited Lifetime†	180	Refer to Chart A	Refer to Chart A	40	110/130 [177/210]	120
Cambridge**	Limited Lifetime†	180	Refer to Chart A	Refer to Chart A	40	110/130 [177/210]	120
Crowne Slate **	Limited Lifetime†	180	Refer to Chart A	Refer to Chart A	95	110/130 [177/210]	120
Cambridge IR**	Limited Lifetime†	180	Refer to Chart A	Refer to Chart A	75	110/130 [177/210]	120
RoofShake HW**	Limited Lifetime†	180	Refer to Chart A	Refer to Chart A	40	110/130 [177/210]	120
Royal Estate**	Limited Lifetime†	180	Refer to Chart A	Refer to Chart A	45	110/130 [177/210]	120
Marathon Ultra AR**	360	60	n/225	m/900	30	60 [97]	60
Marathon 25	300	60	n/225	m/600	30	60 [97]	N/A
Marathon 25 AR**	300	60	n/225	m/600	30	60 [97]	60
Marathon 20	240	36	n/225	m/300	30	60 [97]	N/A

Chart A – Limited Lifetime Warranty Information Table for Armourshake, Cambridge HD, Cambridge, Crowne Slate, Cambridge IR, RoofShake HW & Royal Estate Shingles

Name of Shingle	Warranty Period	IKO "Iron Clad Protection Period"	Reduction Figure for months 181-206	Reduction Figure for months 207-480	Reduction Figure for months 481+
Armourshake	Limited Lifetime†	180	n/260	384/480	432/480
Cambridge HD	Limited Lifetime†	180	n/260	384/480	432/480
Cambridge	Limited Lifetime†	180	n/260	384/480	432/480
Crowne Slate	Limited Lifetime†	180	n/260	384/480	432/480
Cambridge IR	Limited Lifetime†	180	n/260	384/480	432/480
RoofShake HW	Limited Lifetime†	180	n/260	384/480	432/480
Royal Estate	Limited Lifetime†	180	n/260	384/480	432/480

† For any non-individual owner, such as a corporation, religious entity, condominium, government entity or homeowner association, or for any non-single family residential home, the Warranty Period for these Shingles is limited to 40 years.

** Hip & Ridge Shingles used for installation of these Shingles must be Marathon Ultra AR, IKO Ultra HP, IKO Hip & Ridge 12, IKO Hip & Ridge Plus or an IKO approved equivalent product.

n* - refers to the number of months that have passed since the Shingles were installed on the building.

m* - refers to the number of months greater than 180 that have passed since the Shingles were installed on the building.

‡Algae Resistant —This article contains a preservative to prevent discoloration by algae.

EXAMPLE - A manufacturing defect resulting in leaks is found in December 2031 in Shingles Purchased with a 25 year limited warranty. The Shingles were purchased in December 2013; 18 years, or a total of 216 months have elapsed since Purchase. IKO's warranty obligation will be reduced by $(180/225 = .80) + (36/600 = .06) = .86$. So IKO's maximum obligation would be 14% $(100 - 86)$ of the cost of the replacement Shingles.

Asphalt Shingle Limited Warranty

LIMITED WARRANTY

IKO provides a Limited Warranty to the original Owner of its Shingle products. The coverage provided by this Limited Warranty is subject to the terms and conditions listed herein. This Limited Warranty is intended to provide coverage only to the Owner and only for a manufacturing defect that results in leaks. The Limited Warranty starts on the day that the original installation of the Shingles on the roof is completed, and coverage is limited to the length of time listed in the Information Tables for the specific Shingles product installed on the Owner's roof (the "Warranty Period"). The Limited Warranty provides the Owner specific legal rights, but the Owner may also have other legal rights. Those rights will vary from state to state or province to province. In situations where the coverage given includes a dollar value, it is meant to be given in the currency of the country in which the building is located.

IRON CLAD PROTECTION PERIOD

IKO offers Iron Clad Protection as set out below for every Shingle listed in the Information Tables. The length of the Iron Clad Period varies by Shingle product. Refer to the Information Tables to find the Iron Clad Protection Period for your Shingles. The Iron Clad Period starts on the day of installation of the Shingles on the Owner's roof. This coverage is limited to the amount of time shown in the Tables for your Shingles. During the Iron Clad Protection Period, IKO will, at its option, either repair or replace affected Shingles if all Warranty Conditions are met (the "Iron Clad Protection").

If there is a valid claim during the Iron Clad Period, IKO's Maximum Liability is limited to the reasonable cost of placing new Shingles on the Owner's roof. This means that IKO will supply replacement Shingles similar to those already on the roof, plus a reasonable allowance for the cost of applying the new Shingles. Other costs, such as flashings, metal work, vents or repair of any other damages or expenses incurred or claimed, removal of the existing Shingles from the roof (tear-off), and disposal of the existing Shingles, are not covered by the Iron Clad Protection or by other terms of the Limited Warranty, including during the Iron Clad Protection Period.

BEYOND IRON CLAD PROTECTION PERIOD

Once the Iron Clad Period expires, the Limited Warranty provides certain outlined coverage to the Owner for the remainder of the Warranty Period outlined in the Information Tables for the Shingle product on your roof (the "Beyond Iron Clad Protection Period"). This coverage during the Beyond Iron Clad Protection Period will apply only if the Warranty Conditions have been met.

During the Beyond Iron Clad Protection Period, IKO's Maximum Liability is the prorated portion of the replacement Shingles required at the time the claim was reported to IKO. Alternatively, if IKO decides it cannot reasonably provide replacement Shingles, IKO may offer coverage based upon the prorated value of the maximum liability per Square shown in the Information Tables. Other costs, including labor, tear-off and disposal of the existing Shingles, other Shingles, roof, flashings, metal work, vents or repair of any other damages or expenses incurred or claimed are not covered by the Limited Warranty. The formula used to calculate the coverage available is shown in the Information Tables.

LIMITED WIND RESISTANCE WARRANTY

For Armourshake, Cambridge HD, Cambridge, Crowne Slate, Cambridge IR, RoofShake HW and Royal Estate Shingles only, during the first 15 years after they are installed on the Owner's roof, the IKO Shingles carry a Limited Warranty for wind "blow-off" for Shingles lost from the roof due to wind gusts not exceeding certain maximum speeds (a "Limited Wind Resistance Warranty"). Each type of these Shingles carries a maximum wind resistance limit for this coverage. Please refer to the Information Table for the wind speed limits for the Shingles on your roof.

For all other Shingles, during the first 5 years after they are installed on the Owner's roof, the IKO Shingles carry a Limited Wind Resistance Warranty for wind "blow-off" for Shingles lost from the roof due to wind gusts not exceeding certain maximum speeds. Each type of these Shingles carries a maximum wind resistance limit for this coverage. Please refer to the Information Tables for the wind speed limits for the Shingles on your roof.

For Shingles specified below in this section, the use of a High Wind Application will increase the limit of the maximum wind resistance under the Limited Wind Resistance Warranty (a "High Wind Resistance Limited Warranty"). The wind speed limits for the High Wind Resistance Limited Warranty for those Shingles are listed in the Information Tables. If additional nails as listed are used for the following Shingles, the maximum wind speed increases to one hundred thirty (130) mph (two hundred ten (210) km/h);

- (i) three (3) additional (8 in total) nails for Crowne Slate,
- (ii) two (2) additional (6 in total) nails for Cambridge HD, Cambridge, Cambridge IR, RoofShake HW and Royal Estate,
- (iii) one (1) additional (6 in total) nail for Armourshake.

In addition, for the High Wind Resistance Limited Warranty to apply, IKO starter strip shingles must be installed at all eaves and rakes, and IKO Hip and Ridge shingles or approved equivalent must be used on all hips and ridges. Also:

- (i) the Limited Wind Resistance Warranty will only apply if: (a) the Shingles were installed using roofing nails (not staples) in strict accordance with the instructions on the wrapper and (b) for installations in Canada during the fall, winter or in cool weather, the Shingles have been manually sealed at the time of installation, and for installations at all other times in Canada, and at all times in the U.S., the Shingles have been manually sealed at the time of installation, or have had the opportunity to seal down;
- (ii) the High Wind Resistance Limited Warranty will only apply if: (a) the Shingles were installed using roofing nails (not staples) in strict accordance with the instructions on the wrapper and (b) for installations in Canada, the Shingles have been manually sealed at the time of installation, and for installations in the U.S., the Shingles have been manually sealed at the time of installation, or have had the opportunity to seal down.

Shingles that are installed in cool seasons or weather may not seal until weather conditions are adequate to allow the self seal down strip to activate. Please see the NO WARRANTY COVERAGE FOR WIND DAMAGE BEFORE SELF SEALING STRIPS SEAL paragraph in this Limited Warranty for more information regarding the self sealing strip. Please consult your roofer, shingle dealer, the product packaging or our website at www.iko.com for more information on the application instructions for your Shingles.

For valid claims under the Limited Wind Resistance Warranty (where the warranty conditions are satisfied), IKO's Maximum Liability is to provide replacement Shingles for those Shingles lost from the roof due to "blow-off", or alternatively, IKO will pay for the reasonable cost of manually sealing unsealed Shingles. Other costs, such as labor, tear-off, removal or disposal costs of Shingles, other shingles, roof, flashings, metal work, vents or repair of any other damages or expenses incurred or claimed, are not covered by the Limited Wind Resistance Warranty or otherwise.

NO LIMITED WIND RESISTANCE WARRANTY COVERAGE FOR WIND DAMAGE BEFORE SELF-SEALING STRIPS SEAL

All Shingles that contain a factory applied self sealing strip must be subjected to direct sunlight and warm temperatures for several days before full sealing will occur. Shingles installed in the fall or winter may not seal until the following spring. Shingles which do not receive direct sunlight, or which are not exposed to adequate surface temperatures may never seal. Damage to the factory self sealing strip by dust, sand or foreign matter will prevent the sealing strip from activating. This is the nature of shingles and failure to seal down under such circumstances is not a manufacturing defect. IKO will not be responsible for any blow-offs or wind damage that may occur prior to thermal sealing having occurred. After the Shingles have sealed, the Limited Warranty that commenced at installation will cover wind damage or blow-offs, in accordance with the terms listed in the "Limited Wind Resistance Warranty" section of this booklet.

LIMITED ALGAE RESISTANCE WARRANTY (Note that products covered by this section contain a preservative to prevent discoloration by algae)

Some IKO Shingles carry a Limited Warranty against discoloration caused by the development of blue-green algae on the exposed face of the Shingles (Please refer to the Information Tables to see whether your Shingles carry this coverage and for the period of coverage provided). If there is a valid claim under the Limited Algae Resistance Warranty, (where all the Warranty Conditions are satisfied), IKO's Maximum Liability is to provide the Owner with a labor payment certificate. The certificate will pay the reasonable costs of cleaning the affected Shingles up to a maximum value of \$15 per Square. This maximum value will be prorated based upon the number of months that the Shingles have been installed on the Owner's home at the time the claim is filed, divided by the maximum period of coverage listed in the Information Tables.

NON-TRANSFERABILITY OF LIMITED WARRANTY

This Limited Warranty provides rights to, and can only be enforced by the original Owner, or to a person to whom the Limited Warranty is allowed to be and is validly transferred as detailed below in the section titled "Limited Transferability of Limited Warranty". No other person or business can claim coverage or has rights under the Limited Warranty. In addition, IKO does not provide any warranty for Shingles purchased in Canada and installed in the United States or elsewhere not in Canada. Also, IKO does not provide any warranty for Shingles purchased in the United States and installed in Canada or elsewhere not in the United States.

LIMITED TRANSFERABILITY OF LIMITED WARRANTY

The Limited Warranty for your Shingles is intended to primarily provide coverage only to the original Owner of the Shingles. Certain limited provisions of the Limited Warranty and only for a limited period, as outlined below, may be transferred by the original Owner to the next property owner only once during the Limited Warranty period, and only during the first 10 years of the Warranty Period. If the original Owner dies, the Limited Warranty cannot be transferred to the Owner's estate or to anyone else. In the absence of a permissible and valid transfer of the Limited Warranty as set out herein, the Limited Warranty ends on the sale or other transfer of the property.

To transfer certain provisions of the Limited Warranty from the original Owner during the first 10 years of the Warranty Period, the Owner must complete the following steps:

- Notification of a request for transfer must be received in writing by IKO at the Warranty Services Office. Both the Canadian and US Office addresses are listed below in the section entitled "Notification of Claims". Notification must be received within 30 days of the completion of the real estate transfer.
- The transfer request must attach the original Proof of Purchase for the Shingles, and a copy of the property transfer documents.
- The transfer request must also include payment in full of a \$100 transfer fee to complete the transfer.

Except for Armourshake, Cambridge HD, Cambridge, Crowne Slate, Cambridge IR, RoofShake HW and Royal Estate Shingles, upon the sale or transfer of the property, the Iron Clad Protection Period shall automatically terminate and for an allowable and valid transfer of the Limited Warranty, the IKO Shingles will then be covered for a limited Beyond Iron Clad Protection Period on a prorated basis for the Shingles only for a period of two (2) years following the transfer of the property. Please see the Limited Warranty Information Table for the method used to calculate the Limited Warranty coverage for the two (2) year period. The Reduction Figure for these Shingles will be $n/225$.

For Armourshake, Cambridge HD, Cambridge, Crowne Slate, Cambridge IR, RoofShake HW and Royal Estate Shingles, if the transfer of the Limited Warranty occurs within the first 7 years (84 months) after installation, the remaining Iron Clad Protection Period will remain intact. See the section titled "Iron Clad Protection Period" for more information. If the transfer takes place more than 7 years after installation, the Iron Clad Protection Period shall automatically terminate and coverage will be calculated on a prorated basis for the Shingles, using the formula shown in the Information Tables. (The Reduction Figure in Chart A for months 85-120 shall be $n/260$.) Regardless of when the transfer occurs, the Warranty Period for a transferred Limited Warranty for Armourshake, Cambridge HD, Cambridge, Crowne Slate, Cambridge IR, RoofShake HW and Royal Estate Shingles is limited to 15 years from the date of original installation.

EXCLUSIONS AND LIMITATIONS

Except as and limited to what is explicitly set out in this Limited Warranty with respect to the Limited Wind Resistance Warranty and the Limited Algae Resistance Warranty, the coverage under this Limited Warranty is only for manufacturing defects that result in a leak of the Shingles on the Owner's roof, and for no other cause whatsoever. Conditions that do not result in a leak, or are not due solely to a manufacturing defect in the Shingles are not covered by the Limited Warranty or otherwise.

As a result, and without limiting the generality of the foregoing, IKO will not have any liability or obligation under the Limited Warranty or otherwise for the following:

1. Any damage that occurs during or after any improper application process, including one that fails to follow IKO's printed application instructions;
2. Any variation in the color or shading between installed Shingles on the building, including the fading or weathering of colored granules used in any of IKO's Shingle blends, backsurfacing transfer between Shingles, or asphalt staining of Shingles. IKO reserves the right to discontinue or modify any of its products, including the color blend of any Shingles, without notice to the original Owner. IKO will not be liable for any costs as a result of such modification or discontinuance of any product;
3. Any damage to the interior or exterior of any building, or any property or contents within or outside any building;
4. Any damage caused by Acts of God or other causes beyond IKO's control, including, without limitation, lightning, gale or wind (except for the coverage in the Limited Wind Resistance Warranty), hail, hurricane, tornado, earthquake, explosion, flood, fungus contamination, solid objects falling on the roof, or any other causes. This exclusion does not apply to ordinary wear and tear of Shingles caused by the elements;
5. Any damage caused by settlement, distortion or cracking of the roof deck, walls or foundation of a building. This includes failure in the materials used as a roof base, or by the presence of people, animals, machinery, equipment or any traffic of any kind on the roof;
6. Any damage caused by buckling of Shingles. The installation of Shingles on dimensional lumber (including shiplap or board decks) is not recommended as it may cause buckling of Shingles;
7. Any damage that arises after the roof is altered following the original installation of the Shingles. This includes any alteration including structural additions, changes, or replacement; or equipment installations (including but not limited to, signs, water towers, fan housings, air conditioning equipment, solar heaters, water heaters, television and/or radio antennas, satellite dishes, skylights, and equipment or machinery of any kind);
8. Any costs incurred for any, work, repairs (whether temporary or permanent) or replacements not authorized in advance in writing by IKO;
9. Costs incurred for materials, repairs or replacements where materials produced by someone other than IKO (unless authorized in advance in writing by IKO to do so);
10. Any damage that arises from any cause other than a manufacturing defect that results in a leak;
11. Any discoloration or damage due to the presence of mold, mildew, fungus, algae, biological growth or pollutant or other matter on the Shingles or roof (except for the coverage in the Limited Algae Resistance Warranty);
12. Any damage or distortion caused by inadequate ventilation either at the eaves or on the rooftop of the building. This includes failure of ventilation caused by blocked, non operative or defective vents or any other condition that renders the ventilation system ineffective. Roof system ventilation should meet local building code standards for total vent area. Ventilation must also be distributed evenly between the rooftop and the eaves of the building;
13. Any costs related to the replacement of the Shingles that is not expressly covered in this Limited Warranty. This means that unless otherwise explicitly set out in this Limited Warranty, the Limited Warranty does not cover the cost of installation, application, tear-off, removal and disposal of Shingles, other shingles, roof flashings, metal work, vents or repair of any other damages caused by or associated with any leakage, or any other costs or expenses the Owner may incur or claim;
14. Any costs related to the removal of any asbestos present in the roof on which the Shingles have been installed;
15. Any damage due to the effects of debris, resins or drippings from trees in contact with or near the Shingles. Such damage may include blisters on the Shingle surface or premature aging caused by debris or matter on the roof;
16. Any damage due to the effects of chemicals on the Shingles, whether applied to the Shingles or roof, airborne or which otherwise come in contact with the Shingles or roof. This means that this Limited Warranty does not cover the effects on Shingles or roof of any chemical including but not limited to aliphatic or aromatic solvents, chlorinated hydrocarbons, turpentine, oils, organic or inorganic polar materials or any other related materials;
17. Any damage due to the excessive use of roofing cement;
18. Any damages or failure in performance of Shingles installed over insulated roof deck panels, except as outlined below under the section "REDUCED WARRANTY COVERAGE FOR INSTALLATION OF SHINGLES ON INSULATED ROOF DECKS";
19. Any Shingle product sold with or bearing "ECONOMY NO WARRANTY" tape or marking. Such Shingle product is sold on an "As Is", no warranty basis;
20. Any damage to Shingles applied in a closed valley application, where Shingles are used to construct the valley or run-off areas on the roof. Open metal valleys are recommended for best roof performance;
21. Any claim under this Limited Warranty where the Owner deliberately or negligently misrepresents any material fact;

NO LIABILITY OR COVERAGE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES

The Limited Warranty provides coverage only for certain limited damage to Shingles that is directly caused by a manufacturing defect. IN NO EVENT SHALL IKO OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, ASSOCIATED, INCIDENTAL OR CONSEQUENTIAL DAMAGES. This means, without limiting the foregoing, that this Limited Warranty does not cover claims for: damages to homes or other structures, interiors, exteriors, furniture, contents, appliances, loss of income, loss of enjoyment, storage fees, economic loss, or any other loss or damage. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so this condition may not apply to you in those jurisdictions.

REDUCED WARRANTY COVERAGE FOR LOW SLOPE ROOFS

The Limited Warranty terms set out in this document only apply to Shingles installed on roof slopes of 4 in 12 (1:3) and steeper. The limited Warranty Period for Shingles installed on low slope roofs (i.e. those with a slope of less than 4 in 12 (1:3) and down to 2 in 12 (1:6)) is 12 years, and will be prorated for material only (with no Iron Clad Protection coverage) at an annual reduction rate of 8.33%. If certain application procedures are followed as detailed in the application instructions printed on the Shingle wrapper, the regular Limited Warranty may be available for slopes between 3 in 12 and 4 in 12 (1:4 and 1:3). Please see the product packaging or visit www.iko.com for application procedures and instructions for your Shingles, as certain Shingles may not be suitable for use on slopes below 4:12.

If you do not know the slope of your roof, please contact your contractor or roofer for assistance.

REDUCED WARRANTY COVERAGE FOR INSTALLATION OF SHINGLES ON INSULATED ROOF DECKS

The coverage under this Limited Warranty is reduced for any Shingles, which are applied to any of the following:

- a) roof deck assemblies (of slopes greater than 2 in 12) where foam insulation is prefabricated into the roof deck system (commonly known as "nail board insulation"), or
- b) where insulation is installed immediately beneath an acceptable roof deck system.

In the event that such Shingles are installed on insulated or unventilated decks the Warranty Period available to the Owner is reduced to 10 (ten) years with no Iron Clad Protection coverage. The annual reduction figure in this case shall be 10% per year.

LIMITED COVERAGE FOR REPLACEMENT SHINGLES

If IKO provides coverage under this Limited Warranty for a submitted claim, the replacement Shingles are covered by the Limited Warranty only for the remainder of the Warranty Period starting from the date of the original installation of the replaced Shingles.

SEVERABILITY

Each provision of this Limited Warranty is intended to be severable. If any provision hereof is illegal, invalid or unenforceable in whole or in part, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of the remainder hereof. Any provision hereof that is held to be illegal, invalid or unenforceable in any jurisdiction shall be illegal, invalid or unenforceable in that jurisdiction without affecting any other provision hereof in that jurisdiction or the legality, validity or enforceability of that provision in any other jurisdiction, and to this end the provisions hereof are declared to be severable.

NOTIFICATION OF CLAIMS

To receive coverage under the Limited Warranty, the following steps must be followed. This allows IKO the opportunity to review the claim and determine if the reported condition is covered by the Limited Warranty terms. To file a claim, the Owner must:

1. Contact IKO Warranty Services within thirty (30) days of becoming aware of the alleged concern. The Owner may reach IKO toll free at the numbers listed below:
 Eastern Canada 1-800-361-5836 Western Canada 1-800-521-8484 United States 1-800-433-2811
2. Provide all information requested by the IKO Warranty Claims Representative in order to open a claim. The Warranty Claims Representative will then forward a Homeowner Inquiry Survey to your attention.
3. Complete and sign the Homeowner Inquiry Survey. Return the completed Survey along with the following additional items:
 - a. A valid Proof of Purchase for your Shingles, which must identify that the Shingles are IKO Shingles, the model of IKO Shingle, the quantity of Shingles Purchased and the date of original Purchase.
 - b. The required clear color photos as detailed in the Survey information.
 - c. Two complete sample Shingles from the roof which demonstrate the alleged concern. (If claim is for color concerns, please send two full sample Shingles of the lighter color and two full samples of the darker color.)
 - d. Any other information requested by the Warranty Claims Representative during the original reporting call.
4. All requested materials should be provided to IKO within 30 days of the discovery of the alleged concern at the address listed below. The cost of shipping the materials required for the claim is the responsibility of the Owner. Claims materials should be sent to:

Canada IKO Industries Ltd. 80 Stafford Drive Brampton ON L6W 1L4	United States IKO Industries Inc. 235 West South Tec Drive Kankakee IL 60901-8426
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5. Provide IKO and its representative(s) with access to all of the IKO Shingles in question, and the roof and outside and inside of the building upon which it was installed for the purpose of investigating the claim, if IKO requests access. This request may include physical inspection of the roof surface, taking sample Shingles, and photographing the roof surface and the attic space, should IKO determine that such information is needed.

If the Owner fails to send in all requested information or does not otherwise comply with these steps, it may result in a delay in response to the claim and IKO is entitled to conclude that the claim is not valid and decline coverage under the Limited Warranty.

IKO will evaluate and respond according to any obligations under the Limited Warranty within approximately 60 days of receiving all necessary information needed to assess reported claim.

IMPORTANT NOTICES

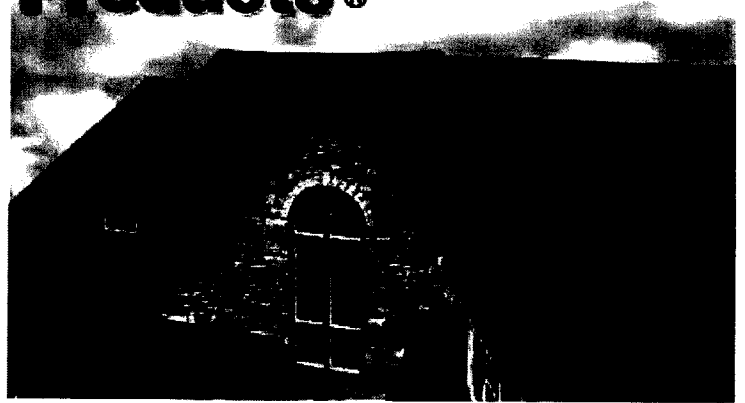
This Limited Warranty replaces all other oral or written warranties, liabilities or obligations of IKO. There are no other warranties which extend beyond the limited warranty described in this document. IKO will not be liable for any oral statement or other written statement about any IKO Shingle, whether such statements are made by an agent or employee of IKO or by any other person. IKO does not authorize its representatives, distributors, contractors or dealers to make any changes or modifications to this limited warranty. EXCEPT WHERE PROHIBITED BY LAW, THE OBLIGATION CONTAINED IN THIS LIMITED WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER OBLIGATIONS, WARRANTIES, CAUSES OF ACTION, CONDITIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND EXCEPT FOR THE OBLIGATION EXPRESSLY CONTAINED IN THIS LIMITED WARRANTY, LIABILITY IS EXCLUDED RELATING TO, IN CONNECTION WITH, OR ARISING FROM, ANY RIGHT, CLAIM, REMEDY AND CAUSE OF ACTION AGAINST IKO OR ANY OF ITS AFFILIATED OR RELATED COMPANIES, OR THEIR AGENTS, OFFICERS, DIRECTORS AND EMPLOYEES, INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY, STATUTE, TORT, NEGLIGENCE, WAIVER OF TORT AND INDIRECT, ASSOCIATED, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

BINDING ARBITRATION: EVERY CLAIM, CONTROVERSY OR DISPUTE OF ANY KIND WHATSOEVER (EACH AN "ACTION") BETWEEN YOU AND IKO (INCLUDING ANY OF IKO'S EMPLOYEES AND AGENTS) RELATING TO OR ARISING OUT OF THE SHINGLES OR THIS LIMITED WARRANTY SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION, REGARDLESS OF WHETHER THE ACTION SOUNDS IN WARRANTY, CONTRACT, STATUTE OR ANY OTHER LEGAL OR EQUITABLE THEORY. **YOU AND IKO AGREE THAT ANY ACTION WILL BE ARBITRATED ON AN INDIVIDUAL BASIS AND THAT NO CLAIM(S) WILL BE CONSOLIDATED OR AGGREGATED WITH THE CLAIM(S) OF ANY OTHER PERSONS BY CLASS ACTION, CLASS ARBITRATION, IN A REPRESENTATIVE CAPACITY OR OTHERWISE.** TO ARBITRATE AN ACTION AGAINST IKO, YOU MUST INITIATE THE ARBITRATION, FOR U.S. CLAIMS, IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT, TO BE CONDUCTED BY A SINGLE ARBITRATOR IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AND FOR CANADIAN CLAIMS, IN ACCORDANCE WITH THE ARBITRATION ACT, R.S.A. 2000, c. A-43, ALBERTA, AS MAY BE AMENDED) AND YOU MUST COMMENCE THE ARBITRATION AND PROVIDE WRITTEN NOTICE TO IKO BY CERTIFIED MAIL AT THE APPLICABLE ADDRESS NOTED ABOVE, WITHIN THE APPLICABLE TIME PERIOD PRESCRIBED IMMEDIATELY BELOW. IF YOU PREVAIL ON YOUR CLAIMS IN THE ARBITRATION, IKO WILL REIMBURSE YOU FOR ANY FILING AND ADMINISTRATIVE FEES PAID BY YOU TO THE ARBITRATION ORGANIZATION. Some jurisdictions do not allow mandatory arbitration, so the above arbitration provision may not apply to you in those jurisdictions. An Action may also be referred to another arbitration organization if you and IKO agree in writing. IKO will not elect arbitration for any Action you file in court in which you agree not to seek to recover more than \$25,000, including attorneys' fees and costs, so long as the claim is individual and pending only in that court. You may also reject this arbitration provision by notifying IKO in writing within 45 days after the installation of the Shingles or the valid transfer of this Limited Warranty to you. If any portion of this arbitration provision is not enforced in the arbitration, then either you or IKO can file a lawsuit in court to adjudicate the arbitrability of the Action and the enforceability of the portion of the arbitration provision at issue.

NO ACTION OR BREACH OF THIS LIMITED WARRANTY OR ANY OTHER ACTION AGAINST IKO RELATING TO OR ARISING OUT OF THE SHINGLES, THEIR PURCHASE OR THIS TRANSACTION SHALL BE BROUGHT LATER THAN ONE (1) YEAR AFTER ANY CAUSE OF ACTION HAS ARISEN OR ACCRUED. IN JURISDICTIONS WHERE STATUTORY CLAIMS OR IMPLIED WARRANTIES AND CONDITIONS CANNOT BE EXCLUDED, ALL SUCH STATUTORY CLAIMS, IMPLIED WARRANTIES AND CONDITIONS AND ALL RIGHTS TO BRING ACTIONS FOR BREACH THEREOF EXPIRE AFTER ONE (1) YEAR, OR SUCH LONGER PERIOD OF TIME IF MANDATED BY APPLICABLE LAWS, AFTER THE PURCHASE OF THE SHINGLE PRODUCT. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY OR CONDITION LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU IN THOSE JURISDICTIONS.

This Limited Warranty applies to IKO Shingles sold on or after March 24, 2014 and supersedes all previously published warranties.

EXHIBIT 4



Shingle WARRANTY



*Available with
certain shingles.*

Please refer to warranty for details.

Shingle and Accessory Warranty

Thank you for choosing the Malarkey Roofing Products® shingle (described in Table 1) for your recent roofing project. Since 1956, Malarkey Roofing Products® (Malarkey) has been focused on building fine quality roofing products and we want you to focus your purchasing decision on the product rather than a warranty. That is why Malarkey offers a straightforward and simple-to-understand limited material product warranty. This warranty covers the Malarkey shingles listed in Table 1, as well as Malarkey accessory products (the "Malarkey Accessory Products") used as part of the system installation, including Malarkey Hip and Ridge shingles, Smart Start™ starter shingles, Right Start™ UDL, Arctic Seal™ self-sealing ice and water shield or SecureStart™ Synthetic Underlayment. We want you to understand our warranty, and if you have any questions, refer to our website at WWW.MALARKEYROOFING.COM or contact our technical services department at (800) 545-1191.

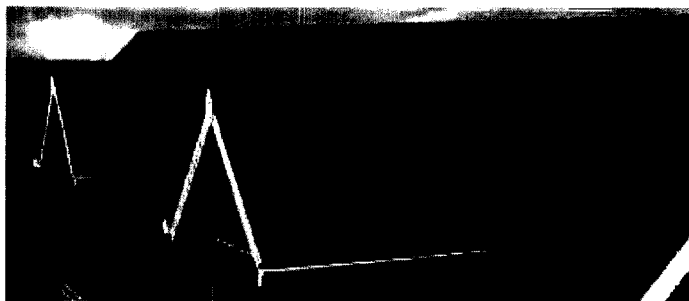
For certain Malarkey shingles (listed in Table 1), a LIMITED LIFETIME WARRANTY against manufacturing defects is offered to individual homeowners for detached single family housing used as their residence. When Malarkey LIMITED LIFETIME WARRANTED shingles are installed with two or more of the Malarkey Accessory Products mentioned above, the Malarkey accessory items are also covered by the LIMITED LIFETIME WARRANTY. Other types of properties (e.g., corporations, government agencies, schools, apartment buildings, condominiums, homeowner associations or cooperative housing arrangements, trusts, religious organizations and any other type of building that is not a single family detached residence), are limited to the warranty period that is also listed in Table 1, under "TERM (Not Primary Residence)".

LIFETIME means as long as you, the original owner (and if transferred within the Right Start™ Period, the subsequent owner), owns the property where the Malarkey shingles and accessories are installed.

Malarkey offers comprehensive warranty coverage with:

- ▶ **Right Start™ Period:** Malarkey's non-prorated warranty period designed to protect your shingle investment. The initial non-prorated warranty period as outlined in Table 1, with 100% warranty coverage.
- ▶ **Enhanced Wind Warranty Option:** Enhanced Wind Warranty protection is available when you install a system of Malarkey products.
- ▶ **Transferability:** During the Right Start™ period the Warranty may be transferred to the subsequent owner, entitling them to the same coverage as the original owner.
- ▶ **Scotchgard® Protection:** Malarkey shingles that feature the Scotchgard™ Algae Resistant Roof System are warranted to resist any discoloration or staining due to algae growth for twenty (20) years from the date of installation.

We strongly believe that it is the roofing material, not the Warranty, which protects your home and family. We urge you to consider the physical attributes and qualities of a shingle product before you purchase specific roofing products.



RIGHT START™ PERIOD:

If, during the Right Start™ Period (listed in Table 1) of this warranty, the shingles are found to have manufacturing defects, Malarkey shall, at its option repair, replace or provide payments (which can, at Malarkey's option, be fulfilled by providing replacement materials) to the owner of the roof of the defective material. During the Right Start™ Period, Malarkey will pay for installation of shingles and a reasonable cost for underlayment and other materials. No payment will be made for tear off or disposal. Malarkey's maximum liability under this warranty shall be equal to the dollar limit expressed in Table 1, plus reasonable installation costs as defined by RS Means^{®2}.

After the Right Start™ Period, Malarkey's maximum repair, replacement or payment obligation (which can, at Malarkey's option be fulfilled by providing replacement materials only), for defective materials which cause leaks shall be an amount not to exceed the maximum dollar liability expressed in Table 1 of this warranty, less a percentage based on the number of months elapsed in the warranty period divided by the number of months of the applicable LIMITED LIFETIME WARRANTY, set forth in Table 1, less all sums previously paid under this warranty.

² RS Means®, a product line of Reed Construction Data, is North America's leading supplier of construction cost information. For more information, visit WWW.RSMEANS.COM.

LIMITED LIFETIME WARRANTY shingles retain a portion of their value as stated in Table 1. LIMITED LIFETIME WARRANTY shingles stop depreciating when these shingles reach 80% of the applicable depreciation rate set forth in Table 1. For instance, The Alaskan® Scotchgard™ stops depreciating at 336 months of service (420 months x 0.80) and Highlander-CS® stops depreciating at 288 months (360 months of service x 0.80).

ACCESSORY WARRANTY FOR MANUFACTURING DEFECTS:

Malarkey accessories used with any brand of Malarkey LIMITED LIFETIME WARRANTY Shingles.

When you install two or more of the Malarkey Accessory Products (listed on page 1) on your roof with any brand of Malarkey LIMITED LIFETIME WARRANTY Shingles, your Malarkey Accessory Products carry a LIMITED LIFETIME WARRANTY (as defined in the LIMITED LIFETIME WARRANTY section) against manufacturing defects and a Right Start™ Period matching the shingle Right Start™ Period. When you install one of the Malarkey Accessory Products on your roof with any brand of Malarkey LIMITED LIFETIME WARRANTY shingles, your Malarkey Accessory Products carry a 20-year warranty against manufacturing defects and a Right Start™ Protection Period of 5 years.

Malarkey accessories used with any brand of Malarkey non-LIMITED LIFETIME WARRANTY Shingles

When you install one or more of the Malarkey Accessory Products on your roof with any Malarkey brand of non-LIMITED LIFETIME WARRANTY shingles, your Malarkey Accessory Products carry a 10-year warranty against manufacturing defects and a Right Start™ Protection Period of 3 years.

TABLE 1

SHINGLE	TERM	TERM (NOT PRIMARY RESIDENCE)	WIND MPH (KPH)	ENHANCED WIND†	RIGHT START™ PERIOD	DOLLAR LIMIT/ SQ	REDUCTION PER MONTH*
3-TAB SHINGLES							
The Alaskan® 	Lifetime*	35	110 (177)	120 (193)	10 years	\$90	1/420
LAMINATE SHINGLES							
Highlander-CS®	Lifetime*	40	110 (177)	130 (209)	10 years	\$80	1/480
Highlander-CS® 	Lifetime*	40	110 (177)	130 (209)	10 years	\$85	1/480
Northwest-XL™	Lifetime*	40	110 (177)	130 (209)	12 years	\$90	1/480
Northwest-XL™+ 	Lifetime*	40	110 (177)	130 (209)	12 years	\$95	1/480
Legacy®	Lifetime*	50	110 (177)	130 (209)	15 years	\$120	1/600
Legacy® 	Lifetime*	50	110 (177)	130 (209)	15 years	\$125	1/600
Ecoasis Premium™ 	Lifetime*	50	110 (177)	130 (209)	15 years	\$160	1/600
ELEGANT HEAVYWEIGHT SHINGLES							
Windsor™ 	Lifetime*	50	110 (177)	140 (225)	15 years	\$220	1/600
TRADITIONAL 3-TAB SHINGLES							
Dura-Seal™ 20	240 Months	20	60 (97)	n/a	3 years	\$50	1/240
Dura-Seal™ 25	300 Months	25	60 (97)	n/a	3 years	\$60	1/300
Dura-Seal™ 25 AR	300 Months	25	60 (97)	n/a	3 years	\$65	1/300

* All LIMITED LIFETIME shingles stop depreciation when the shingles reach 80% of the depreciation rate. For instance, The Alaskan® Scotchgard™ stops depreciating at 336 months of service (420 months x 0.80), Highlander-CS® and Highlander-CS® Scotchgard™ stop depreciation at 288 months of service (360 months x 0.80), Legacy®, Legacy® Scotchgard™, Ecoasis Premium™ Scotchgard™ and Windsor™ Scotchgard™ stop depreciation at 480 months (600 months x 0.80).

† Northwest-XL™ without Scotchgard™ is available from our South Gate, CA plant for certain regions.

‡ See Limited Wind Warranty & Enhanced Wind Warranty section for details.

The LIMITED LIFETIME WARRANTY is only available to individual homeowners. The limited warranty period for shingles installed on premises not used by individuals as their residence is limited to the number of months listed in the proration period with a Right Start™ Period of the associated shingle.

LIMITED WIND WARRANTY & ENHANCED WIND WARRANTY:

Malarkey warrants that for up to ten (10) years from the date of installation [twelve (12) years for Legacy®, Legacy® Scotchgard™, Ecoasis Premium™ Scotchgard™, & Windsor™ Scotchgard™] the Malarkey shingles will resist damage from winds up to the wind speed listed in Table 1, Column "Wind", subject to the terms and limitations listed below.

Malarkey's wind warranties apply only if the shingles are sealed, whether by hand sealing or by activation of the self-sealing strips. Hand sealing is strongly recommended when the average daytime temperature is not sufficient for the shingles to self-seal during installation. Malarkey's maximum liability under this warranty is, at its option, to repair or replace the defective shingles, or to pay to the owner an amount not exceeding the dollar limits expressed in Table 1, plus reasonable installation costs as defined by RS Means®. No amount shall be paid for removal or disposal of damaged shingles. In high wind areas, as listed by the National Weather Service, Malarkey strongly recommends that the shingles be attached with six (6) nails (nine (9) nails for Windsor™) as per Malarkey's printed instructions.

An Enhanced Wind Warranty (winds up to the wind speed listed in Table 1, Column "Enhanced Wind") is available. In addition to all LIMITED LIFETIME WARRANTY conditions listed, roof system must include:

1. Attachment of Malarkey shingles using six (6) nails [nine (9) nails for Windsor]
2. Malarkey Smart Start™ starter shingle
3. One or more of the following
 - a. Right Start™ UDL
 - b. Arctic Seal®
 - c. SecureStart™
 - d. Any Malarkey Hip and Ridge shingle [EZ-Ridge™² or Hip & Ridge Strips²]³.

ALGAE RESISTANT ROOFING SYSTEM LIMITED WARRANTY:

Malarkey's shingles featuring Scotchgard™ Algae Resistant Roofing offer our highest level of algae resistance on a shingle. Should the shingles purchased feature the Scotchgard™ Algae Resistant Roofing System from 3M⁴, Malarkey warrants that the shingles will resist discoloration or staining due to algae growth for a period of twenty (20) years from the date of installation subject to conditions and limitations listed below. Malarkey roofing systems that include Scotchgard™ warranties also require algae resistant hip and

ridge shingles [EZ-Ridge™, Hip & Ridge Strips³ featuring the Scotchgard™ Algae Resistant Roofing System from 3M.

Malarkey's maximum liability under this warranty is to, at its option, repair or replace the defective shingles or to pay to the owner an amount not exceeding the dollar limits expressed in Table 1 and reasonable installation costs as defined by RS Means® [non-prorated for twelve months, prorated after twelve months]. For the first twelve (12) months from the date of installation, the payment to the owner for those shingles which exhibit discoloration due to algae will be an amount not exceeding the dollar limits expressed in Table 1 and reasonable installation costs for your area as defined by RS Means®. During the remaining warranty period, Malarkey's maximum repair or replacement payment obligation will be an amount not to exceed the maximum dollar liability expressed in Table 1 less a percentage which is based on the number of months elapsed in the warranty period divided by the warranty period length (years). Any costs in excess of the prorated adjustment are the owner's responsibility.

Malarkey's Algae Resistant (AR) shingles are warranted against discoloration caused by the development of blue-green algae (primarily the cyanobacteria *Gloeocapsa* sp.), for a period of ten years [prorated after twelve (12) months]. For valid claims (meeting all warranty requirements), Malarkey may, at its discretion repair, replace or offer a labor payment to cover the reasonable cost for cleaning the affected shingles up to a maximum of \$15/square. After the first year, Malarkey's maximum payment under this warranty will be prorated based upon the number of months the shingles have been installed on the roof up to the maximum warranty period of 120 months. After 120 months, there is no remedy for algae on the AR shingles. Malarkey AR shingles require algae resistant hip and ridge shingles* [EZ-Ridge™, Hip & Ridge Strips]³ featuring the Scotchgard™ Algae Resistant Roofing System from 3M. *Use of Dura-Seal™ 25 AR as hip and ridge shingles may only be used when Dura-Seal™ 25 AR is used as a field shingle.

TRANSFERABILITY:

During the Right Start™ Period the warranty may be transferred, but only by the original property owner to the first subsequent owner, after notification to Malarkey as described on the following page. If the transfer occurs during the Right Start™ Period, the second owner is entitled to the same coverage as the original owner. If the transfer occurs after the Right Start™ Period, the warranty to the subsequent owner will be limited to two (2) years from the date of the real estate title transfer. The warranty coverage will be as stated after the Right Start™ period.

² Malarkey EZ-Ridge™, EZ-Ridge™ XT, Hip & Ridge Strips and 12" Hip & Ridge Strips featuring Scotchgard™ Algae Resistant Roofing System from 3M.

³ Some contractors adapt standard roofing shingles for use as a hip and ridge shingle. If your contractor uses this method, the Enhanced Wind Warranty will apply when The Alaskan® Scotchgard™ is used as hip and ridge shingles; Scotchgard™ warranty applies with use of The Alaskan® Scotchgard™ roofing shingles. Use of Dura-Seal shingles for hip and ridge will NOT qualify toward Enhanced Wind Warranty.

⁴ Scotchgard is a trademark of 3M.

TRANSFERABILITY (CONTINUED):

To transfer the warranty, the current holder of the warranty must notify the Malarkey Warranty Claim Department (see Claims Procedure described on page 5) in writing within thirty (30) days from the date of title that the property has changed. The following information must be provided: the name and address of the current holder of the warranty, the date of the original completed installation, proof of purchase, the address where the shingles are installed, the name and address of the new owner, and the date of title transfer. If Malarkey is not notified of the transfer as outlined above, the warranty shall not transfer and Malarkey will have no further liability of any nature to the warranty holder.

EXCLUSIONS:

The LIMITED LIFETIME WARRANTY covers only manufacturing defects in Malarkey shingles. This warranty covers the asphalt shingle products listed in Table 1 that are sold and installed in the U.S. and Canada. Warranty claims that Malarkey determines are cosmetic in nature are not considered manufacturing defects. It does not cover other products such as flashing and metal work, or damage to shingles that is attributable in whole or in part to other causes including, but not limited to:

1. Improper fastening or installation not in accordance with Malarkey's written instructions.
2. Improper ventilation. At minimum, ventilation must comply with FHA Minimum Property Standards.
3. Improper transportation, storage, or handling of shingles and/or accessories.
4. Traffic on the roof.
5. Defects in, or failure of, flashing or metal work or material used as a roof face over which the shingles are applied.
6. Equipment installations, including solar panels, structural changes or other alterations to the roof after application of the shingles.
7. Settlement, movement, distortion, failure or cracking to the roof decks, walls or foundations of the building.
8. Damage to shingles, roof deck, or structure due to ice damming or water back-up.
9. Variation in color (shading), which may occur from the positioning of colored granules on the shingles. Shading or discoloration of shingles or ridges due to algae (excluding AR or Scotchgard™ shingles as described in the "Algae Resistant Roofing System Limited Warranty"), mold, mildew, or other vegetation, organic compounds, paints, chemicals, or similar materials.
10. Granule sloughing due to excessive granules on the shingles.
11. Impact of foreign objects.
12. Violent or unusual weather conditions, such as flooding, tornadoes, hailstorms, winds in excess of Wind Speed Limits (Table 1), or other 'Acts of God'.
13. Fire, acts of vandalism, and other casualties.



Malarkey reserves the right to discontinue or modify any shingles or accessories, including the colors offered, therefore replacement shingles may not be an exact match. Even if the same color and style of shingle or accessory is available, the product may not appear to be an exact match to the existing shingles or accessories due to the normal weathering, aging, or other factors.

All shingles, which contain a factory-applied self-sealing strip, must be subjected to sunlight for several days before full sealing will occur. Shingles installed in fall or winter may not seal until the following spring; consequently, the shingles should be hand-sealed. Shingles which do not receive direct sunlight or which are not exposed to adequate surface temperatures may never seal. This is the nature of the shingles and failure to seal down under such circumstances is not a manufacturing defect. If any self-sealing shingles that have been exposed to adequate temperatures and direct sunlight fail to activate the



self-sealing strips during the first year after application, Malarkey will have no liability under this warranty for such defects unless proper written notification has been made prior to the end of the first year after installation and Malarkey has been allowed the opportunity to hand seal any non-sealed shingles at its own expense.

Malarkey will not be responsible for the cost of removal and replacement of any equipment or overburden installed on the roof in order to conduct repairs on valid claims, such as, but not limited, to solar panels.

CLAIMS PROCEDURE:

1. Warranty claims shall be made in writing by certified or registered mail to the address below and accompanied by proof of purchase. Warranty claims must be made within 30 days of discovery and prior to any repairs being made.

Malarkey Warranty Claim Department,
P.O. Box 17217, Portland, OR 97217

2. Malarkey will be given the opportunity to inspect the roof and to be provided with samples before any steps are taken to repair the roof. Any repairs made prior to or during the investigation period without Malarkey's prior written approval, will be at the owner's expense.
3. Malarkey may require you to send to Malarkey, at your expense, sample shingles or accessories for testing and photographs.
4. After verification that the shingles are defective, Malarkey will perform its obligations under these warranties within forty-five (45) days of receipt of notice, unless performance is delayed by causes beyond Malarkey's control. Any cost in excess of the prorated adjustment will be the owner's responsibility.

SOLE AND EXCLUSIVE WARRANTY:

THE LIMITED LIFETIME WARRANTY, LIMITED OR ENHANCED WIND WARRANTY, AND LIMITED ALGAE RESISTANCE WARRANTY LISTED ON THE PREVIOUS PAGE ARE THE ONLY EXPRESS WARRANTIES MADE BY MALARKEY IN CONNECTION WITH THE SALE OF ITS PRODUCTS. MALARKEY WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR DAMAGE TO ANY BUILDING OR CONTENTS, OR INJURY TO PERSONS, OR FOR ANY CONSEQUENTIAL DAMAGES RESULTING FROM BREACH OF THE WARRANTY, OR ANY OTHER WARRANTY OR CONDITION IMPLIED BY LAW OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS. NO PERSON IS AUTHORIZED TO ALTER THESE LIMITED WARRANTIES EITHER ORALLY OR IN WRITING. IN NO EVENT SHALL MALARKEY'S LIABILITY EXCEED

THE REASONABLE COST OF SHINGLES AND LABOR TO REPLACE OR REPAIR THE DEFECTIVE SHINGLES. MALARKEY RETAINS THE RIGHT TO MAKE THE SOLE DETERMINATION IF THE PRODUCT IS DEFECTIVE OR NOT.

Some states or provinces do not allow these exclusions or limitations, or incidental or consequential damages, so this exclusion may not apply to you. This limited warranty may not be modified or changed except in writing signed by an officer of Malarkey. No one (other than an officer of Malarkey) has the authority to assume any additional liability or responsibility for Malarkey in connection with the shingles and accessories except as described above.

This warranty gives you specific legal rights, and you may also have other rights which vary from state to state and from province to province.

The parties agree that any condition or claims relating to this warranty shall be first submitted to mediation under the construction industry arbitration and mediation rules of the American Arbitration Association (or other mutually acceptable arbitrator). No court or other tribunal shall have jurisdiction until the arbitration is completed.

Malarkey reserves the right to discontinue or modify any of its products, including the color blend of said shingles, without notice to the owner and shall not be liable to the owner as a result of this modification or discontinuance.

YOUR CHOICE WARRANTY OPTION:

If you prefer another manufacturer's limited warranty coverage for "like" products rather than Malarkey's limited warranty, you may elect to have Malarkey honor the terms and conditions of our competitor's limited warranty in place of the Malarkey limited warranty. To do this, you must go online to WWW.MALARKEYROOFING.COM for details of the Your Choice Warranty. If you select another manufacturer's limited warranty coverage, Malarkey will provide limited warranty coverage based on that competitor's current published limited warranty at time of purchase.

SHINGLE AND ACCESSORY WARRANTY REGISTRATION:

Registration of the warranty is not required but is recommended. If you choose to register your roofing installation, complete the online Shingle Warranty Form at WWW.MALARKEYROOFING.COM (found in "Warranties" in the "Residential" or "Commercial" sections). Or, fill out the attached Shingle Warranty form and send registered mail to Malarkey Roofing Products®, P.O. Box 17217, Portland, OR 97217.
Retain a copy for your records.

The owner should retain all documents and proof of purchase of Malarkey products for submission to Malarkey for validation of claims.

5. "Like" products are defined in the "Warranty" section of Malarkey's website, WWW.MALARKEYROOFING.COM.

Thank you again for choosing
the Malarkey Roofing Products®
Shingle for your recent roofing
project.

- If you choose to register your
roofing installation, complete
the online Shingle Warranty
Form at:
WWW.MALARKEYROOFING.COM
(found in "Warranties" in the
"Residential" or "Commercial"
sections).

Or, fill out the attached Warranty
form and send registered mail to
Malarkey Roofing Products,
P.O. Box 17217,
Portland, OR, 97217.

Retain a copy for your records.

- * The owner should retain all
documents and proof of
purchase of Malarkey products
for submission to Malarkey for
validation of claims.

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WARRANTY REGISTRATION FORM - PLEASE PRINT OR TYPE

Please fill out, detach, and send registered mail to:
Malarkey Roofing Products®
P.O. Box 17217, Portland, OR 97217

Installation Date: _____

Building Owner Name: _____ Phone: _____

Address: _____ City: _____ State/Prov.: _____ ZIP/PC: _____

Owner e-mail: _____

Project Name: _____

Address: _____ City: _____ State/Prov.: _____ ZIP/PC: _____
(If different from Building Address)

Installer Company Name: _____ Phone: _____

Address: _____ City: _____ State/Prov.: _____ ZIP/PC: _____

Installer Contact Name: _____ Phone: _____

Installer e-mail: _____

Shingle Color: _____ Number of Squares Installed: _____

Run Date on Shingle Bundle: _____

MALARKEY SHINGLE INSTALLED (PLEASE CHECK ONE)		ENHANCED WIND WARRANTY SELECTED QUALIFYING PRODUCTS INSTALLED	
3-TAB	LAMINATE (CONT.)	☐ Smart Start™ (REQUIRED)	☐ 6 Nails Used (REQUIRED) (9 NAILS USED FOR WINDSOR)
☐ Dura-Seal™ 20	☐ Legacy®	AND , at least one of the following:	
☐ Dura-Seal™ 25	☐ Legacy® 		
☐ Dura-Seal™ 25 AR	SOLAR REFLECTIVE		
☐ The Alaskan® 	☐ Ecoasis Premium™ 		
	ELEGANT HEAVYWEIGHT	☐ 8" EZ-Ridge™ 	☐ Arctic Seal®
	☐ Windsor™ 	☐ 10" EZ-Ridge™ XT 	☐ Right Start™ UDL
LAMINATE		☐ 10" Hip & Ridge Strips 	☐ SecureStart™
☐ Highlander-CS™		☐ 12" Hip & Ridge Strips 	
☐ Highlander-CS™ 		☐ Some contractors adapt roofing shingles for use as a hip and ridge shingle. If your contractor uses this method, the Enhanced Wind Warranty will apply when The Alaskan® (230) is used as hip and ridge shingles. Use of Dura-Seal shingles for hip and ridge will NOT qualify toward Enhanced Wind Warranty.	
☐ Northwest-XL™			
☐ Northwest-XL™ 			

Please fill-out this form and save for your records.

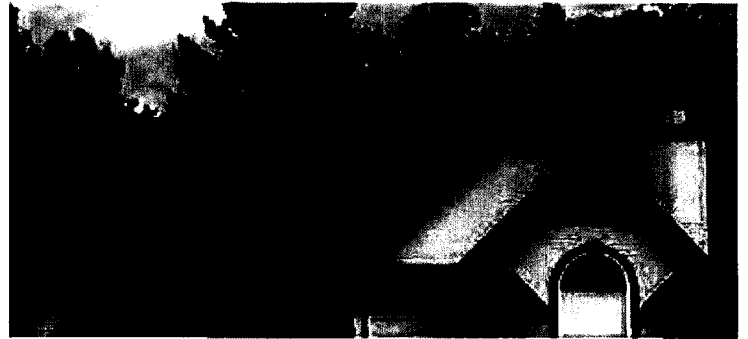
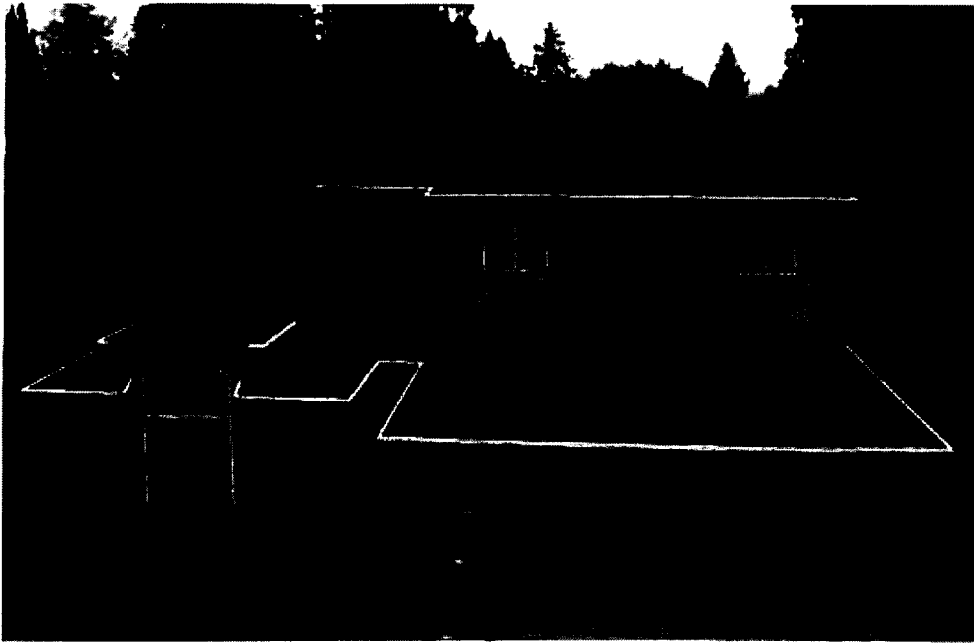
Installation Date: _____

Installer Contact Name: _____ Phone: _____

Installer e-mail: _____

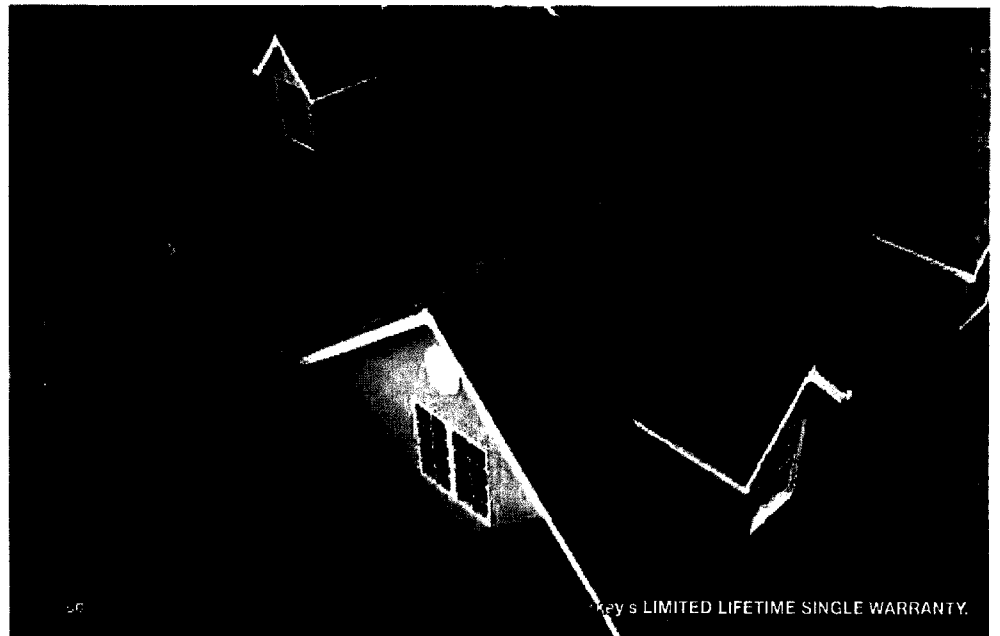
Shingle Color: _____ Number of Squares Installed: _____

MALARKEY SHINGLE INSTALLED (PLEASE CHECK ONE)		ENHANCED WIND WARRANTY SELECTED QUALIFYING PRODUCTS INSTALLED	
3-TAB	LAMINATE (CONT.)	☐ Smart Start™ (REQUIRED)	☐ 6 Nails Used (REQUIRED) (9 NAILS USED FOR WINDSOR)
☐ Dura-Seal™ 20	☐ Legacy®	AND , at least one of the following:	
☐ Dura-Seal™ 25	☐ Legacy® 		
☐ Dura-Seal™ 25 AR	SOLAR REFLECTIVE		
☐ The Alaskan® 	☐ Ecoasis Premium™ 		
	ELEGANT HEAVYWEIGHT	☐ 8" EZ-Ridge™ 	☐ Arctic Seal®
	☐ Windsor™ 	☐ 10" EZ-Ridge™ XT 	☐ Right Start™ UDL
LAMINATE		☐ 10" Hip & Ridge Strips 	☐ SecureStart™
☐ Highlander-CS™		☐ 12" Hip & Ridge Strips 	
☐ Highlander-CS™ 		☐ Some contractors adapt roofing shingles for use as a hip and ridge shingle. If your contractor uses this method, the Enhanced Wind Warranty will apply when The Alaskan® (230) is used as hip and ridge shingles. Use of Dura-Seal shingles for hip and ridge will NOT qualify toward Enhanced Wind Warranty.	
☐ Northwest-XL™			
☐ Northwest-XL™ 			



P.O. Box 17217, Portland, OR 97217
 503.283.1191 | 800.545.1191 | Fax: 503.289.7644
WWW.MALARKEYROOFING.COM

Rev. 5/14



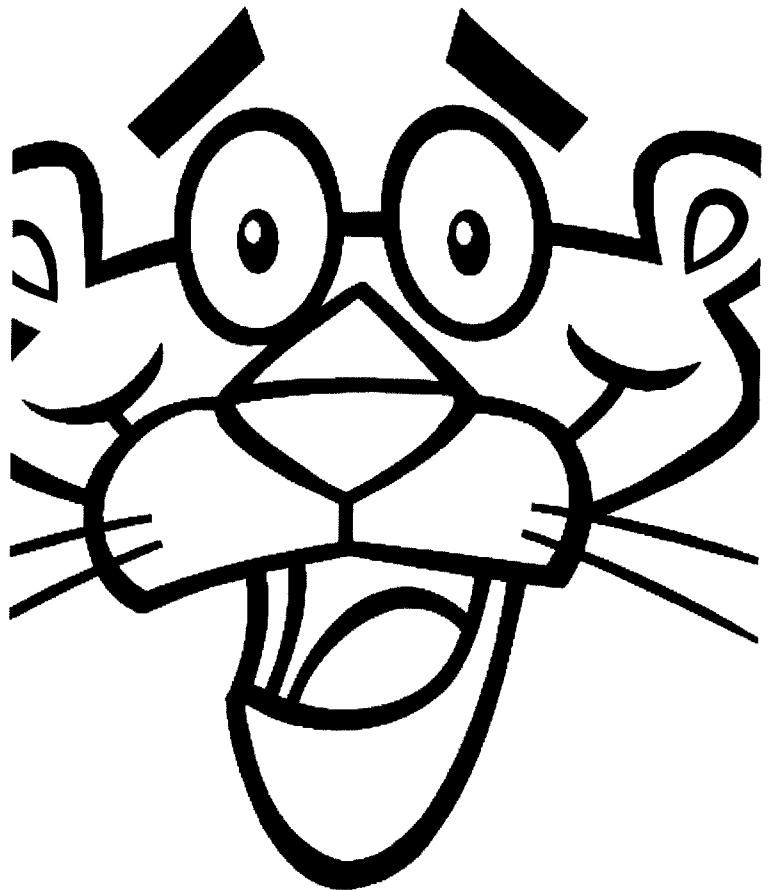
Malarkey's LIMITED LIFETIME SINGLE WARRANTY.

EXHIBIT 5



Standard Product Limited Warranty

on Roofing Shingles



**OWENS CORNING
ROOFING AND ASPHALT, LLC**
ONE OWENS CORNING PARKWAY
TOLEDO, OHIO, USA 43659

1-800-GET-PINK®
www.roofing.owenscorning.com

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Standard Product Limited Warranty on Roofing Shingles.

Limitations on the transferability of this warranty are set forth herein.

Introduction

Thank you for your recent purchase of Owens Corning® roofing shingles manufactured by Owens Corning Roofing and Asphalt, LLC ("Owens Corning"). We believe we manufacture the highest quality and most attractive shingles available anywhere, and that is why we stand behind them with one of the best warranties in the industry. We have attempted to write this warranty in clear, plain-English terms, including the limitations and restrictions, so you will fully understand the warranty we are making to you. However, the terms contained herein are subject to change without notice. If anything in this warranty is not clear to you, please call us at 1-800-ROOFING or visit our Web site at www.roofing.owenscorning.com.

Who Is Covered

Your property must be located in the United States or Canada and you must be the original consumer purchaser (i.e., the property owner, not the installer or contractor), or the first transferee from the original consumer purchaser (Owner) of one of our shingle products listed in the chart at the end of this warranty, you are entitled to the benefits of this warranty.

What Is Covered

We warrant that your Owens Corning® shingles are free from any manufacturing defects which materially affect their performance on your roof during the Tru PROtection® coverage period or that cause leaks for the balance of the applicable warranty period.

How Long Are You Covered

The length of your warranty depends on the type of Owens Corning® shingles you purchased. See the chart at the end of this warranty for the specific warranty period that applies to your shingles.

1. **Tru PROtection® Coverage Period**—During the Tru PROtection coverage period of this warranty, Owens Corning will, at its option and subject to certain limitations, compensate you to either repair, replace or recover shingles Owens Corning determines are defective. The compensation provided by Owens Corning is limited to the cost of replacing Owens Corning® shingles and the labor directly required to repair, replace or recover such defective shingles as reasonably determined by Owens Corning. Our compensation will not cover any underlayment, metalwork, flashings or other related work, and we will not cover the cost to remove or dispose of your shingles. The Tru PROtection coverage period does not apply to Wind and Algae coverage. Please see "What About Wind Resistance" and "What About Algae Resistance" portions of this warranty for applicable coverage.
2. **Prorated Period**—Once the Tru PROtection coverage period for the Owens Corning® shingles purchased has expired, the prorated period will begin. Owens Corning® shingles will be covered, but labor will not be covered during the prorated period, and we will take into account the number of years of use you have enjoyed from the original installation date through the date of your claim, and reduce the amount of our compensation to you accordingly. That is, we will prorate the amount of our compensation to you through the date of your claim for any manufacturing defects that cause leaks for the balance of the applicable warranty period. For example: If you have a twenty-five (25) year warranty and you make your claim anytime in the fifteenth (15th) year of the warranty, our compensation to you will be reduced by 14/25ths of the Owens Corning® shingle cost at the time of purchase. For lifetime shingle coverage (for as long as owner owns home), see the "Limited Lifetime Shingle Proration Table".
3. **Other Types of Structures**—The coverage for all Owens Corning® shingles offered by this warranty applies only to single family detached homes. In the instance of shingles purchased or installed upon property owned by, for example, corporations, governmental agencies, partnerships, trusts, religious organizations, schools, condominiums or cooperative housing arrangements, or installed on apartment buildings or any other type of building or premises not used by individual homeowners as their residence, the warranty period for lifetime shingles will be forty (40) years from the original installation date of the shingles, and the Tru PROtection coverage period will be five (5) years. For lifetime shingle coverage (for as long as owner owns home), see the "Limited Lifetime Shingle Proration Table".

Limited Lifetime^A Shingle Proration^A Table

Structure/Owner	Tru PROtection® Period Years 1-10	Prorated Period Years 11-40	Prorated Period Years 41 and Beyond
Single family detached home owned by individuals	100%	80% reduced by 2% every year thereafter until year 40	20%
Structure/Owner	Years 1-5	Years 6-40	Years 41 and Beyond
Any other types of structures or owners	100%	87.5% reduced by 2.5% every year thereafter until year 40	No coverage

^A For as long as owner owns home.

4. **Exceptions**—At all times, Owens Corning's obligation of compensation for repair, replacement, or prorated portion of the original purchase price of the defective shingles is subject to certain limitations. Owens Corning will not provide compensation for any underlayment, metalwork, flashings or other related work, and we will not compensate for the cost to remove or dispose of your shingles.
5. **What About Wind Resistance**—Your shingles contain asphalt sealant that requires direct warm sunlight for several days (Thermal Sealing) in order to seal properly. If your shingles are installed during a period of cool weather, they may not adequately seal until the season changes or the weather warms, and if your shingles never receive direct sunlight or are not exposed to adequate surface temperatures, they may never achieve Thermal Sealing. Prior to Thermal Sealing, your shingles are more vulnerable to blow-offs and wind damage. This is the fundamental nature of shingles and not a manufacturing defect, and we are not responsible for any blow-offs or wind damage that may occur prior to Thermal Sealing having occurred. After your shingles have achieved Thermal Sealing, however, they will be covered under this warranty if they experience blow-offs or wind damage in winds up to the levels listed in the chart at the end of this warranty. HOWEVER, THE COVERAGE AGAINST SHINGLE BLOW-OFFS OR WIND DAMAGE IS IN EFFECT FOR A PERIOD OF FIFTEEN (15) YEARS FOR LIFETIME SHINGLES AND FIVE (5) YEARS FOR ALL OTHER SHINGLES FROM THE ORIGINAL DATE OF INSTALLATION. Owens Corning will be liable only for the reasonable cost of replacing blown-off shingles (to include material and labor during the applicable Tru PROtection warranty period) and the reasonable cost of manually sealing the unsealed shingles remaining on the roof. Please refer to the "Transferability of This Warranty" below for applicable transfer coverage.
6. **What About Algae Resistance**—If the shingles that you purchased were not specifically labeled as "Algae Resistant" (AR), then any discoloration caused due to algae is not covered by this warranty as explained in the section below, "What Is Not Covered". However, if you did purchase AR shingles, they are covered for the period described in the chart at the end of this warranty (prorated after the first year) following the date of installation ("AR Warranty Period") against brown-black staining caused due to growth of blue-green algae (primarily the cyanobacteria *Gloeocapsa magma*). We do not cover the effects of other growth such as mold, lichen and green algae. If brown-black staining occurs during the AR Warranty Period, you will be entitled to the following remedy:
 - A. **Remedy for Blue-Green Algae Growth**—If your AR shingles are discolored due to blue-green algae growth during the first year of the AR Warranty Period, we will cover the cost, including labor (such cost not to exceed the initial cost of the AR shingles plus the initial cost of installation), as reasonably determined

by Owens Corning, to repair, replace or recover the affected AR shingles, subject to certain limitations. We will not cover any underlayment, metalwork, flashings or other related work, and we will not cover the cost to tear off or dispose of your AR shingles. For purposes of this AR shingle warranty, the term "repair" as used above refers to cleaning or otherwise removing any blue-green algae growth from affected AR shingles. Decisions regarding whether your AR shingles should be repaired, replaced or recovered will be made solely by Owens Corning.

B. Proration—If your AR shingles have been installed longer than one (1) year, labor will not be covered and we will prorate your Compensation to take into account the number of full years of use that you have enjoyed from the original installation date through the date of your claim. For example: If you make your claim anytime in the fourth (4th) year of the AR warranty and the AR warranty length is ten (10) years, our Compensation to you will be reduced by 3/10ths of the reasonable material cost of the affected Owens Corning® AR shingles (such cost not to exceed 7/10ths of the cost at time of purchase of the Owens Corning® AR shingles).

Transferability of This Warranty (Note: Based on Original Installation Date)
You can transfer this warranty one (1) time, anytime during the life of the warranty. For this warranty to be transferred, the new Owner must contact 1-800-ROOFING within sixty (60) days after the date of the real estate transfer to obtain the benefits of this warranty. Proof of purchase of the Owens Corning® shingles and the installation date must be submitted at the same time. If the transfer takes place within the *Tru PROtection* Nonprorated period (see "**Limited Warranty Information Table**"), the second Owner is entitled to the same coverage as the original Owner. If the transfer occurs after the *Tru PROtection* Nonprorated period (see "**Limited Warranty Information Table**"), the balance of this warranty shall be reduced to a two (2) year period after the date of ownership change. If there is a manufacturing defect that causes leaks during this two (2) year period, our compensation to the second Owner will be based only on the reasonable cost of replacement shingles reduced by the amount of use the second (2nd) Owner and the original Owner have enjoyed from the original installation date through the date of your claim. The AR Warranty Period and Wind Warranty Period are fully transferrable. The second Owner will receive the balance of the coverage outlined in the "**Limited Warranty Information Table**" based upon the original installation date.

What Is Not Covered

Our warranty does not cover damage to the Owens Corning® shingles due to any cause not expressly covered herein. After our shingles leave our manufacturing facility, they are subjected to conditions and handling beyond our control that could affect their performance. This warranty does not cover any problems with nondefective shingles caused by conditions or handling beyond our control. Some examples of conditions not covered by this warranty include:

1. Acts of God, such as hail, strong storms (hurricanes) or winds over the maximum windspeed listed in the chart at the end of this warranty, or ice damming above the area covered by leak barriers or flashings.
2. Damage to or failure of the shingles as a result of damage to or the failure of the underlying roofing structure.
3. Foot traffic on your roof or damage caused by object(s) (e.g., tree branches) falling on your roof.
4. Improper or faulty installation of your shingles—installation must be in accordance with our written installation instructions and comply with local building codes.
5. Shading, or variations in the color of your shingles, or discoloration caused due to algae, fungi, lichen or cyanobacteria (unless covered under the section "**What About Algae Resistance**" above).
6. Inadequate ventilation or roof drainage. Some exceptions may apply. If you have questions, please contact us at 1-800-ROOFING.

7. Settlement of the structure of your property or buckling or cracking of the deck over which your shingles are installed.
8. Damage to the shingles caused by alterations made after completion of application, including structural changes, equipment installation, painting or the application of cleaning solutions, coatings, or other modifications.
9. Improper storage, handling or other conditions beyond our control.
10. Damages caused by, or the cost to repair or replace, any non-Owens Corning® shingles.
11. Improperly designed or installed gutter or downspout systems.
12. Any costs that you incur which are not authorized in advance by Owens Corning.

Replacement Shingle Variations

As a result of our ongoing efforts to improve and enhance our shingle product line, we must reserve the right to discontinue or modify our shingles, including their colors. We are not liable to you if you make a warranty claim in the future and any replacement shingles you receive vary in color either because of normal weathering or changes in our product line. You should understand that if we replace any of your shingles under this warranty, we reserve the right to provide you with substitute shingles that are comparable only in quality and price to your original shingles.

Compensation

Under the terms of this Limited Warranty on Roofing Shingles, the manner of Compensation is at Owens Corning's sole discretion and may be issued in the form of cash settlement and/or material credit for Owens Corning® Products to an existing supplier of Owens Corning® Roofing materials. All costs must be pre-approved by Owens Corning. Note: The prorated material cost will be determined by the cost of the shingles at the original time of purchase.

No Modifications to this Warranty

This warranty may not be changed or modified. No one, including any representative or employee of Owens Corning and any representative or employee of a contractor or installer has authority to assume any additional liability or responsibility for Owens Corning or in any way modify or change this warranty.

Claims Process

To make a claim under this warranty, you need to do so within thirty (30) days after you discover the problem. Just call us at 1-800-ROOFING or visit us at: <http://roofing.owenscorning.com/homeowner/warranty/claimform.aspx>. To fully evaluate your claim, we may ask you to provide, at your expense, pictures of your shingles and/or shingle samples for us to test. If you have any questions, do not hesitate to call 1-800-ROOFING or visit our Web site at www.roofing.owenscorning.com.

Limitations

THIS WARRANTY IS EXCLUSIVE AND REPLACES ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER BY STATUTE, AT LAW OR IN EQUITY AND IS LIMITED IN LENGTH TO THE EXPRESS WARRANTY PROVIDED ABOVE UNLESS A SHORTER PERIOD IS PERMITTED BY LAW.

THIS WRITTEN WARRANTY IS YOUR EXCLUSIVE WARRANTY FROM OWENS CORNING AND REPRESENTS THE SOLE REMEDY TO ANY OWNER OF OWENS CORNING® SHINGLES. OWENS CORNING MAKES NO OTHER REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND OTHER THAN THOSE STATED EXPLICITLY HEREIN.

YOUR REMEDY FOR DEFECTIVE SHINGLES IS FULLY DESCRIBED IN THE PRECEDING SECTION, "**HOW LONG ARE YOU COVERED**". YOU ARE NOT ENTITLED TO ANYTHING MORE THAN WHAT IS DESCRIBED IN THAT SECTION UNLESS OTHERWISE COVERED BY AN OPTIONAL

PUBLICATION DATE: April 1, 2014

OWENS CORNING® ENHANCED WARRANTY. WE ARE NOT RESPONSIBLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR OTHER DAMAGES OF ANY KIND INCLUDING DAMAGE TO YOUR STRUCTURE OR TO YOUR STRUCTURE'S CONTENTS WHETHER FOR BREACH OF THIS WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER CLAIMS DERIVED IN TORT OR FOR ANY OTHER CAUSE.

Some states or provinces do not allow limitations on how long an implied warranty lasts and/or do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. To the extent that this warranty is inconsistent with local law, this warranty shall be deemed modified to be consistent with such local law. This warranty gives you specific legal rights and you may also have other rights which vary from state to state or province to province.

FOR CANADA ONLY – The terms in this warranty, except to the extent lawfully permitted, do not exclude, restrict, or modify but are in addition to any provincial laws.

Limited Warranty Information Table

	Warranty Length	Tru PROtection® Nonprorated Period	Wind Warranty Protection	Wind Warranty Length	Algae¹
Berkshire®†	Lifetime*	10 YRS	110/130 MPH**	15 YRS	15 YRS
Avonshire™	Lifetime*	10 YRS	130 MPH	15 YRS	10 YRS
Woodmoor®	Lifetime*	10 YRS	110/130 MPH**	15 YRS	10 YRS
Woodcrest®	Lifetime*	10 YRS	110/130 MPH**	15 YRS	10 YRS
WeatherGuard® HP†/†††	Lifetime*	10 YRS	110/130 MPH**	15 YRS	10 YRS
Duration® Series ††	Lifetime*	10 YRS	130 MPH	15 YRS	10 YRS
Oakridge®†††	Lifetime*	10 YRS	110/130 MPH***	15 YRS	10 YRS
Upreme®	25 YRS	5 YRS	60 MPH	5 YRS	10 YRS
Classic®	20 YRS	3 YRS	60 MPH	5 YRS	

* or as long as owner owns home.

† DTE: When properly installed, Owens Corning™ Hip & Ridge shingle warranty terms will match with the corresponding roofing shingle. (See specific Owens Corning™ Hip & Ridge shingle installation instructions for details.)

† Berkshire® Hip & Ridge is required for 15-year Algae Resistance Limited Warranty.

†† Includes TruDefinition® Duration®, TruDefinition® Duration STORM®,† TruDefinition® Duration® Designer Colors Collection, TruDefinition® Duration MAX®, Duration® Premium Cool and Duration® Premium shingles.

††† Includes TruDefinition® WeatherGuard® HP, TruDefinition® Oakridge® and Oakridge® Artisan Colors shingles.

† WeatherGuard® HP Hip & Ridge or ProEdge STORM® Hip & Ridge is required to complete UL 2218, Class IV impact-resistant roof system.

** 110 MPH is standard with 4-nail application. 130 MPH is applicable only with 6-nail application in accordance with installation instructions.

*** 110 MPH is standard with 4-nail application. 130 MPH is applicable only with 6-nail application and Owens Corning™ Starter Shingle products application along eaves and rakes in accordance with installation instructions.

^ Proration is calculated annually based on the original installation date. There are no partial year prorations.

¹ AR is available regionally. Visit www.owenscorning.com/roofing for availability in your zip code.

Name of Contractor _____ Date of Installation _____

Address _____

City _____ State _____ ZIP _____

Phone Number _____



Warranty Registration & Transfer Information

TO REGISTER THIS WARRANTY:

Visit our website at:

<http://www.owenscorning.com/Roofing/Warranty-101>

Click on Register a Standard Product Limited Warranty

The following information is required for registration:

Original Installation Date _____

Original Purchaser's Name _____

Owens Corning™ Shingle Name/Color Installed _____

Number of Squares Installed (3 bundles = 1 square) _____

Address of Property _____

Note: Please retain proof of purchase and installation date with your important records in the event that you choose to transfer this warranty in the future, or upload these documents as you register this warranty online.

TO TRANSFER THIS WARRANTY:

Contact 1-800-ROOFING

For this warranty to be transferred, the new Owner must contact 1-800-ROOFING within sixty (60) days after the date of the real estate transfer to obtain the benefits of this warranty. Proof of purchase of the Owens Corning™ shingles and the installation date must be submitted at the same time.

For more information, call 1-800-GET-PINK® or visit our website at: www.roofing.owenscorning.com.

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EXHIBIT 6

Comparison of Manufacturer Provided Shingle Warranties

	Duration (varies by product)	Limitations on Implied Warranty	Exclusion of Incidental and Consequential Damages	Limited to Repair and Replace	Limitations on Time to Notify Manufacturer of Defects	Exclusive Warranty	Transferability of Warranty
TAMKO – Exhibit B to Plaintiff's Memorandum	20 years to Lifetime	Yes	Yes	Yes	Must notify TAMKO within 30 days	Yes	By Original Owner Only within 2 years
CertainTeed – Exhibit 1	10 years to Lifetime	Yes	Yes	Yes	Must promptly notify	Yes	By Original Owner Only
GAF – Exhibit 2	20 years to Lifetime	Yes	Yes	Yes	Must notify GAF within 30 days	Yes	By Original Owner Only within 3 to 10 years
IKO – Exhibit 3	20 years to Lifetime	Yes	Yes	Yes	Must notify IKO within 30 days	Yes	By Original Owner within 10 years
Malarkey – Exhibit 4	20 years to Lifetime	Yes	Yes	Yes	Must notify Malarkey within 30 days	Yes	By Original Owner only
Owens Corning – Exhibit 5	20 years to Lifetime	Yes	Yes	Yes	Must notify Owens Corning with 30 days	Yes	By Original Owner Only

Sara Tyer

From: Nicholson, J. C. Law Clerk (Charles Patrick) <JNicholsonLC@sccourts.org>
Sent: Thursday, August 14, 2014 2:55 PM
To: dlynn@lucey-law.com; Justin Lucey
Cc: Richard Willis
Subject: One Belle Hall Property Owners Association, Inc. v. Trammell Crow Residential Company, et al., 2012-CP-10-7594

Dear Counsel:

Judge Nicholson took TAMKO's Motion to Dismiss and Compel Arbitration under advisement. After further review of the memoranda and relevant case law, Judge Nicholson denies the motion.

Ms. Lynn, please prepare a proposed order reflecting the arguments you put forth in you memorandum of June 24, 2014. Judge Nicholson is not persuaded by the arguments set forth in subsection (C) regarding the Horizontal Property Regime Act, nor in subsection (D) arguing that Plaintiffs are not parties to the agreement. Therefore, please omit these portions from the proposed order.

Please submit the proposed order to me via e-mail and in Microsoft Word format after circulating it with opposing counsel for objections. Thank you for your assistance.

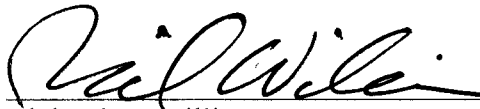
Kind regards,
Kate

Kate Hendricks
Law Clerk to The Honorable J.C. Nicholson, Jr.
Circuit Court Judge
100 Broad Street
Charleston, South Carolina 29401
Tel: (843) 958-5047
jnicholsonlc@sccourts.org<<mailto:jnicholsonlc@sccourts.org>>

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# **CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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Paula M. Burlison  
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1441 Main Street, Ste 1200  
Columbia, SC 29201  
Telephone: (803) 726-7420

Attorneys for Appellant

May 7, 2015

MAY 07 2015  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2012-CP-10-7594

Case Tracking No. 2014-002115

**EX-111**  
**MAY 07 2015**  
**SC Court of Appeals**

One Bell Hall Property Owners Association, Inc. and Brandy Ramey,  
individually, and on behalf of all others similarly situated,.....

Respondents,

v.

Trammell Crow Residential Company; TCR NC Construction I, LP; Belle Hall Direct 101, LP; TCR RLD Condominiums, Inc.; CS 101 Belle Hall, LP; TCR Southeast, Inc.; TCR Carolina Properties, Inc.; TCR SE Construction, Inc.; TCR SE Construction II, Inc.; TCR Construction, a division of Trammell Crow Residential; TCR Development, a division of Trammell Crow Residential; Trammell Crow Residential Carolina, a division of Trammell Crow Residential; and Tauer Consulting Company, Inc., a division of Trammell Crow Residential, each individually, and collectively d/b/a "Trammell Crow Residential," "Trammell Crow" or "TCR"; Halter Properties, LLC; Halter Realty LLC; and Halter Realty Group, LLC, each individually, and collectively d/b/a "Halter Companies", Jane Doe 1-5; ABG Caulking & Waterproofing of Morristown, Inc. a/k/a ABG Caulking Contractors; Advanced Building Products & Services, LLC; BASF Corporation; Budget Mechanical Plumbing, Inc.; Builders First Source – Southeast Group, LLC; Builders Services Group, Inc., individually, and d/b/a Gale Contractor Services, Inc.; Century Fire Protection, LLC; Cline Design Associates, P.A. and Gary D. Cline; Coastal Lumber & Framing, LLC; Dodson Brothers Exterminating Co., Inc. a/k/a Dodson Pest Control; First Exteriors, LLC; Flooring Services, Inc.; General Heating & Air Conditioning Company of Greenville, Inc. d/b/a General Heating and Air; Jimmy Warner, individually, and d/b/a Warner Heating & Air; Glazing Consultants, Inc.; GWC Roofing, Inc., individually, and d/b/a Southcoast Exteriors, Inc.; Houston Stafford Electrical Contractors, LP a/k/a IES Residential, Inc. d/b/a Houston Stafford Electric; KMAC of the Carolinas, Inc.; P&P Metal Sales Co., Inc. a/k/a P&P Metal Sales, LLC a/k/a P&P Metal Sales, Inc. a/k/a Carolina Metals;

Pleasant Places, Inc.; Raymond Building Supply Corporation d/b/a Energy Saving Products of Florida, Inc. a/k/a Energy Saving Products of Florida; RS Custom Homes, LLC; Southern Specialties, Inc.; Structural Contractors South, Inc.; Superior Construction Services, Inc., individually, and d/b/a Superior Masonry Unlimited, Inc.; TAMKO Building Products, Inc. f/k/a TAMKO Roofing Products, Inc.; VNS Corporation, individually, and d/b/a Wholesale Building Products f/k/a Wholesale Building Materials, Inc.; What Don't We Do; and John Doe 1-25, Defendants,

Appellant.

Of whom TAMKO Building Products, Inc. is the Appellant.

VNS Corporation, individually, and d/b/a Wholesale Building Products f/k/a Wholesale Building Materials, Third-Party Plaintiff,

v.

Billy Gray, d/b/a United Builders, LLC., Third-Party Defendant,

Houston Stafford Electrical Contractors, LP a/k/a IES Residential, Inc. d/b/a Houston Stafford Electric, Third-Party Plaintiff,

v.

J. Correa Electrical Company, LLC, Third-Party Defendant,

MAY 07 2015  
SC Court of Appeals

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PROOF OF SERVICE

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I certify that I have served the Record on Appeal on One Belle Hall Property Owners Association, Inc. and Brandy Ramey, individually, and on behalf of all others similarly situated, by depositing a copy of it in the United States Mail, postage prepaid, on May 7, 2015, addressed to their attorneys of record, Justin Lucey and Dabny Lynn, Post Office Box 806, Mt. Pleasant, SC 29465.

BOWMAN AND BROOKE LLP

By: 

Richard H. Willis

Paula M. Burlison

1441 Main Street, Suite 1200

Columbia, SC 29201

(803) 726-7420

Attorneys for Appellant TAMKO Building  
Products, Inc.

May 7, 2015